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The Uniform Child Custody Jurisdiction Act: An Analysis of Its History, A Prediction of Its Future

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THE UNIFORM CHILD CUSTODY JURISDICTION ACT: AN ANALYSIS OF ITS HISTORY, A PREDICTION OF ITS FUTURE

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This case, like most child custody matters, involves a collision of principles as well as of intransigent would-be custodians of the hapless children, innocent subjects of a conflict they can never understand. The primary principal of the child's best interests is never easily applied once the litigants themselves have succeeded in creating the disruption of shifting custody as has happened in this case. The courts can only repair, patch and cover over, as best they can, the irreparable harm occasioned and reduce the harm to a minimum, if the minimum is discernable, . . . the courts cannot assure the happiness and stability of these children; that only their parents could have done, and hopefully, can still do.[1]

I. INTRODUCTION

The social significance of the spiraling divorce rate in the United States has become apparent in all phases of cultural development. The incidence of single parent homes has forced unprecedented changes in the American life style and employment pattern. Legislation has been passed which reflects these changes. During its 1980 session, the West Virginia Legislature revoked the historic presumption that the best interests of a child of tender years were served by allowing the child to remain in the custody of its mother following divorce.[2] The original statute had reflected the previously cherished concepts that women were incapable of work related functions outside the

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[1] Nehra v. Uhlar, 43 N.Y.2d 242, 251; 327 N.E.2d 4, 8-9 (1977).

[2] W. VA. CODE § 48-2-15 (Supp. 1980). Subsequent case law has substituted the maternal presumption with the presumption that the primary caretaker of the child is preferred as the custodial party in a divorce custody award. Garska v. McCoy, 278 S.E.2d 357 (W. Va. 1981).

home and that men were incapable of performing tasks within the home.

These societal changes have potential long-range cultural impact on the 300,000 children who yearly join the ranks of millions of American children of divorced parents.[3] These victims of the negative and sometimes violent forces which have destroyed their familial structure have lost that which is safe and predictable in their lives. Often ridden with guilt regarding their role in the disintegration of their parents' marriage, these children seek, even more aggressively than their peers, the stability and continuity required for their development into healthy adults.

The courts, left with the responsibility of Solomon, but with little else to guide their decision making, have been asked to determine the "proper" environment for these children of divorce. Using the ill-defined "best interests of the child" theory, a judge is expected to determine which competing parent is best suited to provide the child's emotional, social and monetary needs. Based on this determination, the judge must then issue a custody order which will, in theory, be recognized and honored by all parties to the order. It is not surprising that the practical realities of this scenario have often fallen short of judicial goals.

The frustration and anger symptomatic of divorce often remains unresolved between divorced parties. These emotions are exacerbated further by resentment over custody and visitation restrictions. As the confused child shuttles between parents, the youngster increasingly becomes a symbol to the noncustodial parent of what has been lost. This cycle often ends in parental kidnapping or "snatching" of the child. Hoping to have a better chance of obtaining custody in another forum, the kidnapping parent removes the child to the favorable jurisdiction. In a court far from the home of the custodial parent, with little evidence to contradict accusations against the ex-spouse, it is not surprising that the abducting parent has often been awarded custody. The

[3] *See* U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES - 1973, at 65 (94th ed. 1973). Figures compiled by the West Virginia Department of Health, Division of Vital Statistics, indicate that between January 1, 1977 and December 31, 1979, between nine to ten thousand children yearly became victims of West Virginia divorces. Provisional figures for 1980 show 8,615 children recorded as dependants of newly divorced parents.

frequency of these successes has been sufficient to create a parental kidnapping problem of national and international proportions.[4]

State court decisions demonstrate a history of inconsistent law, conflicting decisions on an often unpredictable and arbitrary approach by judges in their search for a custody jurisdiction formula serving the best interests of the child and of the contestants. Too often the decisions indicate that the court's sym-

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[4] *See* Kuth and Fox, *Closing the Custody Floodgate: Florida Adopts the Uniform Child Custody Jurisdiction Act*, 6 FLORIDA ST. L. REV. 409 (1978).

