

## SAFVIC ON THE SCENE

## "THE CHILD'S NOT MISSING. YOU KNOW WHERE SHE IS"

## INSIDE THIS ISSUE:

<i>SAVE the Date</i>	2
<i>ACP Program</i>	2
<i>Featured Agency</i>	3
<i>SAFVIC Library</i>	3
<i>CenTex Award</i>	4

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Article Provided By: Pam Brown, Attorney at Law &  
Director of Bi-National Project on Family Violence Texas RioGrande Legal Aid, Inc.

*"He knew taking my daughter from me would hurt more than the blows he had given me," BFVP client.*

*Elena started to cry as the police officer challenged her, "How can your daughter be missing if you know where she is?" But Elena didn't know. All she knew was that her abusive ex-husband Miguel had taken off with both her young daughters, Gennifer and Dora, when they were one and four years old respectively. Within a day of the abduction, a friend from church located Elena's husband in Juarez, Mexico and persuaded him to return the younger child to Elena. Miguel sent a message to Elena with the man who brought Gennifer to her, "Now we each have one, and we'll both suffer equally for the one we don't have." No incident report was taken. No entry in NCIC.*

*That was five years ago, and Elena still has no idea where Dora is other than that she may be in Mexico. But to her local police officer, the child was not missing. Now five years later, even after a judge awarded her full custody, she is told that the case was a civil matter and the child is not technically missing.*

In addition to the physical brutality used by family violence perpetrators, many also rely on other equally damaging tactics to exert control over and harm their intimate partners. One of the most common and sadly, effective, control tools is the threat to the victim that she will never see her children again if she doesn't 'obey' the perpetrator or if she threatens to leave him. Unfortunately, all too often batterers make good on these threats and the devastating effects on the left behind parent can be profound.

Often the first place the left behind parent goes for assistance when the batterer has taken the children is to her local law enforcement agency. Sadly, most law enforcement agencies are ill equipped to deal with parental kidnappings. Indeed, most don't even have a protocol to respond to these cases. Far too frequently, law enforcement does not view parental kidnapping as a law-enforcement problem but as a civil problem that should be worked out by lawyers. A common attitude can be captured by the following statements: "The child's not missing, they're with the other parent. How bad can it be?"

The answer to this last question is revealing. After accounting for runaways, the vast majority of miss-

ing children are victims of parental or family abductions. Studies have shown that the motive in the vast majority of these cases is not love, but more often anger and/or revenge.<sup>2</sup> In other words, the children are used as tools to inflict harm on the victim. More alarming is the fact that an estimated 70,000 to 75,000 children every year in the United States are seriously harmed as a result of parental kidnappings.<sup>3</sup>

That said, it is a real challenge for law enforcement officers on the street to differentiate between the dreaded and all too frequent child visitation dispute calls and those calls from the parent who has a sincere belief that the other parent has taken his/her child with the intent to prevent him/her from ever seeing the child again. But if the effort is not made at the initial call to distinguish among these diverse cases, the consequences can be dire.

The Texas Missing Children and Missing Persons Act, Code of Criminal Procedure Art. 63.001, provides a framework for evaluating how to respond to these cases, but also promotes some confusion. According to the Act, a missing child is defined as

"a child whose whereabouts are unknown to the child's legal custodian, the circumstances of whose absence indicate that: (A) the child did not voluntarily leave the care

and control of the custodian, and the taking of the child was not authorized by law; (B) the child voluntarily left the care and control his legal custodian without the custodian's consent and without intent to return; or (C) the child was taken or retained in violation of the terms of a court order for possession of or access to the child."

Under the above, it's clear that unless a child is taken by a parent (i.e. legal custodian) in violation of a court order, the child isn't missing. However, under CCP 62.001 (4)(A) a missing child or missing person also includes a person of any age who is missing and; ...(B) is in the company of a another person or *is in a situation the circumstances*



**An estimated 70,000 to 75,000 children every year in the United States are seriously harmed as a result of parental kidnappings.**

## 6th Annual SAFVIC Instructor Summit

will be held at the

### Drury Inn & Suites

#### Riverwalk

201 N. St. Mary's  
San Antonio, Texas 78205  
210-212-5200

For more information about the hotel, driving directions, and points of interest visit their website at:

<http://www.druryhotels.com/properities/sanantonioriverwalk.cfm>

### Address Confidentiality Program

Office of the Attorney General

With increased public access to personal information, there is a rising need for address confidentiality for victims of family violence, sexual assault, and stalking. Fearing for their safety, many victims do not even obtain a driver's license or register to vote.

