

Parental Kidnapping: Law, Prevention, and Remedies

I. Introduction

Battered women fleeing an abuser often take their children with them. Depending on the situation, a woman who takes her children in violation of a court order, or who hides her children, might violate legal bans on parental kidnapping.

On the other hand, in some other cases the abuser takes the children with him to another country. Every year, hundreds of children in the United States are victims of international parental kidnapping – a child’s wrongful removal from the United States, or wrongful retention in another country, by a parent or other family member.

Parental kidnapping arises in parents feelings of loss, anguish, despair, an anger, as well as confusion and uncertainty about what can be done in response.

This technical assistant packet discusses prevention measures, interstate and international parental kidnapping, remedies to both of them, and how domestic violence as well as other defenses can be used by a battered women who took her children to flee from domestic violence.

II. What is Parental Kidnapping?

Parental kidnapping is the practice of a noncustodial parent taking a child from the custodial parent from one state to another without court permission or in violation of court orders obtained through a divorce or custody hearing.

The practice of parental kidnapping is forbidden by both federal and state laws in the absence of a provable emergency situation and can result in the noncustodial parent being charged with felony kidnapping. But often this threat does not stop parental kidnapping from occurring

III. What to Do If Your Child Has Been Abducted

A. Contact local law enforcement

Provide them with your child's name, date of birth, height, weight, and any other unique identifiers such as eyeglasses and braces. Tell them when you noticed that your child was missing and what clothing he or she was wearing.

File a Missing Person’s Report: record name, badge number, telephone number of the officer who takes the report. Ask for a copy of the report or a police report number.

Make sure the police enter the child’s information into the FBI’s National Crime Information Center Missing Person File (NCIC-MPF)

Verify with local enforcement that an NCIC-MPF entry has been made

Ask for a copy, or the NCIC record number

*IMPORTANT: You do not need to wait 24 hours or have a custody order because the National Child Search Assistance Act (42 USC sec 5779) *prohibits* waiting periods

B. Contact the National Center for Missing and Exploited Children (NCMEC)

Provides assistance in location, recovery and return of missing children

Toll-free hotline: #1-800-843-5678

Ask for free copy of *Family Abduction: How to Prevent an Abduction and What to do if your Child is Abducted*, or download it at www.missingkids.com

C. If you think you know the state or jurisdiction to which your spouse has gone,

- Immediately contact a lawyer in that state or jurisdiction and ask him or her to prepare a complaint seeking a Writ of Habeas Corpus, which will give the police or deputy sheriff the right to take possession of your child and immediately bring your child to court.
- In the complaint, you also can ask for a Writ of Ne Exeat Regno, asking that the police or deputy sheriff be permitted to take possession of your spouse in the event that your child is not present when the authorities effect the Writ of Habeas Corpus.
- The complaint should seek an immediate Order of Return without the need for the court to hold an evidentiary hearing or exercise plenary jurisdiction.

D. Ask the state prosecutor or district attorney to request the local U.S. attorney to issue an Unauthorized Flight to Avoid Prosecution arrest (UFAP) Warrant.

The Parental Kidnapping Prevention Act mandates that parental kidnapping be addressed through the Fugitive Felon Act, Title 18, USC, Section 1073, which in turn is a stepping stone in the process of seeking a UFAP warrant

E. Searching for Your Child

Use the services of the federal Parent Locator Service (FLPS).

The FLPS obtains and transmits information about the location of any absent parent when that information is to be used for the purpose of enforcing child support, but the FLPS also can be used in connection with the enforcement or determination of child custody, visitation, and parental kidnapping. There are also state parent locator services in some states.

If the abductor is charged with a state felony verify that the felony is entered into the NCIC and cross-referenced to the Missing Person Report on the abducted child.

Contact State Missing Children's Clearinghouses

Contact *National Center for Missing and Exploited Children* (NCMEC) 1-800-843-5678, web site: www.missingkids.com.

Contact *Project Hope* 1-800-306-6311, which is a national support network that matches parents with parent-volunteers who have experienced abductions

F. Legal Remedies

- All fifty states, the District of Columbia, and Congress have enacted civil and criminal laws to address parental kidnapping and interstate and international child custody and visitation disputes
- The laws governing custody jurisdiction and enforcement are the Uniform and Child Custody Jurisdiction Act (UCCJA), Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and the Parental Kidnapping Prevention Act of 1980 (PKPA)
- If the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is in effect in state where child is located file for custody and enforce custody order (with pick-up order to take custody of the child)

- Send certified copy of the custody determination for filing to the Clerk of the Court
- Once an out-of-state decree is filed, it is entitled to enforcement as if it were a local order
- If UCCJEA is in effect in state where child is located
 - Streamlined procedures allow for the prompt enforcement of a custody order
 - Receive assistance from the local prosecutor
- “Pick up Orders”
 - Local law enforcement officers will take physical custody of child and serve notice on the abductor of the enforcement hearing
 - Seek if abductor parent likely to flee the jurisdiction upon notice of an enforcement hearing
 - Officers will usually bring the child before the court or place the child in the care of the custodial parent
- Press Criminal Charges
 - A prosecutor’s principal job is to prosecute the kidnapping parent and not to secure the child’s return, therefore, pressing criminal charges does not necessarily insure the child will return to the desired place.
 - Contact the Prosecutor’s Office for assistance in locating child under UCCJEA
- Consider possible civil remedies, such as a tort suit against the kidnapper or anyone who may have assisted in the abduction
 - Causes of action include: intentional infliction of emotional distress or outrageous conduct where plaintiffs have the right to recover damages for the intentional and unreasonable infliction of emotional distress which results in foreseeable injury to the plaintiff
 - MN Supreme Court refused to recognize tort of custodial interference

G. Obtain Counseling Services for the Child

H. Seek modification to the original custody order to include safeguards to prevent a re-abduction

IV. Prevention

A. The following are common red flags that a parent may kidnap a child:

- Previously abducted the child or threatened to do so
- No strong ties to the child’s home state
- Citizenship in another country and strong emotional/cultural ties to that country
- Friends or Family living out of state or abroad
- A strong support network
- No financial reason to stay in the area: unemployed, able to work anywhere, financially independent
- Engaged in planning activities: Quit a job/ sold home/ terminated lease/ closed bank account/ liquidated other assets/ hid or destroyed documents/ applied for passport, birth certificate, school or medical records

- History of marital instability, lack of parental cooperation, domestic violence, child abuse
- Prior criminal record