> Legal kidnapping is just one of the more effective means employed to take advantage of the judicial loopholes in child custody laws. The most publicized case of legal kidnapping involved the wealthy Mellon family. Seward Grosser Mellon and Karen Boyd Mellon were divorced in 1974. A Pennsylvania court awarded custody of their two children . . . to their father. In fall, 1975, the children visited their mother in North Carolina. Mrs. Mellon, by her own account, slipped the children away from their governess and onto a chartered plane in New York. In just a few short months the children had used nine names and had stayed in 14 hotels and finally in a middle class home in Brooklyn. Meanwhile, a New York court granted custody to Mrs. Mellon. Subsequently, in March, 1976, as the children were being escorted to school by an armed guard, they were snatched by three men posing as F.B.I. agents. The three men disarmed the guard, put the children into a car, and delivered them to Mr. Mellon in Pittsburgh. Mr. Mellon promptly called the New York police and the F.B.I. and informed the authorities that the children had arrived safely. Other incidents have occurred in which the results were more shocking.
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> > In a recent Oklahoma tragedy, a four-year-old and his father died in a wreck following a high speed auto chase after the father had snatched the boy from the custody of his mother and tried to leave the state. After the boy had been seized, the mother's brother had given chase and forced the car off the road. In another incident in Massachusetts, two brothers were violently snatched and removed to their father's Alabama home. The boys had been playing when two men chased them and knocked one from his bicycle to accomplish the abduction. Fortunately, the snatch went smoothly enough that the men did not have to use the tear gas or the club they were armed with. This operation was orchestrated by a person who was recommended to their father by a veteran of over 400 child snatchings.

Id. at 409-10.

An example of international child snatching was brought before the West Virginia Supreme Court of Appeals in 1970. Domico v. Domico, 153 W. Va. 695, 172 S.E.2d 805 (1970).

pathy was swayed more by the ongoing battle of the parents then by the needs of their child.[5]

The increasing incidence of conflicting custody orders and the judicial chaos they have created have resulted in legislative action on state and federal levels. When the 65th session of the West Virginia Legislature commenced in February, 1981, forty-one states had enacted the Uniform Child Custody Jurisdiction Act. This pact among the states offered an alternative to the previous *ad hoc* pattern of custody jurisdiction. Still bound to antiquated common law principles of jurisdiction, West Virginia offered a haven to abducting parents who hoped to benefit from judicial confusion.

The West Virginia Legislature adopted the Uniform Act in March, 1981.[6] Concurrent with the legislative debate, the need for jurisdictional cooperation with sister states was being argued before the West Virginia Supreme Court of Appeals. The court, recognizing that the uniform law had been enacted by the Legislature, judicially adopted the principles of the Act in *Shermer v. Cornelius*.[7]

This article specifically addresses the evolution of the Uniform Child Custody Jurisdiction Act and federal law designed to support it.

II. JUDICIAL HISTORY OF CHILD CUSTODY JURISDICTION SCHEMES

The United States Supreme Court has been subjected to increasing criticism for its refusal to confront the judicial problems arising from parental kidnapping.[8] In five major decisions on cases involving modification of custody orders by foreign states, the Court has chosen to ignore the jurisdictional quandry

[5] *See* May v. Anderson 345 U.S. 528, 533 (1953). Justice Burton's plurality opinion suggests that the paramount issue decided by the court in this custody dispute was one of parental rights rather than the interests of the child.

[6] W. VA. CODE § 48-10-1 to -26 (Supp. 1981).

[7] 278 S.E.2d 349 (W. Va. 1981).

[8] *See* Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207, 1210-14 (1969) [hereinafter cited as Bodenheimer, LEGISLATIVE REMEDY]. *See also* Comment, *Child Custody Forum*, 62 CAL. L. REV. 365, 368-70 (1974).

faced by the lower courts in these cases and has rendered its decisions on other issues. In each of these holdings, the Court refused to rule on the constitutional question of whether custody orders are protected by the Full Faith and Credit clause of the United States Constitution[9] as other orders emanating from the courts of the various states are enforced.