Texas has a new program to help these victims of family violence, sexual assault, and stalking keep their actual address confidential. The Texas Address Confidentiality Program (ACP), administered by the Office of the Attorney General (OAG), provides a substitute post office box address and free mail forwarding service for participants.

ACP is a safety tool and intended as one step in an overall safety plan. It is neither a witness protection program nor a guarantee of safety

Laws governing the ACP program are found in [Chapter 56, Subchapter C, of the Texas Code of Criminal Procedure](#)

For an application and checklist or more information, visit the home page of the SAFVIC website.

# SAVE THE DATE...

## 6TH ANNUAL SAFVIC INSTRUCTOR SUMMIT AUGUST 11 - 13, 2008

Instructor summits are held to enable instructors to have input regarding SAFVIC policies, to implement curriculum updates, and to offer an opportunity to network with other trainers. Attendees will receive a minimum of 16 hours TCLEOSE credit. We strongly encourage every instructor to attend this summit! We have a great group of instructors, and we would love for everyone to meet, swap stories and techniques, and take an active role in the growth of SAFVIC.

Guest speakers include Thomas Martin, Crime Scene Forensics, LLC, Dr. Randall Lockwood, Ph. D. and CAAB of the ASPCA, and Krista Del Gallo, Policy Manager of TCFV.

Some of the topics covered will include:

- Coping with the CSI effect
- Dispelling myths about forensic science
- Forensic analysis of evidence
- Documenting crime scenes
- Building good cases - One block at a time
- Managing the large scale, multi-disciplinary investigation
- Animal abuse in the context of domestic violence
- Evidence for co-existence of animal abuse and child abuse
- Legal remedies available for immigrant victims of violence, such as VAWA self petitioning and U visas
- Economic options for immigrant victims.

### 2008 SAFVIC Instructor Summit Agenda

- Registration will be on Monday, August 11<sup>th</sup>, 10:00 AM - 1:00 PM
- Monday, August 11<sup>th</sup>, 1:00 PM - 5:00 PM
- Tuesday, August 12<sup>th</sup>, 8:00 AM - 5:00 PM
- Wednesday, August 13<sup>th</sup>, 8:00 AM - 12:00 PM

**Must be a SAFVIC Instructor to attend.**

**If you have any questions, please contact the SAFVIC Staff at (800) 848-2088.**

(Continued from page 1)

*of which indicate that the missing child's safety is in doubt...(emphasis added).*" In other words, the inquiry should not start and end with the question, "do you have custody orders, and was the child taken in violation of those orders?" Officers should not assume that a child is safe merely because s/he is with a parent, but rather the officer should take quick and appropriate steps to determine the identity of the abductor and assess whether the child is at risk.

Lee Reed, Abilene Police Department Detective and member of the National Missing and Exploited Children's elite missing child rapid response group known as "Team Adam," helped pass the Texas Missing Children Act. Detective Reed asserts that, "If there is *any* indication that the child may be at risk or in some kind of danger, it's the obligation of the responding officer to take a missing children's report and enter the child's name into NCIC." Among the factors to be considered in assessing the risk to the child are the following:

- Whether the abducted child has a medical condition which the abducting parent is either unaware of or unable to properly treat;
- Whether there is a danger to the abducted child of either physical or sexual abuse;
- Whether there has been a threat of harm to the child or a threat to take the child out of the jurisdiction, especially if the threat is to take the child outside of the United States;
- Whether the abducting parent has a history of mental illness or any type of substance abuse

problem which poses a threat to the child;

- Whether the abducting parent is known to be armed while in possession of the child or committed a violent act when taking the child;
- Whether the abducting parent does not have a verifiable current address.

Even though the facts presented may not give rise to the need to initiate a criminal investigation or issue an Amber Alert (something that parents request all too frequently), the officers should nonetheless take a missing child report and enter both the abductor's and child's information into NCIC.<sup>4</sup> Indeed, the National Child Search Assistance Act requires every federal, state and local law enforcement agency to report each case of a missing child younger than the age of 18 to the NCIC. 42 U.S.C. Sections 5779 5780.

