

Jean The hearing was held 3 different times and was continued. ...He did show up in court, he and Grace got legal custody yesterday.

S. Yes, that was predictable.

Jean It was, except that we thought that he had a little more loyalty. I don't know what his motives are. He has always said that he would help us and that would never be an issue.

S. Never get between a woman and her man. It's an old adage. They run one to another, on top of loyalties.

Jean Tim did testify on her behalf yesterday. Promptly yesterday afternoon delivered a letter saying he demanded custody of the child. Said we were to deliver the child by next Friday noon. (quotes the letter)

S. What jurisdiction did the court have over the real father at the time?

Jean We say none.

S. Well, that doesnt do you any good. What does the court say?

Jean That I don't know, and I wonder how I'd find out?

S. Well, what type of service was given on him? Did he have actual service of the hearing?

Jean Yes, he did. He was notified to be there.

S. Where was that service performed? Down south?

Jean I'm not sure whether or not they got one down there. We did get one here at the church.

S. And it was communicated to him?

Jean I'm unaware of that. I think it probably was.

S. So actual notice he had; the question of legal notice is another question. Its your understanding he had actual notice, so he knows about the hearing and the judge entered an order granting legal custody and the right to physical custody to both the natural mother and her husband. I take it the court entered an order to that effect.

Jean I presume. I haven't seen the papers. Noone that I know was there, at the actual hearing ~~XXXXXX~~

S. You weren't there to hear what happened?

Jean I could get the court papers though.

S. Yes, that would be wise. The court will be signing an order within a day or so. You should get a copy of the actual

papers that were filed and whatever copy of an order that the judge granted.

Jean This is what I understood you to explain last time: if the court did serve notice there, he did get it or whatever, the court's jurisdiction does in fact extend?

S No, No, I said there was a specific question about that. It was a question of reciprocity between the southern state and the courts here in the US. If in fact the courts down there received notice of this and chose to give it full recognition, then the court down there could issue an order giving what they refer to as "full faith and recognition to the U.S. court order." The US court has no jurisdiction down there.

Jean In itself, it has none. It has to be honored by the court there, is that right?

S That's right. They would have to apply to the government there and have a court order there which grants full faith and recognition to the US court order. Then they would issue an order in turn mandating that a certain thing be done.

Jean What my concern is, our relations are very good there. What we have been able to accomplish there, by now we have over 800 people there. We also have a very highly developed ~~crop~~ which is exactly what the country is interested in doing for self-sufficiency and a number of other reasons. That's I guess what we're holding on to at this point, and it's pretty good. Course it's still a matter of tremendous concern. What my concern would be is, is there any way, when you previously talked to me, you told me about the kind of warrant that was out for Huey Newton, a fugitive thing

S The only instance in which that would occur, for example is that if in fact the US court here had undertaken some sort of criminal sanction, or ordered that the real father be present, and he didn't show up, and chose to move to have him held in contempt.

Jean Who could do that, what court could do that?

S The civil court could, by the sounds of it. At least we don't have any affirmative information that that's been done. That's why it's important to get a look at the paper.

Jean You think it might have been done?

S No, it doesn't sound like it. It seems like something would have been said in the letter that you received if it had been.

Jean Could have issued contempt?

S Yes, for example in a divorce case where a decree of divorce has been entered, and an order has been entered by the court

S mandating that the father pay alimony and child support. If he doesn't pay the child support, the court can enter an order directing him to appear in front of the court. If he doesn't appear, they can issue a citation for contempt. Then issue a warrant, because contempt is criminal. The fact is, it's a felony. Then it becomes, if the U.S. court issues a felony warrant, the question becomes totally political with a foreign country as to whether or not they will have an extradition.

Jean What would be the jump between the local civil proceeding and the US court issue

S Well, no, it would be a State court, a State civil court can issue an order of contempt and can in fact issue a subpoena in effect. And then it becomes specifically a political question as to whether or not the foreign state will recognize it. In the vast overwhelming majority of cases, they do not. Now if in fact it were a federal fugitive warrant, which there's no way that that would likely get translated into one of those, that's when you get the sort of Huey Newton situation.

Jean Now the third situation would be, I thought what you said, was if there was some kidnapping charge.

S O, that - if they intended to bring a totally separate action - for example now, as I understand it there has been a State court order entered granting legal custody to the mother and to her husband. That means she has legal custody and that also means that the natural father has no legal custody whatsoever. He is no longer recognized as having legal authority to have the child - has no legal authority to have the child. There was one other question that arose, you indicated to me that there was also a party down there with him who had legal guardianship of the child.