The first of these cases, *Halvey v. Halvey*,[10] established the rule that a custody decree modifiable in the court of original jurisdiction was modifiable in the court of a sister state. The ability of the moving party to present new evidence appeared to be the salient issue in this decision. Justice Douglas, who wrote the opinion, did not address the question of the applicability of the Full Faith and Credit clause to these orders, but observed:

> So far as the Full Faith and Credit Clause is concerned, what Florida could do in modifying the decree, New York may do . . . it is clear that the State of the forum has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered.[11]

In a concurring opinion, Justice Rutledge expressed concern regarding the underlying judicial problems which the Court failed to confront: "The result seems unfortunate in that, apparently, it may make possible a continuing round of litigation over custody, perhaps also of abduction, between alienated parents."[12]

Once again reflecting its reluctance to define the authority of a custody order, the Court based its decision in *May v. Anderson*[13] on a procedural defect. The Court determined that lack of personal jurisdiction over one of the parties to a custody dispute created a fatal error and that the resulting order was unenfor-

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[9] "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. CONST. art. IV, § 1.

Congress has provided by statute that judgments "shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." 28 U.S.C. § 1738 (1976).

[10] 330 U.S. 610 (1947).

[11] *Id.* at 614-15.

[12] *Id.* at 619.

[13] 345 U.S. 528 (1953).

cable. Justice Jackson's dissenting opinion suggested the practical effects of a rule which allowed the parties to determine a court's authority by simply making themselves unavailable for process.

> The convenience of a leave-taking parent is placed above the welfare of the child, but neither party is greatly aided in obtaining a decision. The Wisconsin courts cannot bind the mother, and the Ohio courts cannot bind the father. A state of the law such as this, where possession apparently is not merely nine points of the law but all of them and self help the ultimate authority, has little to commend it in legal logic or as a principal of order in a federal system.
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> . . . [H]ere the court requires personal service upon a spouse who decamps before the State of good-faith domicile can make provision for custody . . . Wisconsin had a far more real concern with the transactions here litigated than have many of the divorce-mill forums whose judgments we have commended their sister states to recognize.
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> Personal jurisdiction of all parties to be affected by a proceeding is highly desirable, to make certain that they have had valid notice and opportunity to be heard. But the assumption that it overrides all other considerations and in its absence a state is constitutionally impotent to resolve questions of custody flies in the face of our own cases.[14]

In *Kovacs v. Brewer*,[15] the Court once again was asked for direction regarding the extension of full faith and credit to custody orders of sister states. The case was remanded to the North Carolina Supreme Court for clarification of the grounds for the trial court's decision. Citing *Halvey*, Justice Black ordered that if the lower court's refusal to be bound by the custody order of a sister state was based on a change of circumstances subsequent to issuance of the original order, it was unnecessary to address the constitutional question regarding extension of full faith and credit to the decree of a sister state and the order of the lower court would be allowed to stand.[16]

The most recent reviews by the Court of this problem have resulted in decisions which have provided no clearer direction than their precedents. In *Ford v. Ford*,[17] the Court again avoided

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[14] *Id.* at 536, 539-41 (Jackson, J., dissenting).

[15] 356 U.S. 604 (1958).

[16] *Id.* at 608.

[17] 371 U.S. 187 (1962).

the question of jurisdictional limitations by finding that the lower court's dismissal of a custody dispute upon the representation of the parties that they had reached a custody agreement was an insufficient review of the best interests of the child. Accordingly, the lower court was not mandated to recognize a full faith and credit defense to a later challenge of the agreement.[18]

The Court once again chose to avoid confrontation of the issue in *Webb v. Webb*,[19] decided in 1981. The Court held that it had no jurisdiction to decide the case because the petitioner had failed to raise a federal claim, and the Georgia Supreme Court had failed to rule on such a claim. Consequently, the lower court's ruling, which denied full faith and credit to a Florida custody order obtained under the Uniform Child Custody Jurisdiction Act, was allowed to stand.

While the Court continued its refusal to address the expressed need for judicial direction on this matter, the divorce rate escalated annually[20] and the American population became increasingly mobile. The fluid status of custody decrees encouraged disgruntled parents to bring their children before courts of different jurisdictions to challege the custody judgments of a divorce court. Realizing that the law was as vunerable to manipulation as the judge enforcing it, noncustodial parents resorted to the rule of "seize and run."