B. If these red flags appear, seek Protective Measures

- Restrict Removal of Child from the State or the United States
 - In the custody order, include a provision limiting the right of the noncustodial parent to remove the child from the state and/or country.
- Restrict custodial parent's right to relocate with the child
 - A noncustodial parent may seek to restrict the custodial parent's right to relocate with the child out of concern that the child will be moved so far as to obstruct meaningful access, or that the country will not honor an American custody order
- Specify Visitation Rights
 - Avoid using the term "reasonable visitation" in the custody order because of its vagueness
 - Define visitation rights as precisely as possible in the court order
 - Set forth both start and end days and times of visitation; including holidays/birthdays...
- Supervised Visitation
 - Supervised visitation is appropriate when there is:
 - Evidence of domestic violence or child abuse
 - Threats of abduction
 - Abduction has already occurred in the past
 - Possibility child would be abducted to or kept in a country where recovery from would be difficult or impossible
 - *Abu-Dalbough v Abu-Dalbough*
 - History of abuse – need to provide strongest protection for mother and children – required strictest supervised visitation through court services, no visitation outside of MN, must place passport w/court administrator
- If there is a history of custodial interference, or a likelihood of flight, lawyers may seek a writs ne exeat in conjunction with a bond
 - Prohibit a party from leaving the jurisdiction
 - A bond is a financial deterrent to abduction that can be imposed on noncustodial parents or custodial parents who interfere with visitation. If the parent that posts the bond abducts the child, the aggrieved parent can use the money to search for the child, hire an attorney, etc.

"Courts should require such a bond only if...there is substantial likelihood that its order will be violated absent the bond" – *Bullard v Bullard*, 647 P.2d 294
 - For more information, contact the Professional Bail Agents of the United States (PBUS) or contact the executive director at (800) 883-PBUS or go to www.PBUS.com
- Avoid Joint-Custody Orders where abduction is likely
- Authorize law enforcement assistance in the Custody Order

- Direct officer to “accompany and assist” a parent to recover an abducted child
- Prohibit unauthorized pick up of the child
 - A Court order may prohibit the noncustodial parent from picking up the child from school, daycare centers, and babysitters, unless the custodial parent gives written permission

C. Prevention Tips for Parents

- Teach child how and when to call home
- Notify schools, day care centers and babysitters of custody orders.
 - Certified copies of custody orders should be on file with the school office
 - With instructions not to release the child to anyone else without the custodial parent’s permission
 - Ask to be contacted immediately if the non-custodial parent attempts to pick up the child without explicit authorization
- Keep lists of identifying information about the other parent and child
- File or register a certified copy of the custody order in the non-custodial parent’s state
 - Social Security Numbers
 - Current photographs updated every six months
 - License plate numbers
 - Bank and credit card information
 - Have child fingerprinted at the local police department and keep fingerprints within your possession
- If no custody decree has been entered consider Custody Mediation
 - Establish terms that both parents will be likely to abide by
 - *INAPPROPRIATE for families with a history of Domestic Violence
- Counseling
 - Child Find of America, Inc: tel.# 1-800-A-WAY-OUT
 - Offers counseling for parents who are considering abducting their children or who want to end an abduction situation
- Obtain a Prevention Packet from the National Center for Missing and Exploited Children
 - Call tel. # 1-800-843-5678

V. About Custody Issues

A. Child Custody Issues

As presented in Benchbook for Tribal Courts on Domestic Violence Laws in Indian Country and Full Faith and Credit for Domestic Violence Protection Orders, State of North Dakota Attorney General's opinion of 10-23-95, Heidi Heitkamp, Attorney General, with Robert P. Bennett, Assistant Attorney General, and Seema Zeya, staff attorney for the Full Faith and Credit Project of the PCADV:

- Protection orders often contain provisions granting custody of the parties' minor children to the battered parent. Many civil protection order statutes include

temporary custody as one form of available relief since, in the absence of a court order, abusers may threaten to take the children as a means to coerce reconciliation or to punish and control the battered parent. Temporary custody provisions within civil protection orders permit battered parents to avert the retaliatory taking of children and to enhance the safety of both the children and the battered parents. Similarly, visitation provisions are often included in protection orders to prevent any future threats or violence which might result from unprotected access or uncertainty about access arrangements (thus requiring that the victim to negotiate the terms and conditions of visitation arrangements with the batterer).

- However, currently there is dispute about whether custody and visitation provisions in all protection orders are subject to the full faith and credit mandate of the VAWA. Some, including staff within the United States Department of Justice, have opined that such provisions are entitled to full faith and credit when issued for safety purposes within civil protection orders, but not when restraining orders are issued pursuant to custody and visitation matters filed in divorce proceedings. Other persons submit that the language of the statute explicitly exempts custody and support from the full faith and credit provision in the VAWA. Whichever position eventually prevails, attorneys and advocates for abused parents must address this potential problem when seeking relief under state or tribal protection codes.

- The issue of whether custody awards in protection orders are entitled to interstate enforcement turns on three laws (Note from NAC: And a fourth law, the UCCJEA, recently adopted and discussed in the following pages): the Violence Against Women Act (VAWA), the Uniform Child Custody Jurisdiction Act (UCCJA), and the Parental Kidnapping Prevention Act (PKPA). Custody provisions within protection orders are entitled to interstate enforcement if they meet the jurisdictional requirements of the UCCJA and the PKPA, otherwise it may be difficult to obtain interstate enforcement.

- Every state has adopted its own version of the UCCJA into state law. Under the UCCJA, there are four possible bases for a state to assert jurisdiction in a custody matter. The first basis is "home state" jurisdiction which is determined by where the child has lived for six (6) consecutive months immediately preceding the filing of the action or, if the child has been wrongfully removed from that state, it remains "home state" for one (1) year. The second is the state where the child and at least one contestant have "significant connections". This basis for jurisdiction, however, may only be invoked if it is in the best interests of the child. The third

basis is "emergency jurisdiction" where the child is physically present in the state and is in need of protection from abuse, mistreatment or neglect. Finally, the fourth basis for jurisdiction is where the child is physically present and no other state has jurisdiction. The UCCJA holds "home state" and "significant connections" equal in terms of priority.

- The PKPA is federal law, preempting the UCCJA in cases where laws of the issuing and enforcing states conflict. It applies to all interstate child custody cases and requires states to honor sister state's custody and visitation orders, provided they comply with the Act. Under the PKPA there are four bases for the state to assert jurisdiction. These are the same as under the UCCJA; however, the PKPA gives "home state" the highest priority. In other words, "significant connections" under the PKPA applies only if "home state" jurisdiction has been waived. Moreover, no other state may assert jurisdiction when another state has continuing jurisdiction under the PKPA.