Jean Well, it was not entered in the court. So it's something that simply could be revoked.

S Oh, well then there isn't any.

Jean No

S Okay, what you have then, is the/natural mother, and the legal father, who have custody of the child. Now no one else has the right to have legal custody of the child right now. So in fact if they could determine if someone had the child and a request had been made to that person to return the child and the child was defying the parents, then they would be in a standing to go before a US Attorney and file a complaint for kidnapping, that in fact there are people in custody of our child who have no right to the child and they are keeping it over and against our will and they have actual notice of our demand to have the child back.

S It's no longer a legal custody fight because that's been resolved now. So now they are very close to getting into a position of having standing to possibly file a complaint for kidnapping. ~~Now if in fact a kidnapping warrant were issued, then that would end up into the straight realm of a decision as to whether or not the southern state would in fact recognize a federal warrant for extradition purposes.~~ NO
That's a simple enough issue to find out, whether or not they have an extradition reciprocity treaty with the US. If they did, what would happen is that the warrant would be sent down there to the executive department of the foreign state and they would have to make a decision as to whether or not to execute on it.

Jean Who would it be sent to?

S It would be sent to, like the federal law enforcement agency.

Jean It wouldn't be necessarily the executive branch; it might be the highest magistrate, or something?

S Well it would probably be sent to the comparable agency of the ~~U.S. Attorney~~ - their attorney general would get it and ~~it would be the national police force that would be asked to enforce it.~~ That's if in fact such a step were taken. If in fact no warrant for kidnapping were issued, then you'd be dealing with a civil action and as far as I can tell, they may not have any jurisdiction over the natural father. They may not have gotten any type of legal service on him to mandate his appearance and he may not be subject to the jurisdiction of the court. So to the extent to which it remains on the civil level, my sense is that there would be likely to be very little relief that they could get. But now if in fact they chose to take the step into the criminal dimension, then it would revolve down to the question of whether or not the foreign state was going to enforce the warrant. Those are the two situations that you're looking at.

Jean I have another question, and this regards the thing I mentioned to you; we thought it might be appropriate to find some place for the child other than where he is.

S Yes, to the extent to which there has been no service on him, if there is no service on him and he is not under any type of court order relating to the child that they have jurisdiction over him on, he has perfect right to go wherever he wants to go ~~to~~ to the extent to which he's the natural father, has the right to take the child where he chooses to. Now the other issue about there being some person who is a legal guardian, that seems to be pretty well mooted now.

Jean They did sign a number of documents, and they were notarized, but they've never been filed with the court.

S Well, to the extent to which there is a superceding court order now granting custody to the natural mother and her legal

5

S husband, I would say that thats pretty much viciated (sp?)

Jean I'm sure it is. If they were to go out of the country, say it were not he, but another person, and he had no knowledge of where the child were going

S Well, that wouldn't be very credible. The says that can be thought of creatively to avoid legal implications of what you're doing are not very successful because they've been tried before, so if in fact he did have actual knowledge of where the child was going and was the one in charge of, the agent that had the child, he would be part of a conspiracy to commit kidnapping, and he'd still have the same problem with the federal warrant.

Jean What if he actually did not know?

Handwritten: S DOT U.S.A. ↓

Well, if he did actually not know, then he'd still be, if he were responsible for directing an agent to take the child and go somewhere when he knew that the natural mother and legal father had legal custody of the child, and he was doing this to keep the child out of their custody, that is what kidnapping is all about.

Jean Okay, so there's no way around that

S It's very unlikely

Jean Okay, considering that that would be the case, if he went out, what about if he were to go out of the country through immigration (break in tape)

S If in fact there had been no warrant issued, clearly the extent to which the letter is the avenue along which they're attempting to pursue custody of this thing, the extent to which theres no federal warrant outstanding against him, and theres no, from what I can understand at least, jurisdiction that has been asserted over him, he has the right to go wherever he chooses with the child. But the question is, the thing really shakes down to a question of what country would not recognize a federal warrant. That's where the bottom line political question is. If he is the natural father of the child and has the requisite affection and things for the child, is dealing in good faith with having the child in his custody, especially in fact if there were papers signed by the natural mother authorizing the child to be with whoever this subguardian was down there, at least at initio

Jean But, papers signed by whom, at this point now?

S If they were signed by the natural moter.

Jean

S father, as I understand it, had no legal status until just recently.