West Virginia case law reflects a pattern typical of the nation. The law is replete with examples of the chaos created by forum shopping. The leading West Virginia cases regarding modification of custody orders have been grounded in fact situations which reveal parents shopping from one jurisdiction to another seeking a sympathetic court.

Exemplifying the confusion caused by this movement from court to court is the fact situation found in *Suter v. Suter*.[21] The competing parents had married in West Virginia, but later moved

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[18] *Id.* at 194.

[19] 101 S. Ct. 1889 (1981).

[20] The divorce rate in the United States rose from 5.0 per thousand people in 1977 to 5.2 per thousand people in 1978. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1980 (101st ed. 1980). The rate continued to rise in 1979, reaching 5.4 per thousand people. ADVANCE REPORT OF FINAL DIVORCE STATISTICS, 30 MONTHLY VITAL STATISTICS REPORT 2 (Supp., May 29, 1981).

[21] 128 W. Va. 511, 37 S.E.2d 474 (1946).

to Ohio. When they separated, Mr. Suter returned to West Virginia while Ms. Suter remained in Ohio with the children of the marriage. By some device, Mr. Suter subsequently removed the children from Ms. Suter's custody and placed them with his relatives in West Virginia. His action precipitated a separate maintenance petition by Ms. Suter in the Ohio court which resulted in her being awarded custody of the children. Mr. Suter had received notice and appeared at the hearing. He later contended that he attempted to comply with the court's order to return the children to his wife, but was unable to determine her whereabouts. The children remained in West Virginia.

Sixteen months later, Mr. Suter initiated divorce proceedings in Wetzel County, West Virginia. In his petition, he prayed for custody of the children. Ms. Suter received notice by publication and obtained counsel to contest the action. The petition was dismissed before she could file an answer. Mr. Suter refiled the divorce action one month later, this time in Ritchie County, West Virginia. Once again, he gave notice by publication. He was awarded a decree which placed the children in his custody.

Three months after the entry of the Ritchie County order, Ms. Suter filed a habeas corpus action in Wetzel County. Unaware of the Ritchie County order, she based her petition on the Ohio separate maintenance decree. The court dismissed her habeas corpus action, but suggested that Ms. Suter might find a remedy through still another action to attack the Ritchie County divorce.

Case law further reveals that the West Virginia Supreme Court has suffered the same dissatisfaction with the efficiency of the law concerning child custody modification that was being reflected in other jurisdictions. In *Cantrell v. Cantrell*,[22] the court observed:

> It is true that the effect of the decisions hereinbefore discussed or referred to may produce unfortunate results . . . such decisions will author new confusions, and would seem 'to reduce the law of custody to a rule of seize and run' . . . but we think Stapler v. Leamons, 101 W. Va. 235, 132 S.E.507, binds us to

[22] 143 W. Va. 826, 106 S.E.2d 768 (1953).

> decide the present case in accordance with the rule therein set forth. Even if this were not so, we should be reluctant to adopt a view which would run counter to principles approved by the great majority of the able judges in other jurisdictions who have had occasion to consider the matter. If the question were new, it might be worthy of consideration, but it is impossible to 'overthrow all the books'. 'It is safer to travel the path which the law has trodden, instead of discovering another one, . . . unless it is very certain that the new path will enable us to reach, not only most of the results which have been reached by the old one, but all, or at least all of which ought to be reached'.[23]

Through the years following the *Cantrell* decision, the West Virginia court struggled with the concept of the continuing jurisdiction of a divorce court. Its 1976 decision in *Adams v. Bowens*[24] showed little progress from the inflexible restraints of *Cantrell.* As it had in the past, the court held that an order of custody entered pursuant to a foreign divorce decree was modifiable in West Virginia since it was not *res judicata* in the state of its entry. The court did reflect, however, sensitivity to the changing state of the law.