- Emergency jurisdiction may be confirmed in a non-issuing state, but only temporarily and only to protect endangered children. Some juvenile courts have asserted jurisdiction over children for purposes of protection under the state child protection codes when they conclude that a child who is within the state requires protection of the courts and child protective services in the state to which a parent has fled with the endangered child. The juvenile courts asserting such jurisdiction have articulated that the juvenile code of the asylum state prevails over the PKPA and state custody codes in both states.

- In summary, a custody provision within a protection order may not always be easily enforced across state lines. A custody provision in a civil protection order is entitled to full faith and credit if it meets the jurisdictional requirements of the UCCJA and the PKPA. If, however, it does not comply with both laws, it may be difficult to enforce across state lines. Battered women and their attorneys need to be aware of these issues when seeking custody as part of the relief in a protection order.

- Per Arvo Mikkanen, Assistant U.S. Attorney and Special Assistant for Tribal Relations, U. S. Department of Justice, United States Attorney's Office, Western District of Oklahoma, under the Indian Child Welfare Act, child custody is a federal decision and the State is mandated to uphold the federal decision of the Indian court. However, Section 2265 of Full Faith and Credit has not been

definitively determined to cover child support and custody issues, but specifically excludes support and custody. Federal laws that may be examined in this event are those of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping and Prevention Act.

- Recently, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) has been enacted by Congress to address specific problems with the original UCCJA. The UCCJEA, currently being promoted in many state legislatures for adoption, contains specific language to provide protection in domestic violence cases. These include:
 - Emergency jurisdiction (domestic violence can be used to establish grounds for this protection);
 - "Unclean hands" (if a parent took the child/children due to domestic violence, this taking should not be held against him/her);
 - Inconvenient forum (fleeing domestic violence is a factor in determining whether the home state is now inconvenient to return to. Likewise, if the batterer is using the court system to manipulate the victim, the court can deny the batterer jurisdiction); and
 - Keeping information confidential from the other parent (e.g., addresses and other pertinent information essential to the safety and confidentiality of the adult victim and children's physical address, etc.).
- The UCCJEA also states preference for the child's home state or the child's residence during the last six months, making or modifying the permanent custody decision. The act allows parties to be involved in telephone conferences between judges in the home state and the refuge state, gives courts in both states more power to obtain evidence from the other state, and provides that the temporary custody order in the refuge state can become permanent under some circumstances.
- As of December 1999, the UCCJEA had been enacted in 15 states. New York's governor, however, vetoed the act.

(Lemon, Nancy (February/March 2000). "Release of Special Family Violence Issue". Domestic Violence Report, Volume 5, No. 3, pg. 42.)

B. Native American Circle urges judiciary to presume that batterers are not fit to be the sole or joint custodian of children.

- It should be presumed that it is never in the best interest of a child to allow an abuser joint or sole custody of children. Such a presumption was unanimously

passed by Congress in 1990 because it had been noted that too many batterers were able to present well in court and obtain custody of their children, and that too often, the courts minimized or rationalized the violence in the home and its impact on the children. Most states now require that courts consider evidence of domestic violence in making custody determinations. Whenever allowed by law, the abusing parent should:

- be required to successfully complete a batterer's intervention program prior to receiving the privilege of visitation with children; and
- only be granted supervised visitation with children until the abuser has been evaluated by a batterer intervention expert and certified as "safe" for unsupervised visitation;
- never be allowed visitation privileges, supervised or otherwise, if it is known that he is actively substance abusing; and if visitation privileges are allowed, then such visitation should take place only at supervised meetings when the batterer has abstained from using alcohol or drugs for a pre-designated period of time prior to the visit, and will also be required to abstain from using alcohol or drugs during the visit;
- be held to accountability in the payment of child support to the fullest extent of the law. Courts should not hesitate to enforce court-ordered child support with jail terms for non-paying abusers whenever necessary;
- never be furnished with the victim's and/or children's address or other personal information, but rather, strict confidentiality should be maintained by the court to promote victim safety.

VI. Fleeing With Children to Escape Domestic Violence

A. Possible legal consequences are felony charges and loss of custody

B. Legal Remedies

- File for Custody in the Home State
- File for Custody in the Haven State –
 - *depends on State Law*
 - Those states apply the UCCJEA will place a temporary emergency custody order
 - May become 'home state' custody determination if there is no prior custody order and there has not been a custody filing within 6 months after child's departure
 - Otherwise, fleeing parent may have to litigate custody in home state
 - Home State *may* decline jurisdiction on "inconvenient grounds" (d.v.)
 - The UCCJA does not *expressly* extend child custody emergency jurisdiction if the emergency directly relates to the parent or sibling but not the child in question.
 1. *However*, some courts will construe the provision broadly
 2. Such emergency orders are only temporary

3. Parent must then have a custody proceeding brought in the child's home state.
3. Have the lawyer request the court to seal all records that contain the parent and child's address.
4. ***Prompt filing of a custody action will frequently help victim-parent avoid prosecution for criminal parental kidnapping***

27 Fordham Urb. L.J. 909 Winter 2000 "The UCCJEA: what it is and how does it affect battered women in child-custody disputes" by Joan Zorza

VII. Domestic Violence as a defense to Interstate Kidnapping

A. The necessary justification defense

- Courts evaluate the legitimacy of a claim of necessity against a backdrop of reasonable, legal alternatives to kidnapping
- The defense fails if there are "reasonable, legal alternatives to violating the law" available to the defendant:
 1. A chance to refuse to commit the crime, *and*
 2. Avoid the threatened harm
- Some states require taking statutorily mandated steps after the abduction to
 - Inform the proper authorities of reason for fleeing and fleeing parent's present location
 - Once removed from danger, fleeing parent must present case to proper authorities for a change in custody decree
- * Some states will *preclude* a domestic violence defense if a parent takes the child to another state
- The UCCJA only grants temporary emergency jurisdiction to a court if the child is physically present in the haven state, and has either been abandoned or "it is necessary in an emergency to protect the child because the child is subjected to or threatened with mistreatment or abuse."
- Under the UCCJA, a haven state can only award a fleeing parent a temporary emergency custody order when invoking temporary emergency jurisdiction. The parent must then have a custody proceeding brought in the child's home state. According to *Perez v. Tanner*, a haven state can only issue a temporary custody order in order to give the fleeing parent enough time to travel, with the child, back to the home state to seek a permanent modification of custody. At the custody proceedings in the home state, the parent should present allegations of an emergency in order to justify a permanent modification of custody. *Perez v. Tanner*, 332 Ark. 356, 965 S.W.2d 90, 80 A.L.R.5th 697 (1998). This interpretation of the UCCJA is adopted by a majority of the courts.
- The temporary emergency jurisdiction section of the UCCJEA allows courts to exercise emergency jurisdiction if it is necessary to protect not just the child, but also a parent or a sibling of the child from the threat or mistreatment of abuse. domestic violence victims have the opportunity to petition a court for emergency jurisdiction to protect themselves and their children from abuse.
- Under the UCCJEA, if there is a prior custody decree from the home state that is entitled to be enforced, or the left-behind parent files an action in the home state to make an initial child-custody determination, the court with emergency jurisdiction must