Entering the information into NCIC-Missing Person's File (MPF) greatly enhances the likelihood that a child will be recovered promptly as it enables local, state and federal criminal justice agencies throughout the U.S. to access the information. Even more significant are the huge benefits the NCIC entry can be to the left behind parent. Once the child is in NCIC, the National Center for Missing and Exploited Children (NCMEC) can devote its considerable resources to the search effort as well as provide a variety of services, such as peer counseling, etc. to the left behind parents when their children are taken to another country. NCMEC case officers provide parents useful materials and guidance regarding the steps to take to try to recover a child that has been removed from the United States. They will orient the parent as to the available civil and criminal remedies and whether pursuing one or the other is more or less

(Continued on page 4)

## FEATURED AGENCY:



Texas RioGrande Legal Aid (TRLA) is a non-profit organization that provides free legal services to low-income residents in Central, South, and West Texas. TRLA currently serves a 68-county service area and its staff includes approximately 120 lawyers and 50 paralegals located in 17 branch offices throughout the state of Texas. Program headquarters are in Weslaco and branch offices are located in Austin, El Paso, Corpus Christi, San Antonio, Del Rio, Eagle Pass, Harlingen, Edinburg, Laredo, Sinton, and Victoria. TRLA also runs Southern Migrant Legal Services out of Nashville, Tennessee.

TRLA's mission is to promote the dignity, self-sufficiency, safety, and stability of low-income Texans by providing high quality legal services and related educational services. In doing so, TRLA provides legal services in 39 different practice areas including housing, family law and domestic violence, consumer fraud, and employment issues. Within these services, TRLA provides a variety of opportunities for law enforcement officials to continue to serve low-income clients.

Victims of domestic violence can approach TRLA for help with a variety of legal services. Legal staff work with victims to navigate through the legal system so that they can rebuild their lives and protect their children. From filing for divorce or child custody to getting a protective order, attorneys and social workers are with a victim throughout every step of the legal process.

*This article was provided by Cynthia M. Martinez, Communications Director of Texas RioGrande Legal Aid, Inc.*

Attorneys are also trained to work with victims of human trafficking and victims of consumer fraud. Furthermore, TRLA's Bi-National Project helps parents whose children have been kidnapped and taken across national borders. In doing so, the Bi-National Project provides valuable services in helping victims navigate through the legal systems of multiple countries to seek the safe return of their children.

Throughout the year, TRLA attorneys do a considerable amount of outreach to local officials, including law enforcement, to both educate and train them on changes to legal procedures. The Legal Access to Rural Shelters Project (LARS), a project of TRLA, runs an annual training conference for attorneys and domestic violence shelter staff to ensure that victims are provided with the best possible support and resources as they rebuild their lives. Additional trainings are developed by TRLA throughout the year to target pressing issues that may arise.

TRLA's online staff directory provides a valuable resource for law enforcement officials in need of additional information or resources. By being able to search for legal experts by subject matter and having their contact information readily available, law enforcement can easily find a reference for any issue that may arise. Additionally, TRLA's press center helps supporters keep track of the latest legal developments.

For more information on Texas RioGrande Legal Aid, visit [www.trla.org](http://www.trla.org).

## SAFVIC INSTRUCTOR LIBRARY

Looking for more in-depth knowledge? Whether you're looking to brush up on cyber crimes investigations or find out what other communities are doing for stalking investigation, the SAFVIC library has the tools to help!

The SAFVIC library is **FREE** (including postage) to our instructors, and includes some of the best material in the field with a number of practical investigative books. Here are some of our most popular titles:

- **Digital Evidence and Computer Crimes: Forensic Science, Computers and the Internet**  
By: Eoghan Casey
- **Handbook of Computer Crime Investigation: Forensic Tools and Technology**  
Edited By: Eoghan Casey
- **How to Stop a Stalker**  
By: Detective Mike Proctor
- **Practical Aspects of Rape Investigation**  
By: Robert R. Hazelwood and Ann Wolbert Burgess
- **The Macho Paradox**  
By: Jackson Katz

To find a complete list of available titles, please visit the SAFVIC website @ [www.safvic.org](http://www.safvic.org).

Interested in  
Becoming a  
SAFVIC  
Instructor?

Applicants scored  
based on the following  
criteria:

- Level of TCLEOSE license certification
- Instructor certificate
- Demonstrated interest in the field of sexual assault or family violence investigation
- Working knowledge of computers, especially Microsoft Word and PowerPoint
- Proven public speaking ability
- Positive role model within the department and the community
- Geographical location
- Must have taken and passed the 3-day SAFVIC

For dates & an  
application, go to  
[www.safvic.org](http://www.safvic.org).