> While the authorities are not in agreement as to the proper basis of jurisdiction in custody cases concerning minor children, there are respectable authorities which support the view that the child's physical presence within a state is sufficient to give that state's courts' jurisdiction to determine and award custody. This is grounded on the belief that such a court is best qualified to act in the best interest and welfare of the child. We subscribe to this principle and hold that the physical presence of the child together with jurisdiction over the parties is a sufficient basis to permit a court to determine and award custody of a minor child.[25]

The court took a much more definitive position in *State ex rel. Ravitz v. Fox.*[26] Although the question of custody jurisdiction had not been argued, the court specifically addressed it in its decision. The continuing jurisdiction of the West Virginia divorce court clearly was established in Justice McGraw's opinion.

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[23] *Id.* at 836-38, *id.* at 774 (citations omitted).

[24] 230 S.E.2d 481 (W. Va. 1976).

[25] *Id.* at 484-85.

[26] 273 S.E.2d 370 (W. Va. 1980).

> We conclude that once the circuit court's jurisdiction of a person attaches in a divorce action, jurisdiction continues throughout all subsequent proceedings which arise out of the original cause of action, including matters relating to alimony, child support, and custody, and that a party may not avoid the continuing jurisdiction of the trial court to modify orders concerning alimony, child support, and custody by moving outside the geographical jurisdiction of this State.[27]

The *Ravitz* decision stopped short of recognizing constitutional protection for the divorce decrees of sister states, but a further move in that direction was evidenced in *Stewart v. Stewart*.[28] The court extended full faith and credit to a Virginia adoption order entered over the the natural father's objection. By holding that the order was protected, the court denied the father a forum to attack the validity of the order.

The final step in this judicial evolution was taken in the parental abduction case, *Shermer v. Cornelius*.[29] The facts provide a classic model of the problem.

The parents, Ms. Cornelius and Mr. Shermer, were married, produced two children and were divorced, all within the confines of New York state. Their divorce decree awarded custody of the children to the mother. The order further provided that Mr. Shermer was to make regular child support payments and specifically prohibited modification of custody terms by any but the court of original jurisdiction. For several weeks, Mr. Shermer made the support payments as ordered and visited his children regularly. He then disappeared without warning. Several weeks later, the New York Department of Welfare discovered his whereabouts and brought him before a Georgia court where he was again ordered to provide support for his children. Mr. Shermer made one payment before leaving the jurisdiction of the Georgia court.

Three years passed without Ms. Cornelius or the children having contact with Mr. Shermer. The children regularly visited their paternal grandparents during this period. At the conclusion of one of these visits, the grandparents asked if the children could be allowed to remain an extra day. Their mother agreed.

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[27] *Id.* at 373.

[28] No. CC916 (W. Va., Dec. 19, 1980).

[29] 278 S.E.2d 349.

When she appeared to bring her children home, Ms. Cornelius was told that they had been abducted by their father. The grandparents contended they had no knowledge of his destination.

Ms. Cornelius searched for the children for five months. When she eventually discovered their whereabouts in southern West Virginia, she was denied access to them. Mr. Shermer and his current wife immediately instituted custody proceedings in the West Virginia courts. Ms. Cornelius responded with a motion to dismiss on the grounds that the West Virginia court did not have jurisdiction. The lower court denied Ms. Cornelius' motion and refused to recognize the exclusive jurisdiction of the New York court. Further proceedings were stayed while the question of whether full faith and credit should be extended to the New York custody order was certified to the state supreme court.

The court's decision, entered May 14, 1981, held that the custody order of a foreign state shall be constitutionally protected by the West Virginia courts and shall be given the same force and effect in West Virginia it has in the state where it was entered. In recognition of the scope of the problem of parental child abduction, the court judicially adopted the principles of the Uniform Child Custody Jurisdiction Act. Legislative enactment of the Uniform Act preceeded the Court's decision by only 44 days.

III. LEGISLATIVE HISTORY OF THE UNIFORM CHILD CUSTODY JURISDICTION ACT

In 1965, Professor Leonard Ratner published an authoritative study of the complex problems surrounding enforcement of child custody decrees.[30] Concurrently, the National Conference of Commissioners on Uniform State Laws and the Family Law Section of the American Bar Association investigated the question and determined that parental kidnapping was a national problem of epidemic proportion. Seeing little hope of immediate help from Congress, the Commissioners drafted the Uniform Child Custody Jurisdiction Act (hereinafter referred to as UCCJA). It was introduced in July, 1968, with the ABA's recommendation that it be enacted by the states.