do two things. First, it must specify in the temporary emergency order a period of time that the court considers adequate to allow the person seeking the emergency order to obtain an order from the state having initial custody jurisdiction. 55. Second, the court "shall immediately communicate with the court of that State to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order." 56.

- One of the benefits in seeking a temporary emergency custody order is that the court in a haven state can make a final ruling on the presence of abuse or domestic violence that is entitled to full faith and credit by the home state. After factual findings or rulings of law have been made, and having given the opposing party notice and opportunity to be heard in a custody proceeding, the issue of abuse cannot be re-litigated under the assumption that the allegations of abuse were made to unfairly disadvantage the left-behind parent. For example, under the Violence Against Women Act, (VAWA), a protection order is entitled to enforcement in every state and can be used to establish the presence of domestic violence warranting an emergency custody order.
- The UCCJEA makes clear that protective parents should not be punished for fleeing incidents or patterns of domestic violence, and that any judicial finding or determination that parental or child abuse occurred cannot be re-contested by each party who had notice of that proceeding.
- Even if the home state has jurisdiction to hear custody disputes, under the UCCJEA the home state may decline jurisdiction to the haven state on a finding of "inconvenient grounds." If, after a finding of domestic violence is made, the home state determines that the battered parent could be better protected in the haven state, and other statutory factors do not "militate" against transfer, then the transfer of a child custody dispute to the haven state court, as a "more convenient forum" is appropriate under the UCCJEA. As found in *Stoneman v Drollinger*, the "safety of victims of domestic violence should be given priority when considering jurisdictional issues under the UCCJEA. 314 Mont. 139 (2003).
- The temporary emergency jurisdiction section of the UCCJEA provides another benefit to domestic violence victims as well. VAWA mandates that a court must give full faith and credit to out of state and tribal court orders of protection. According to the commentary after Section 204 in the model act, this would include giving full faith and credit to the findings of fact contained in the order. Thus, when determining whether or not an emergency exists, the court could not re-litigate the factual findings in the protective order (See Uniform Child Custody Jurisdiction and Enforcement Act, With Prefatory Note and Comments, National Conference of Commissioners on Uniform State Laws, 1997).

B. Temporary Emergency Jurisdiction under the UCCJEA

- According to section 204(a) of the UCCJEA, a haven State can exert Temporary Emergency Jurisdiction over a child if the child is present in the State and "it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse." Under the Violence Against Women Act (VAWA) in determining whether an emergency exists, a

court is required to give “full faith and credit” to a protective order issued in another State, including the findings of fact contained in that order. 18 USC sec 2265.

- Child must be present in the forum state at the time the action is filed for TEJ
 - No previous child-custody determination:
 1. Child custody determination under TEJ remains in effect until a court with jurisdiction under sec 201-203 enters a determination
 2. Otherwise, after six months the determination is final and the TEJ state becomes the HOME state
 - Previous child-custody determination: *Or custody determination entered by a state having 201-3 jurisdiction,*
 - Order under TEJ must specify a period (of time) for person seeking an order to obtain an order from the State having jurisdiction
 - There must be communication between forums
 - ***The duties of States to recognize, enforce, and not modify a custody determination do not take precedence over the need to enter a temporary emergency order to protect the child. – although the order is temporary!

100 A.L.R. 5th 1 Construction and Operation of Uniform Child Custody Jurisdiction and Enforcement Act

C. Case Law:

i. In re C.T. 100 Cal.App.4th 101

- Under section 3424 a California court may enter a child custody order for a child subject to an existing sister state custody order only if it finds an emergency necessitating protection of the child from mistreatment or abuse and the order is limited in time to a specified period. Except as authorized by section 3424, a California court may not make an initial custody order or modify a sister state child custody order unless prescribed conditions not ****904** here present exist. (§§ 3421, 3423.) The finding of an emergency "should not be made 'in a rush to judgment' but rather 'after a full and fair evidentiary hearing.' [Citation.]" (*People v. Beach* (1987) 194 Cal.App.3d 955, 963, 240 Cal.Rptr. 50; see also *Matter of C.O. and J.O.* (Okla.Ct.App.1993) 856 P.2d 290, 294 [the "court has the duty to take evidence on the issue of abuse to determine whether emergency jurisdiction is proper"].) Unsubstantiated allegations are insufficient to invoke emergency jurisdiction. ***108** (*Roberts v. District Court of Larimer County* 1979) 198 Colo. 79, 82 [596 P.2d 65, 68]; *Tenenbaum v. Sprecher* (1987) 133 A.D.2d 371, 373 [519 N.Y.S.2d 273, 274]; *Glynn v. Meslin* (R.I.1987) 532 A.2d 554, 556.) [FN3]

ii. Cases where allegations or proof of emergency situation held sufficient for TEJ

- In re Nada R., 89 Cal.App.4th 1166 (4th Dist 2001)
 - Evidence included father's arrests for drunken assaults on mother in addition to allegations of abuse of children
 - "Emergency" defined as "a situation in which a child is in immediate risk of danger if returned to a parent's home"
 - Two requirements for TEP
 - Protecting child from immediate harm
 - Presence of child in forum state
 - Where validity of allegations is uncertain... "the possibility that the allegations of immediate harm *might* be true is sufficient for the court to assume TEP in the best interest of the child"
 - Temporary Jurisdiction: "If the risk of harm creating the emergency is ongoing, then the court should be afforded jurisdiction to prevent such harm"

iii. Cases where allegations of proof of emergency situation held insufficient for TEP:

- P.E.K. v J.M., 52 S.W.3d 653 (Tenn. Ct. App. 2001)
 - TEP denied where father only alleged immediate fear for safety of child
 - "Without factual allegations of specific threats to the child's well-being the trial court did not have any basis on which to enter a TEP award"
- Removal of child before any court order
 - Nieto v Ramos, 2001 WL 1380533 (Cal. App. 2d Dist. 2001) *unpublished*
 - Sec 208 of UCCJEA did not apply to mother's conduct in that mother left father due to domestic violence against her
 - Application of "wrongful conduct provision" generally limited to situations in which a child has been removed from a state in violation of an existing custody order or injunction
 - Before a custody order: both parents are natural guardians of their child
 - In determining whether a petitioner's conduct is unjustifiable, a court "shall not consider as a factor weighing against the petitioner any taking of the child...from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner"
- Hector G. v. Josefina P. 2 Misc.3d 801, 771 N.Y.S.2d 316 N.Y.Sup.,2003.Dec 19, 2003
 - While "**unjustifiable conduct**" is not affirmatively defined, it does not include instances where a parent left the jurisdiction with a child because of **domestic violence**:
 - In making a determination under this section, a court shall not

consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was to protect the petitioner from domestic violence or the child or sibling *822 from mistreatment or abuse.

- **Stoneman v Drollinger, 314 Mont. 139, 64 P.3d 997 (2003)**
 - “While domestic violence alone is not dispositive under state UCCJEA, the safety of victims of d.v. should be given priority when considering jurisdictional issues under UCCJEA
 - where party has fled state to avoid further violence or abuse, court authorized to yield jurisdiction in custody proceedings to another state if the victim could be better protected in the other forum and if other statutory factors do not militate against transfer
 - This section codifies and clarifies several aspects of what has become common practice in emergency jurisdiction cases under the UCCJA and PKPA. First, a court may take jurisdiction to protect the child even though it can claim neither home State nor significant connection jurisdiction. Second, the duties of States to recognize, enforce and not modify a custody determination of another State do not take precedence over the need to enter a temporary emergency order to protect the child.
 - Third, a custody determination made under the emergency jurisdiction provisions of this section is a temporary order. The purpose of the order is to protect the child until the State that has jurisdiction under Sections 201-203 enters an order.
 - Under certain circumstances, however, subsection (b) provides that an emergency custody determination may become a final custody determination. If there is no existing custody determination, and no custody proceeding is filed in a State with jurisdiction under Sections 201-203, an emergency custody determination made under this section becomes a final determination, if it so provides, when the State that issues the order becomes the home State of the child.
 - Subsection (c) is concerned with the temporary nature of the order when there exists a prior custody order that is entitled to be enforced under this Act or when a subsequent custody proceeding is filed in a State with jurisdiction under Sections 201- 203. Subsection (c) allows the temporary order to remain in effect only so long as is necessary for the person who obtained the determination under this section to present a case and obtain an order from the State with jurisdiction under Sections 201-203. That time period must be specified in the order. If there is an existing order by a State with jurisdiction under Sections 201-203, that order need not be reconfirmed. The temporary emergency

determination would lapse by its own terms at the end of the specified period or when an order is obtained from the court with jurisdiction under Sections 202-203. The court with appropriate jurisdiction also may decide, under the provisions of 207, that the court that entered the emergency order is in a better position to address the safety of the person who obtained the emergency order, or the child, and decline jurisdiction under Section 207.

- Any hearing in the State with jurisdiction under Sections 201-203 on the temporary emergency determination is subject to the provisions of Sections 111 and 112. These sections facilitate the presentation of testimony and evidence taken out of State. If there is a concern that the person obtaining the temporary emergency determination under this section would be in danger upon returning to the State with jurisdiction under Sections 201-203, these provisions should be used.
- Subsection (d) requires communication between the court of the State that is exercising jurisdiction under this section and the court of another State that is exercising jurisdiction under Sections 201-203. The pleading rules of Section 209 apply fully to determinations made under this section. Therefore, a person seeking a temporary emergency custody determination is required to inform the court pursuant to Section 209(d) of any proceeding concerning the child that has been commenced elsewhere. The person commencing the custody proceeding under Sections 201-203 is required under Section 209(a) to inform the court about the temporary emergency proceeding. These pleading requirements are to be strictly followed so that the courts are able to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

D. Declining Jurisdiction for Inconvenient Forum

- A court is required to permit all parties to submit information and consider all relevant factors:
 - (1) Whether domestic violence has occurred and is likely to continue
 - Which state could best protect the parties and child?
 - (4) Relative finances of the parties
 - (6) Nature and location of the evidence needed to resolve the case
 - (8) Familiarity of the court with the pending litigation
- State Court Declining Jurisdiction for Reason of Party Conduct
 - Except in Temporary Emergency Jurisdiction
 - Under section 208(c) of the UCCJEA, if a court of this State has jurisdiction under this [Act] because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction ...
 - {The focus in this section is on the unjustified conduct of the person who invokes the jurisdiction of the court. A technical illegality or wrong is

insufficient to trigger the applicability of this section. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. **Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section.** An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another State to establish jurisdiction has engaged in unjustifiable conduct and the new State must decline to exercise jurisdiction under this section. }

- Stoneman v. Drollinger
 - the UCCJEA specifically mandates that a Montana court, at a minimum, consider the following factors when evaluating a motion to decline jurisdiction as an inconvenient forum:
 - (a) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
 - (b) the length of time that the child has resided outside this state;
 - **1001** (c) the distance between the court in this state and the court in the state that would assume jurisdiction;
 - (d) the relative financial circumstances of the parties;
 - (e) any agreement of the parties as to which state should assume jurisdiction;
 - (f) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
 - (g) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the ***146** evidence; and
 - (h) the familiarity of the court of each state with the facts and issues in the pending litigation.
 - For this purpose, the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse. If domestic violence or child abuse has occurred, this factor authorizes the court to consider which State can best protect the victim from further violence or abuse. 9 U.L.A. 683.
 - The NCCUSL explicitly recognized that past abuse or a continuing threat of violence might compel a battered spouse or parent of an abused child to relocate to another state. The NCCUSL further directed courts to proceed with an evaluation of which forum can provide the greater safety whenever domestic violence or child abuse has occurred.
 - The priority the NCCUSL assigned to the protection of victims from further domestic violence is supported by the research findings of the United States Department of Justice. Those findings suggest that termination of an abusive relationship actually poses an increased risk of escalation in domestic violence. Interviews with men who killed their wives indicated that either threats of separation or actual separation most

often precipitated events leading to the murder. *See* Patricia Tjanden and Nancy Thoennes, United States Department of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence* 37 (July 2000).