*"Piecing together the tools needed to effectively investigate and prevent sexual assault and family violence."*

**MITCH LANDRY**  
Deputy Executive Director of  
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Director of Development

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Program Analyst

**BROOKS LOUTON**  
Program Assistant

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We're on the Web @  
[www.safvic.org](http://www.safvic.org)

To obtain free copies of relevant NCMEC publications, such as "Missing and Abducted Children: A Law-Enforcement Guide to Case Investigation and Program Management," go to [www.ncmecpublications.org](http://www.ncmecpublications.org)

AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION - CENTEX CHAPTER PRESENTS

**PUBLIC SERVICE** *recognition week*

## SAFVIC Receives Award for Innovative Program of the Year

We are delighted to announce that the CenTex Chapter of the American Society for Public Administration has selected SAFVIC for the Innovative Program of the Year award. CenTex ASPA awards this recognition when a program improves delivery of public services, addresses significant community challenges, or leads to improved processes within public organizations. The CenTex Chapter's nominee selection process is highly competitive, and the winner is announced during Public Service Recognition Week in early May. This year, SAFVIC won this distinguished award.

We want to thank our Instructors and Stakeholders for your commitment to the SAFVIC program — it is because of *your* vision, support, and guidance that SAFVIC was selected for this honor. We appreciate the dedication you have shown to this work to improve the quality and delivery of law enforcement services to investigate crimes of family violence and sexual assault.

*(Continued from page 2)*

likely to result in the child being returned.

In some instances federal criminal charges may be appropriate. However, most state and local law enforcement personnel are unaware that it is a federal felony (International Parental Kidnapping, 18 U.S.C. Section 1204) if a person "removes a child from the U.S., or attempts to do so, or retains a child (who has been in the U.S.) outside the U.S. with the intent to obstruct the lawful exercise of parental rights." Interestingly, the IPKA presumes that the removal of a child from the U.S. is inherently dangerous in that once out of the country, U.S. authorities can't ascertain or ensure the child's welfare. As such, no custody orders need be in place at the time of the removal for a taking parent to be charged with international kidnapping.

It's important to note, however, that there are several affirmative defenses available to a parent who faces charges under the IPKA. These include proof that 1) the defendant acted within the provisions of a valid court order that was in effect at the time of the offense; 2) that the defendant was fleeing an incidence or pattern of domestic violence; or 3) the defendant had the child pursuant to rights conferred in a valid court order and failed to return the child as a result of circumstances beyond his control and the defendant notified or made reasonable attempts to notify the other parent of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible."

Again, whether criminal charges are useful or not is something for the left behind parent to consider. Several countries are reticent to return a child to a country where the taking parent might be unable to return due to outstanding criminal charges related to the child's removal. In those instances, the "missing child report"

becomes increasingly important to the left behind parent because it expedites the parent's access to the services s/he needs, either via NCMEC, the U.S. State Department or international missing children databases.

Law enforcement has come a long way in its response to family abductions in the last ten years. But like other crimes involving families and the perceived privacy of the home, such as family violence and child abuse, some still fail to recognize family abduction's real impact. Studies have begun to confirm what child psychologists and left behind parents have known for some time—that children are profoundly and often permanently affected by family abduction. By responding promptly and efficiently to reports of family abduction, in a manner that recognizes the potential danger to the child and respects the anguish of the parent, law enforcement can make all the difference in ensuring the safe and prompt recovery of the child. Had Elena's local law enforcement agency responded accordingly, perhaps her daughter Dora would be with her today, playing with her sister and Elena would not feel the persistent and agonizing pain of having lost a child.

1. This is based on a true story; however, the names have been changed to protect privacy.

2. Geoffrey Greif and Rebecca Hegar. "When Parents Kidnap: The Families Behind the Headlines." The Free Press: New York, New York, 1993

3. "The Kid is With a Parent; How Bad Can It Be? The Crisis of Family Abductions," by Ernie Allen, President, COO, National Center for Missing and Exploited Children, 1991

4. Depending on the case, abductor entries may be made in the Wanted Person File; Vehicle File, License File; and in some jurisdictions, the MPF. All NCIC entries pertaining to the child and abductor should be cross-referenced. (From "Family Abduction: Prevention and Response" Publication of the National Center for Missing and Exploited Children, the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, in cooperation with the ABA Center on Children and the Law, March 2002).