From International Law to a Made-for-TV-Movie: Media Influence in the Elian Gonzalez Story

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When his relatives in Miami refused to return him to his father in Cuba, their campaign was fought with photo ops and sound bites as much as with the law.¹

Everyone remembers powerful images the media propagates. The media helps us stand in the crowd as Dr. Martin Luther King, Jr., captivates the nation with his “I Have a Dream” speech in front of the Washington Monument. Joe Rosenthal’s well-known photograph of U.S. Marines raising the American flag over Okinawa engenders feelings of humble patriotism while reminding us of war’s terrible price. In one photograph, “Migrant Mother, Nipomo, California 1936,” Dorothea Lang seems to capture not only the Depression’s melancholy, but a mother’s stoic determination as well. The media’s power to engrave images in our cultural unconscious and to prompt dialogue in our forums is so obvious that it is undisputed.

People in America, Cuba, and much of the world, will remember the still photo of a U.S. marshall taking a petrified Elián Gonzales from his Miami relatives at gunpoint.² This photo’s ubiquity demonstrates the media’s power to endow a completely unknown and obscure six-year-old with international fame. Media artifice crafted the Elián Gonzales case into the cause célèbre of the Cuban exile community, the Clinton Administration, Castro’s Cuba, and almost every American. Not only does this photo act as a silent epilogue to months of preceding media din, it demonstrates the media’s pervasive influence and direct involvement in the Elián Gonzales case. Just as the media’s figurative presence was felt throughout Elián’s entire ordeal, the physical
presence of photographer Alan Diaz during this winding-up raid typifies media involvement in legal matters. The media unnecessarily complicated the Elián case by covering, and thus legitimizing, legally questionable claims that influenced public standards of justice. Though both parties’ claims were not equally legal, the media consistently portrayed them as equivalents.

**Parent Kidnapping: Pitting One Nation against Another**

In order to understand how the media interfered in a custody dispute, one must understand the statutory scheme that frames this international saga. Elián’s mother’s coming to the U.S. illegally and without the knowledge of her ex-husband, who had partial custody of the child, constitutes an international abduction, or parent kidnapping. As divorce rates burgeon, separated parents increasingly resort to vigilante kidnappings of their own children, hoping to retain custody by moving from one nation to another. These parents essentially pit one nation’s jurisdiction against another’s. Even though the child’s native country will not award full custody, kidnapping parents hope that a different nation will award permanent custody of the child.

**The Hague Convention: General Legal Procedures for Child Abduction**

In order to stem the growing tide of parent kidnappings, international law-making bodies have drafted the Hague Convention on the Civil Aspects of International Child Abduction. This treaty forces the abducting parent to return the child to the “country of habitual residence,” where domestic jurisprudence can most effectively determine who should rightly retain custody of the child. The Hague Convention seeks to return kidnapped children as quickly as possible to “pre-abduction status quo, where custody issues could be determined according to the laws of that [nation’s] forum.”

The Hague Convention seems to resolve the plight of the Gonzales family so clearly that those who observed the apparently endless media morass may now question—if they had not before—how complications arose. There is a catch. In order for the Hague Convention to be binding, both the “home” state and the “foreign” state must sign the treaty before the abduction takes place. Congress ratified the
Hague Convention in 1988; Cuba, however, is not a signatory of the Convention, and therefore the Hague Convention did not apply in Elián’s case.7

Even though the Hague Convention played no concrete part in the Elián case, I include this discussion for two reasons. First of all, U.S. federal laws exactly parallel the Hague Convention. If a parent kidnapping takes place within the U.S., the abducted child will be returned to the state of habitual residence for custody hearings. The Hague Convention reflects federal laws as well as international laws; and consequently, observing the Elián case as an independent and solitary example does not adequately portray what qualifies as a case of political asylum.8 Second, even though the Hague Convention did not bind Cuba in this case, “international law has a strong basis for returning Elián to his home in Cuba because his only surviving parent lives in Cuba.”9 Hence, the Hague Convention characterizes the nationally and internationally sanctioned jurisprudential momentum regarding child abduction cases. In this abduction case, media-inflated hopes of a naturalized Elián stand in stark contrast to universal legal paradigms.

U.S. Immigration Law

Because Cuba is not party to the Hague Convention, the most efficient, legal apparatus for returning abducted children was disabled, but Elián’s alien status activated an auxiliary statutory scheme. U.S. law considered Elián an alien because of his Cuban citizenship, thus his case fell under the jurisdiction of the Immigration and Naturalization Service (INS). Immigration law does not mandate that the INS automatically deport illegal immigrants. Nevertheless, both Attorney General Janet Reno and INS Commissioner Doris Meissner felt that because of Elián’s young age and his traumatic experience, the U.S.’s “first responsibility . . . when dealing with an unaccompanied minor was to find the parent or legal guardian, even if the person was outside the United States.”10

The Case for Elián’s Naturalization

At this point, Senator Foreign Relations Chair Jesse Helms revealed his plans to make Elián a U.S. citizen, an act that would have prevented
Elián's reunion with Juan Miguel Gonzales, his father, in Cuba. Additionally, Elián's Miami relatives filed a lawsuit against Attorney General Reno and Commissioner Meissner seeking a political asylum hearing to naturalize Elián. If granted political asylum, Elián would have gained immediate resident status, whereas Cuban refugees normally become citizens after residing in the U.S. for one year. A family division of a Florida state court awarded temporary custody of Elián to his great uncle, Lazaro Gonzales. Nevertheless, federal immigration laws trumped the court's ruling and the state circuit court ultimately nullified the order granting Lazaro custody of Elián. The state court conceded that "Elián's ability to remain in the United States was not a custodial matter to be decided by a state court but rather was a federal immigration issue of whether he should stay in the United States or be sent back to Cuba."