- "Domestic violence often escalates over time in frequency, intensity and duration.... Although divorced women and separated women comprise only 10 percent of all women in America, they account for three-quarters of all battered women and report being battered 14 times as often as women still living with their partners. Divorced or separated men, as opposed to husbands living with their wives, commit 79% of all spousal violence." Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 Fam. L.Q. 273, 274.
- Since the distance between the Montana and ****1005** Washington courts creates a transportation inconvenience that must be borne by one of the parties, we conclude that the facts suggest that Stoneman, as the noncustodial parent, may be in the better position to undertake the necessary travel

E. Confidentiality under the UCCJEA

- *People v Olsewski* (1994, 2d Dist) 257 Ill App 3d 1018, 196 Ill Dec 434, 630 NE2d 131.
 - Court erred in convicting mother of abducting her own children where mother awarded custody and moved out of state- unaware that she first needed court permission to move
 - Upholding the trial court's order would also contravene the well-established principle that merely removing the children from the jurisdiction of the court is not in and of itself sufficient grounds for a change of custody. (*Rizza*, 237 Ill.App.3d at 89, 177 Ill.Dec. 353, 603 N.E.2d 134.) Court erred in convicting mother of abducting her own children where mother had been awarded custody of children in divorce, where she later moved out of state with children and her new husband, where upon returning to state shortly thereafter to conclude sale of her home, she was served with papers to appear in proceeding on father's petition for restraining order prohibiting her from removing children from state, where mother appeared at hearing and was ordered not to remove children and to return to court on specified date, where mother explained at hearing that she had not been aware that she had to obtain permission of court to move and that she had been under impression that father did not object to move, where mother did not return as ordered and father thereafter obtained temporary custody, where it was undisputed that mother had sole legal custody at time of order, which she allegedly violated by her earlier move with children out of state, and where temporary-custody order was invalid given court's failure to expressly make required findings.

VIII. International Parental Kidnapping

A. The Hague Convention . More than 150 countries in the world (Unites States one of them) has signed the Hague Convention. Use the Hague Convention to secure the

return of your child whenever your child has been removed to or retained in a country signatory of the Hague Convention.

B. Stopping an Abduction in Progress

1. Contact local law enforcement

- File a missing person's report on the abducted child
 - Record the name, badge number and tel. # of police officer who takes the report. Ask for a copy of the case #.
 - Ask to enter child into FBI's National Crime Information Center Missing Person File (NCIC-MPF)
 - Ask police to contact the U.S. National Central Bureau-INTERPOL for assistance
 - Notify port authority police at the nearest airports, bus depots, and train stations about the abduction in progress. Fax pictures of abductor and child

2. Report your child missing to the toll-free hotline of the National Center for Missing and Exploited Children (800-THE-LOST, or 800-843-5678).

- To meet criteria for international abduction cases leaving the US:
 - Parent/guardian must have filed a police report
 - Parent/guardian has full/temporary custody...or
 - Parent has filed a Hague application for child's return
 - Federal warrant for abductor under IPKA

3. Call the FBI Field Office (front of local telephone book)

- Ask for assistance to stop the abductor from leaving the country
 - Have agent contact FBI headquarters in Washington, DC for the Crimes Against Children Coordinator. (202-324-3666).
- Try to secure a Federal UFAP warrant if abductor charged with a State felony
 - Federal Unlawful Flight to Avoid Persecution
- Consider charging abductor with IPKA violation – *not advised*

4. Call Department of State, Office of Children's Issues (US Authority for the Hague Convention) # (202) 616-3637 & # (202) 736-7000

- Ask for help in coordinating with foreign authorities to intercept your abducted child abroad.
- Find out if The Hague Convention remedy is available in your case
- Ask for a free copy of their booklet *International Child Abduction*, or download it from the Web site, <http://www.travel.state.gov/>

IX. Domestic Violence as a Defense to International Kidnapping

- Defenses raised by battered abductors in Hague Convention Cases: 1) Children face grave risk of harm if returned to country of habitual residence (Least recognized, used in 2/3rds of cases), 2) Habitual Residence Issues, 3) Consent of Left-behind Parent, 4) Child of an age allowing it to decide where to live
- Grave Risk Defense:

- Article 13(b) Exception to return of child to his/her habitual residence if “there is grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation”
- Grave Risk =
 1. “Internal strife in country of habitual residence” OR
 2. “Courts of such country cannot or will not protect child & family
- Grave Risk is *not* intended to be applied to behavior of individual parents
Ex. “That a particular party might cause child to be in peril is not sufficient grounds for claiming a grave risk
- Psychological Harm
 - “Interpreted so broadly and liberally as to render Hague ineffective” ~Skoler
 - *Establishing domestic violence exposure as grave risk.* The ICARA, the implementing legislation of the Hague Convention, requires clear and convincing evidence of the level of risk to a specific child.
 - First, the level of violence in the family must be established. Current research suggests that the level of domestic violence is known to vary greatly across families (Straus & Gelles, 1990).
 - Second, it is very likely that children’s exposure to violence at home and what meaning they attach to it will vary greatly (Peled, 1998).
 - Third, the child’s own ability or lack of ability to cope with the violent environment may also affect the level of harm to the child. Harm that children experience may be moderated by a number of factors, including how a child interprets or copes with the violence (Hughes, Graham-Bermann, & Gruber, 2001).
 - Fourth, children are likely to have varying risk and protective factors present in their lives. Protective factors may include a battered mother, siblings, or other adults who offer protection to the child as well the level of legal and social service protections likely avail-able to the child and his or her battered mother in their country of habitual residence. Risk factors that co-occur with domestic violence might include parental substance abuse, presence of weapons in the home, both maternal and male caregiver mental health issues, and other neglect. These and other factors may combine with domestic violence in some families to create greater or lesser risk to the child.
 - The risk of harm resulting from expo-sure may also vary from child to child. Two additional pieces of information are important to examine when thinking about harm or risk of harm: (a) the degree to which a child is involved in violent events and (b) the documented level of child maltreatment and emotional harm. Children’s immediate responses to violent situations may create increased risk for their own well-being.
 - Children’s responses to domestic violence have been shown to vary from their becoming actively involved in the conflict, to distracting themselves and their parents, or to distancing themselves (Margolin, 1998).
 - Grave Risk has been held sufficient as a defense in a series of United States cases. Although Judges rarely rely solely on a child’s exposure to domestic violence to find a grave risk of harm- despite recent studies indicating the

harm of exposure to children. Most Judges will expect a detailed assessment of the risk of harm to a child exposed to domestic violence.