[30] Ratner, *Child Custody in a Federal System*, 62 MICH. L. REV. 795 (1964).

Response by state legislatures initially was slow. By the end of 1969, only North Dakota had adopted the uniform legislation. Twenty-two states had enacted the UCCJA by 1978.[31] State legislatures responded, however, as recognition of the value of a cooperative effort grew. Between September, 1978, and February, 1981, when the West Virginia Legislature adopted the Act,[32] twenty-three more states joined the pact.[33]

The Act is premised on the theory that the best interests of the child are served by limiting modification of custody orders to courts having access to the maximum amount of information regarding the child. The late Bridgette Bodenheimer, Reporter for the Special Committee which drafted the Act, identified its scenario for achievement of this judicial goal:

> The basic scheme of the Act is simple. First, one court in the country assumes full responsibility for the custody of a par-

[31] *See* ALASKA STAT. § 25.30 (1977); ARIZ. REV. STAT. ANN. §§ 8-401 to -424 (Supp. 1981); CAL. CIV. CODE §§ 5150-74 (Deering Supp. 1981); COLO. REV. STAT. §§ 14-13-101 to -126 (1973); CONN. GEN. STAT. ANN. §§ 46b-90 to -114 (West 1978); DEL. CODE ANN. tit. 13, §§ 1901-25 (Supp. 1981); FLA. STAT. ANN. § 61.1302-48 (West 1977); HAWAII REV. STAT. §§ 583-1 to -25 (Repl. Vol. 1976); IDAHO CODE §§ 5-1000 to -25 (1977); IND. CODE ANN. §§ 31-1-11-1 to -24 (Burns 1980); IOWA CODE ANN. §§ 598A.1 to .25 (1977); MD. ANN. CODE art. 16, §§ 184-207 (1981); MICH. STAT. ANN. § 27A.651-.73 (Supp. 1981); MINN. STAT. ANN. § 518A.01-.25 (West Supp. 1981); MONT. REV. STAT. ANN. § 61-401-25 (Supp. 1977); N.D. CENT. CODE §§ 14-14-1 to -26 (1971); OHIO REV. CODE § 3109.21-.27 (Page Repl. Vol. 1980); OR. REV. STAT. § 109.700-.930 (1975); 42 PA. CON. STAT. ANN. §§ 5341-66 (Purdon 1981); R.I. GEN. LAWS § 15-14-1 to -26 (Supp. 1980); WIS. STAT. ANN. § 822.01-.24 (West Supp. 1980); WYO. STAT. §§ 20-5-101 to -125 (1977).

[32] W. VA. CODE §§ 48-10-1 to -26 (1981). The West Virginia Legislature adopted the Uniform Act in its entirety, adding a provision for introduction of psychological evidence.

[33] *See* Alabama, H.B. 154 (1981); ARK. STAT. ANN. §§ 34-2701 to -26 (Supp. 1979); GA. CODE ANN. §§ 74-501 to -25 (1981); ILL. ANN. STAT. ch. 40, §§ 2101 to -26 (Smith-Hurd 1980); KAN. STAT. ANN. §§ 38-1301 to -26 (1978); KY. REV. STAT. ANN. § 403.400-.630 (Baldwin 1980 Acts); LA. REV. STAT. ANN. §§ 13:1700 to -24 (West Supp. 1980); ME. REV. STAT. ANN. tit. 19, § 801-25 (1981); MO. ANN. STAT. § 452.440-.550 (Vernon Supp. 1980); N.M. STAT. ANN., ch. 40, art. 10, § 1-24 (1981); NEB. REV. STAT. §§ 43-1201 to -25 (1981); NEV. REV. STAT. § 125A.010-.250 (1979); N.H. REV. STAT. ANN. § 458-A:1 to :25 (Supp. 1979); N.J. STAT. ANN. §§ 2A-34-28 to -52 (Supp. 1980); N.Y. DOM. REL. §§ 75-a to -z (Supp. 1980); N.C. GEN. STAT. §§ 50A-1 to -25 (Supp. 1979); OKLA. STAT. ANN. title 10, § 1601-27 (Supp. 1980); S.D. COMP. LAWS ANN. §§ 26-5-5 to -52 (Supp. 1980); TENN. CODE ANN. §§ 36-1301 to -25 (Supp. 1980); UTAH STAT. §§ 78-45c-1 to -26 (Supp. 1980); VA. CODE §§ 20-35 to -146 (Supp. 1980); VT. STAT. ANN. tit. 15, § 1031-51 (Supp. 1980); REV. CODE WASH. § 26.27.010-.910 (Supp. 1981).