Attorney General Reno truncated the aforementioned asylum attempt by exercising her legal discretion to recognize Elián's father, and not his great uncle, as guardian. Therefore, only Juan Miguel Gonzales could legally apply for Elián's asylum, which of course he did not. The Miami relatives appealed this decision in the Eleventh Circuit Court of Appeals in Atlanta and finally in the U.S. Supreme Court, which turned down the case. Federal marshalls ultimately took the boy by force and reunited him with his father, on April 22, 2000. The reunited family then returned to Cuba on June 28, 2000.

The Plea for Asylum

The media covered Elián's case poorly, portraying the asylum scenario as a viable option. Unaccompanied children's political asylum rights are strictly limited under the Hague Convention, even when the child's nation of habitual residence adheres to a very different political ideology. According to the Hague Convention, the U.S. would need a domestic law that expressly prohibits authorities from returning children on U.S. soil to communist countries in order to prevent Elián's return to Cuba on political grounds. Even in terms of federal immigration law, applicants for political asylum must demonstrate "a well-founded fear of political persecution." Even the best asylum lawyers would have struggled with this task, given that by this time the Cuban
media had already begun Elián’s apotheosis in ongoing anti-U.S. propaganda.¹⁹

Even though differing political ideologies cannot grant residency per se, age may. When a person reaches sixteen years of age, the Hague Convention stipulations become null for that person. Six-year-old Elián did not come close to this age standard upon arrival in the United States.²⁰ Immigration statutes do not specify a minimum age for asylum seekers, but Michael Heyman of the University of Chicago’s law school summarizes the one major problem with young children’s filing for asylum: “only in a surrealistic world can you argue that he [Elian] is making the asylum decision himself.”²¹

Again, though the Hague Convention did not apply in the Elián case, it represents the international community’s fairest legal recourse in any international parental kidnapping case. Its philosophy reflects the U.S. legal system’s policy in domestic parental kidnappings; therefore, the ideology representative of the Hague Convention should have tempered media caricatures of a political asylum scenario.

**Agenda-setting and Priming**

Agenda-setting and priming represent some of the media’s lesser-known but potent influences. The media can cover only a limited amount of news, and everyone must turn to the media for news. The media in deciding what to cover does not tell us what to think, but controls what we think about. This is agenda-setting. According to Shanto Iyengar and Donald R. Kinder, “priming” refers to the media’s ability to influence and even determine the standards by which people evaluate policies and their outcomes. “By calling attention to some matters while ignoring others, television news influences the standards by which governments, presidents, [and] policies . . . are judged.”²² By applying Iyengar and Kinder’s “priming hypothesis” to the Elián case, one concludes that the media’s preoccupation with political asylum makes such an outcome a chief standard by which the public judges the outcome as fair. In other words, because the media emphasized political asylum, people perceived that outcome as just and plausible, despite jurisprudence.

The media increased the “fairness appeal” of Elián’s asylum by connecting that wish to the Cuban exile community, which is
conceptually linked to ideas of warranted political asylum and hard-won justice. Common sense in concert with jurisprudence should have restricted this debate to legal reality, not media-invented legal standards.

Articles in *U.S. News and World Report* from April 10, 2000–May 8, 2000, consistently commented on the asylum case and Elián’s potential permanence in America. *U.S. News and World Report*’s involvement represents a significant phase in the Elián saga because it demonstrates a respectable weekly periodical’s continued coverage of the international tug-of-war. Of course, many other mediums began incorporating the asylum hypothesis, such as grassroots websites, like www.libertyforElián.org, which sprang up over night, petitioning for money and man-hours to help Elián stay in the U.S.

While some may view media coverage as an immaterial influence, continued media coverage polarized public opinion, changing the standards by which the public evaluated the case. This naturalization debate roused legal watchdogs from their uneasy sleep and called politicians to the plate. For example, three immigrant and human rights groups filed amica curiae briefs, defending Elián’s right to file for asylum. And elected officials as well as late-night comedians bought turns on the Elián-political-spin ride for the price of a few paltry sound bites or wisecracks. The pages upon pages and hours upon hours of commentary concerning the possibility of Elián’s naturalization involved individuals and groups who complicated a simple immigration policy and changed public perceptions of justice.