- Changing Public Policy
- Studies have found that child-maltreatment often accompanies domestic violence (41%)(Appel & Holden, 1998)
- WI: “It is detrimental to the child and contrary to the child’s best interest for that parent [who committed domestic violence] to have either sole or joint legal custody of the child” [Wis. Stat. § 767.24(2)(d)(1) (2004)].”

F. UN Convention on the Rights of the Child

- Considering that articles on the dangers of exposing children to domestic violence are only now gaining attention in the US it is likely that other countries do not recognize exposure as a harm-making an analysis of whether the country of habitual residence has court proceedings and social services capable of protecting the child appropriate in certain cases.

G. Cases:

- **Nunez-Escudero** :“Vague claim; need more convincing evidence of grave risk to child”
- **Rodriguez v Rodriguez**: Grave risk = child abuse & domestic violence exposure; “If other parent removes or retains the child to safeguard against further victimization and abusive parent petitions for child’s return under the Convention, the court may deny the petition, to protect the child from being returned to an ‘intolerable situation’ and subjected to grave risk of psychological harm”
- **Larson v Dunn**: No cause of action for international interference with custodial relations, Ex. visitation rights
- **Re Bates**: Requisite “degree of common purpose” to habitually reside in a location
- Settled purpose: “The purpose of living where one does has a sufficient degree of continuity to be properly described as settled”
- **Slagenweit v Slagenweit**: The 1 yr statute of limitations for wrongful detention does not run until wife attempts to regain custody
- **Blondin v Dubois (1998)**: The District Court ruled that “grave risk existed as a result of beatings of the mother in the children’s presence and abuse of the older child.” The Circuit Court upheld this stating “We do not disturb or modify the district court’s finding that returning [the children to the father’s] custody (either expressly or de facto) would expose them to a ‘grave risk’ of harm within the meaning of Article 13(b).”
- **Possibly the 1 of only 2 published opinions to find domestic violence in and of itself poses a grave risk or intolerable

situation to a child under the Convention. Determine whether any arrangements might be made that would mitigate the risk of harm to the children, thereby enabling them safely to return to France.

- **Steffen v Severina:** Child had bonded with abducting parent and removal from mother, detached and un-bonded, would cause grave risk of harm under the Convention.

- **Walsh v Walsh**
 - Wife made showing that return of children to Ireland would expose them to grave risk of physical or psychological harm as would bar their return under the Hague Convention
 - Respondent parent has the burden to demonstrate ‘grave risk’ to defeat the assumption that the wrongful removal of a child from his/her place of habitual residence normally requires return to the left-behind parent
 - Convention requires only that there be “grave risk” that return would expose the child to physical or psychological harm, or otherwise place the child in an intolerable situation, - not that the risk be “immediate”
 - The harm, although needing only be physical or psychological, must be more than minimal, not any harm will suffice, and the level of risk of harm must not be low
 - The harm must be other than normally expected on taking a child away from one parent and passing him to another – otherwise the goals of the Convention would be easily circumvented
 - Grave risk of harm may not be established on fact that removal would unsettle children who have now settled in the place to which they were brought since this is an inevitable consequence of removal
 - Child diagnosed by social worker as having PTSD, post-traumatic stress disorder, and determined child in remission while within the United States but likely to relapse if returned to Ireland
 - The District Court concluded that child does not want to return to Ireland or to have anything to do with her father (age 9)
 - Courtt of Appeals, in overruling the District Court’s decision to return the children into the hands of the left-behind partner, noted that the DC Court “inappropriately discounted the grave risk of physical and psychological harm to children in cases of spousal

abuse.” This was taken into consideration with father’s “generalized pattern of violence” and violence towards his own children, and “chronic disobedience of court orders” provided ample evidence of an extremely violent man who cannot control his temper.

- Court noted father “has demonstrated that his violence knows not the bonds between parent and child or husband and wife” and

H. Are there Undertakings sufficient to render risk less than ‘grave’?

- A “potential grave risk of harm can, at times, be mitigated sufficiently by the acceptance of undertakings and sufficient guarantees of performance of those undertakings.
- An example is where and how a child is to be returned: Allow courts to evaluate the placement options & legal safeguards in the country of habitual residence to preserve child’s safety “while the courts of that country have the opportunity to determine custody of the children within the physical boundaries of their jurisdiction.”
- Undertakings satisfy twin goals of Convention: (1) strong presumption for return of child, and (2) protect children from exposure to grave risk of harm
- undertakings are unlikely to be obeyed will be found insufficient; while the Court of Appeals in *Walsh v. Walsh* found that Irish Courts would issue “appropriate protective orders” the father’s history of violating orders issued by a court presented an issue
- Courts, when confronted with the grave risk of physical harm have allowed the return of a child to the country of habitual residence provided sufficient protection is afforded.

I. Congress

- Both state and federal law have recognized that children are at increased risk of physical and psychological injury themselves when they are in contact with a spousal abuser:
 - “Whereas the effects of physical abuse of a spouse on children include...the potential for future harm where contact with the batterer continues;
 - “Whereas children often become targets of physical abuse themselves or are injured when they attempt to intervene on behalf of a parent”

J. Case Law:

- **McManus v McManus** 354 F.Supp.2d 62 D.Mass.,2005. Feb 04, 2005
 - Evidence of real but sporadic or isolated incidents of physical abuse, or of some limited incidents aimed at persons other than the child at issue, have not been found sufficient to support application of the "grave risk" exception. *See Whallon, 230 F.3d at 460*
 - or "grave" need pattern of severe violence if directed at person other than child
- **March v Levine** 136 F.Supp.2d 831
 - Mexico, not Illinois, was "habitual residence" of children;
 - Children's presence in Mexico for one year was long enough period of time to establish habitual residence there for purposes of Hague Convention
 - grandparents' allegation that father had killed mother was insufficient to establish grave risk of harm to children, absent evidence that father had ever abused children
- **Whallon v Lynn** 230 F.3d 450
 - Child's return to Mexico would not subject child to grave risk of physical or psychological harm or otherwise intolerable situation; notwithstanding alleged instances of verbal and physical abuse committed by father, who resided in Mexico, as none of abusive conduct was directed at child
 - Lynn accused Whallon of subjecting her and Leah to significant verbal abuse and of allowing matters to escalate to physical violence against Lynn herself
 - Whallon's attorney attempted to block the departure of Lynn. Lynn and the two children were held at gunpoint at the airport until a high-level official enabled Lynn and her daughters to leave
 - Pattern of physical abuse against Lynn herself: an altercation in January 1999 in which Whallon allegedly pushed Lynn as she was departing with Micheli and then threw a rock in the direction of Lynn's car
 - father did not acquiesce in removal, even though father did not institute formal custody proceedings as to child and wrote note allegedly acknowledging that mother could relocate with child, in light of father's subsequent increasing involvement in child's life, and father's prompt and persistent actions seeking child's return to Mexico following her removal