Jean So anything he did was not really

S It doesnt really have any impact. Shaking the thing down, what it looks like is that if the natural father and the former guardian, at least according to papers even though it might not have been filed in court, and the legal father now all consented to the child being in this southern country, it seems that that is perfectly proper for the child to be there. If in fact there are papers that have been just signed yesterday which establish legal custody in the natural mother and the legal father and they want to have the child some other place, way up in San Francisco, by Friday, that is for the first time a change in status. The status had been fairly well understood apparently by the mother by her designating the legal guardian to have the child down there; the natural father was there and the legal father knew the child was there and apparently participated in bringing the child there; all the status of the child there in the southern country is perfectly appropriate up until yesterday. As a matter of fact, it will be perfectly appropriate as far as I can tell til this next Friday. The only question then will be what type of communication was made between San Francisco, and the San Francisco court, and the legal parents now, to the people down in the southern country to mandate the return of the child. That's a physical question of what type of notice has been served, what type of jurisdiction obtained. At first it's a factual question, very simply; and secondly, it's a legal question of None what type of force and effect a court order from up here really has down there. Unless a court down there has somehow taken jurisdiction of the thing and issued a court order from that country, my guess would be that it has very little if any effect.

Jean Little effect unless they pick up on it.

S That's right. But does the court up here take any real jurisdiction over them down there

Jean And issue a warrant

S And issue a warrant, then it really wouldn't have any effect until such time as either the executive department down there or the judicial division undertakes to issue some type of order predicated upon the U.S. court order. My sense is that there's no force and effect to it, that would be my guess

Jean I think that's what we're feeling.

S of course, then the question would be, what additional steps

S and what the status was with respect to various countries and their extradition status with the US. Tell him that I asked you to call him. He'll know a firm.

Jean We do have a written statement from the legal father saying that the natural father is in fact the natural father. I don't know - even if that's a written document, signed and written in his own hand, that isn't going to put any conditions on it at this point, that wouldn't change the status?

S No. See, I've been going upon the assumption that there's not any factual question about the status of the natural father, there's an evidenciary question - what type of evidence do you have, and that's of assistance to the extent to which it's evidenciary in support of that thing. But the fact of the matter is that the natural status of either the mother or father is not totally controlling, as you've no doubt gathered by this time. The status of the court orders are what really control.

Jean I understand, that's pretty clearly explained. And of course, he refused to return the child.

S Then you've got to get down to some of the bottom lines here.

Jean From what I've heard so far, what it really comes down to is one of the most troublesome aspects of law, when you have a natural mother and natural father who had initially entered into at least some sort of tacit understanding that they were going to spend their life together and raise a child, and when that understanding is breached, at the outset of the thing - clearly a natural father has as much right to custody of the child as the natural mother, and so it's a straight 50/50 proposition. At that point, the physical possession of the child is controlling. Who has the child. Then neither party can invoke the power of a court to force the other person to release custody of the child to them, unless they can get the court to make a full ruling and say who has custody of the child. They can't without depriving one of the parties of custody ~~or~~ physically remove the child. They can physically remove the child and they're perfectly legal in doing so - that's that whole kidnap situation. A parent cannot be said to kidnap their own child as long as they have legal equal access to the child. But now once one of the natural parents goes before a court and gets a court order removing legal custody from one of the two parents and placing it in the other one, then physical possession of the child no longer controls. Then it's the court.

Jean Then it's your feeling that it's going to be a matter of political level, and the location of the parties concerned would be best determined at this point by the relations

S of the country at stake. You have to get yourself into the

S Well I would assume that they would just let it sit there pending, and my sense is that the worst that could happen is he could be put in jail for civil contempt with no term. Just in perpetuity until he complied. That's the worst that could happen, cause that could technically be longer than the sentence for kidnapping. Meanwhile, once the kidnapping charge had been initially filed, the statute of limitations would have run on that and they could just leave the thing pending until the civil court was done doing whatever they were going to do with him. Then prosecute him. But that's stating things in the most nightmarish

Jean Well that's the way we have to think, so your advice is much appreciated.

S The real bottom line is the political reality between the place where he is and the United States.

Jean And as far as going somewhere else, it would simply at this point be a matter, even if he said he didn't know, it's not really going to help the situation

S If the factstate that they technically have not established jurisdiction over here, there's no service that has been performed on him to bring him under the jurisdiction of the court, and I think we'd know that if it had happened, then he is free to go wherever he chooses to go. But given the kind of life he leads and the responsibility he has for his people, it's not likely he's going to go

Jean No, he's not going to go anywhere. I was thinking of someone else with the child, not he.

S What they'll do, is they'll move directly on him. Say I know you know where the kid is.

Jean And still they could act against him even though he could say he didn't know.

S Yes.