“The Hostage Video”

In addition to altering perceptions, the media interfered with this case’s resolution, vilifying public officials and disrupting court rulings. A federal appeals court ruled that Reno acted legally in her decision to return Elián to his father.23 Accordingly an ultimatum was issued; however, the Miami relatives flouted this ultimatum. After meeting with them, the Attorney General felt that the Miami relatives would not hand the boy over as the federal court ruling demanded.

A few hours after meeting with Reno, the Miami relatives released footage that many have called “the hostage video.”24 This video shows an obviously coached Elián defiantly waving his hand while sitting on a bed with his legs crossed, looking like a long-suffering monk or a
young mystic. The cultural icon Elián asserted, "Papá, I do not want to go to Cuba. If you want to, stay here [in the U.S.]. I am not going to Cuba." This footage started a television chain reaction; cable television networks soon placed the hostage video in every living room in America.26

The hostage video delivered a personal blow to Reno who "put the prestige and credibility of her office on the line and saw it snubbed."27 This video caused Reno, a duly appointed top-ranking official, to appear unjust and insensitive to the feelings and needs of young Elián. The media created the image that her legally sanctioned order to return Elián to his father was an extreme and unnecessary act. Reno returned to Washington after the hostage video's release to allow the appeals process to play out, confident her decision would be upheld, especially in light of the court rulings validating her position.28

And of Course, the Made-for-TV Movie

While journalists disseminated the story, opportunistic screenwriters began to compose an ostensibly disinterested summary of the Elián saga. Only the Fox Family Channel ultimately released a watered-down version called The Elián Gonzales Story.29 New York Times television critic Caryn James insists that Fox's narrative favors the Miami relatives' point of view.30 Fox's melodrama summarizes the media's exacerbation of the whole incident. Fox produced The Elián Gonzales Story after the case was resolved; nevertheless, the TV movie, in an especially succinct way, encapsulates the media's equal treatment of two parties' legal rights, which were in fact, not equal.

The Fox Family Channel's movie softened their portrayal of Elián's Miami environment. James believes the TV reworking distorts "a complex political battle into entertainment for the largest possible audience, [because] the film creates a fantasy in which there are only heroes."31 For instance, Fox depicts Lazaro Gonzales as a gentle "teddy bear" of a great uncle, who did not want to give up Elián because he would miss him too much. According to the Fox movie the Miami relatives' only flaw, if anything, was doting too much on their long-lost relative.32

Of course, one must not fault the Miami relatives personally, but the movie reflects a general media effort to shift from a discussion of
law to an appeal for pity. The Fox movie legitimizes the Miami relatives' legal stance by artistically creating a wholesome base from which questionable legal claims might originate.

Politically, *The Elián Gonzales Story* represents the producers' failed attempts to avoid taking any side, perpetuating the legally illegitimate idea that Elián's Miami relatives had custodial claim to the young boy: "This [movie] was going to be about a little boy lost at sea, and whether he belonged back with his father or with a loving uncle and cousin."33 Though the Fox Family Channel tried to produce an apolitical movie, merely setting public agenda, telling viewers to think about the Elián case and suggesting "a loving uncle and cousin's" possible custody, influences the way people feel about this case's aftermath. Most importantly, the movie did in fact favor the Miami relatives' stance.

**Conclusion**

Of course, Elián ultimately returned to Cuba with his father, thus abating the media and satisfying what I have called in this article the international and domestic jurisprudential momentum regarding child abduction cases. I began this article commenting on some famous images the media has captured from American history. Some felt that the still photograph of Elián merited a Pulitzer Prize, suggesting in my mind that this photo might become an important part of history.34 Most newspapers printed a large photograph of the federal marshall seizing Elián and a smaller photograph of Elián's reunion with Juan Miguel Gonzales, his father.35 This fact, at the symbolic end of the Elián case, demonstrates the media's tendency throughout the whole saga to give lesser emphasis to what jurisprudence demanded all along: the boy's reunion with his father. Certainly the media should report current events, but it should not befuddle relatively basic legal processes, or create justice outside the law. The presence of a photographer during the raid typifies the media's interference in an international kidnapping that demanded only the involvement of the law and the family.
Notes


2. Some of the sources I consulted spelled the word Elián with an accent mark on the a; a few did not. To standardize my essay I have always included the accent mark, even if the original source did not.


5. Reisman, “‘Best Interest,’” 334.

6. Reisman, “‘Best Interest,’” 334.


10. Reisman, “‘Best Interest,’” 335.

11. Reisman, “‘Best Interest,’” 335–36. Under the Adjustment Act of 1966, permanent U.S. residency is granted to Cuban exiles one year and one day after their coming to the U.S.

12. When a conflict arises between federal and state laws, federal laws take precedence per the U.S. Constitution.

13. Reisman, “‘Best Interests,’” 345.


15. Reisman, “‘Best Interests,’” 352–33.


17. Reisman, “‘Best Interests,’” 340.


20. Reisman, “‘Best Interests,’” 337.


29. James, “Elián Redux,” 1. “Directed by Christopher Leitch; produced by Leanne Moore; Lance H. Robbins and Brad Krevoy, executive producers; CBS also worked on a four-hour miniseries produced by Menahem Golan, which to my knowledge never aired.