Literature Cited By Court:

- Michele Bograd, *Feminist Perspectives on Wife Abuse*
- Susan M. Ross, *Risk of Physical Abuse to Children of Spouse Abusing Parents*
- Anee E. Appel, *The Co-Occurrence of Spouse and Physical Child Abuse: A Review and Appraisal*
- Lee H. Bowker, *On the Relationship Between Wife Beating and Child Abuse*
- The Court, citing Jeffrey L. Edleson, *The Overlap Between Child Maltreatment and Woman Battering*, noted that "credible social science literature establishes that serial spousal abusers are also likely to be child abusers –

X. Other Defenses:

A. Violation of Human Rights (largely unsuccessful)

Article 20 of the Convention states, ““The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms” (the Convention, 1980, Article 20).

- Courts have consistently dismissed claims of human rights violations as unfounded (*Danaipour v. McLarey*, 2002; *Fabri v. Pritikin-Fabri*, 2001; *Mendez Lynch v. Mendez Lynch*, 2002; *Steffen v. Severina*, 1997).
- This claim is often accompanied by ‘grave risk’ and may have been viewed as redundant

B. Habitual Residence

- Left behind parent must establish that the removal of the child was *wrongful*
Article 3a refers to a parent’s right of custody in the location where the child is “habitually resident immediately before the removal” (the Convention, 1980, Article 3a) but never goes on to define how habitual residence is established. In Article 14 of the Convention, judicial authorities are instructed to consider the removal of the child within the context of “the State of habitual residence of the child” (the Convention, 1980, Article 14).

The courts have produced mixed rulings on this issue, with some interpreting habitual residence broadly to recognize the child’s acclimatization (which is usually a fact-intensive inquiry regarding school enrollment, friends, social patterns, sports clubs, etc.), the intent of both parties regarding permanent residence, and physical geography. (1995), the court stated, “We believe that a child’s habitual residence is the place where he or she has been physically present for an amount of time sufficient for acclimatization and which has a “degree of settled purpose” from the child’s perspective. We further believe that a determination of whether any particular place satisfies this standard must focus on the child and consists of an analysis of the child’s circumstances in that place and the parents’ present, shared intentions regarding their child’s presence there. (p. 224)

Feder v Evans (II, 1995)

- The court stated, “We believe that a child’s habitual residence is the place where he or she has been physically present for an amount of time sufficient for acclimatization and which has a ‘degree of settled purpose’ from the child’s perspective. We further believe that a determination of whether any particular place satisfies this standard must focus on the child and consists of an analysis of the child’s circumstances in that place and the parents’ present, shared intentions regarding their child’s presence there. (p. 224)

Ponath v Ponath

- “Coerced residence is not habitual residence within the meaning of the Convention” (398).

Tsarbopoulos v. Tsarbopoulos (II) (2001)

- The mother had fled to the state of Washington, testified that she had been a victim of physical and emotional abuse at the hands of her husband, and said that it was never her intent to make Greece her permanent home. The family had long lived in the United States and only in recent years moved to Greece. The judge agreed that the parents did not share the desire to change their habitual residence from the United States to Greece and pointedly stated that the mother’s so-called consent to do so must be examined carefully in the context of the father’s use of violence.

- No Wrongful removal (Convention does not apply in this case- denied father’s claim)

C. Child Maturity

In *Mendez Lynch v. Mendez Lynch* (2002), the court ruled that a 9-year-old should be repatriated to his place of habitual residence despite his expressed wish not to do so. In *Blondin v. Dubois (III)* (2000), however, the court ruled that an 8-year-old was mature enough to express her opinions about where she wished to live, *Blondin v. Dubois (IV)* the importance of the child’s wish not to return in its decision to allow the child to remain in the United States. The court ruled that in the instant case, we conclude that the District Court properly considered Marie-Eline’s views as part of its “grave risk” analysis under Article 13(b), and that it did not clearly err in finding that Marie-Eline was old and mature enough for her views to be considered in this context. (*Blondin v. Dubois [IV]*, 2001, p. 166)

McManus v. McManus

Convention suggests that children who are nearing 16 years should ordinarily have their own wishes respected. Elisa Pérez-Vera, *Explanatory Report on the 1980 Child Abduction Convention*, ¶ 30, at 433, in 3 Hague Conference on Private Int’l Law, Acts and Documents of the Fourteenth Session (1980), available at [http:// hcch.e-vision.nl/index_en.php?act=publications.details & pid=2779](http://hcch.e-vision.nl/index_en.php?act=publications.details&pid=2779)

- 14 yr old children found to have maturity to weigh options

- Younger children allowed to stay as additional factor of the psychological harm that the younger two would likely suffer if the children were separated gives support for the conclusion that they also should have their objections to return honored.

- It may be objected that this is simply a "best interests of the child" analysis masquerading as a "mature child's objection" analysis. It would be absurd to conclude that the child's mature objection should be honored *unless* it is in the child's best interest.

D. Consent by the left-behind parent

Article 12 of the Hague Convention, which mandates the return of children “where a child has been wrongfully removed or retained . . . and, at the date of the commencement of the proceedings ...a period of less than one year has elapsed from the date of the wrongful removal or retention”

- If a Convention case is not filed against the abducting parent within a year after the child's removal and it can be demonstrated that the child is now settled within its new environment, the child might not be returned to the left-behind parent.

Acquiescence

- The left behind parent sent letters and shipped wife and children's belongings to her new residence (unpublished case)

Did not Constitute Acquiescence

- Attempts by father to achieve re-conciliations with wife and children

Exception:

- The fact that the abducting parent has hidden for more than a year maybe used by the court to disallow this defense and start the clock over (*Lops v. Lops*, 1998).