> ticular child. Second, for this purpose, a court is selected which has access to as much relevant information about the child and family in the state as possible. Third, other essential evidence, which is inevitably out-of-state in the case of an interstate child, is channelled into the first court which might be called the 'custody court.' Fourth, other states abide by the decision of the custody court and enforce it in their territory, if necessary. Fifth, adjustments in visitation and other ancillary provisions of the decree, and custody changes, if any, are as a rule, made by the original custody court. Sixth, if the child and his family no longer have appreciable ties with the state of the original court, a new custody court is selected to take the place of the original one for purposes of adjustments and modifications, and pertinent information is channelled from the prior to the subsequent custody court.[34]

The Act provides a system of voluntary and mandatory controls over the courts of participating states[35] designed to result in the scheme described by Professor Bodenheimer.

In the past, courts generally have used one of three legal grounds for determining jurisdiction in custody proceedings. The original Restatement of Conflict of Laws predicated jurisdiction on the domicile of the child's father.[36] This was not an inflexible rule, however, and the courts recognized two exceptions.[37] Jurisdiction could be established in a state which was the

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[34] Bodenheimer, *Legislative Remedy*, *supra* note 8 at 1218.

[35] The Act does not require strict reciprocity.

> The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Article or which was made under factual circumstances meeting the jurisdictional standards of this article, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this article.

W. VA. CODE § 48-10-14. *See also* Foy v. Foy, 6 FAM. L. REP. 2537 (BNA) (1980); Kraft v. District Court, 197 Col. 10, 593 P.2d 321 (1979); In re McDonald, 74 Mich. App. 119, 253 N.W.2d 768 (1977).

In its prefatory note to the Uniform Act, the Committee observed, however, that the Act would become effective only when a large number of the states had adopted it and their courts developed a "new, truly 'inter-state' approach to child custody litigation." 9 UNIFORM LAWS ANN. 114 (1979) [hereinafter cited as U.L.A.].

[36] RESTATEMENT OF CONFLICT OF LAWS § 144 (1934).

[37] RESTATEMENT OF CONFLICT OF LAWS § 148 (1934). The second version of the Restatement made the following provisions regarding jurisdiction.

> A state has the power to exercise judicial jurisdiction to determine the custody, or to appoint a guardian, of the person of a child or adult

domicile of both custodial parents. Application of these standards often resulted in the child's future being decided in a state where the youngster never actually lived, or where available information on the family was minimal.

Alternatively the state in which the child actually was present was considered the appropriate place for modification of a custody decree under the *parens patriae* theory of court responsibility and authority.[38] As was the case with the alternative jurisdictional theories, this left open the possibility that the child might have been within the court's geographic boundries only days before a court appearance. If neither of the child's parents were domiciled within the court's jurisdiction, the child might appear before the court with no available information on any of the parties. The third alternative jurisdictional concept grew out of the decision in *May v. Anderson*.[39] Because the Supreme Court had withheld full faith and credit protection to an order not grounded on personal jurisdiction of both parents, jurisdiction subsequently was assumed where both parents appeared personally before the court.[40]

All of these approaches could be manipulated by the party with greatest resources. The incentive was clear to abduct the child to an inconvenient or unavailable forum to the custodial parent. Even in those courts which sought personal jurisdiction of both parents, the party required to travel usually was prejudiced by the costs of bringing evidence and witnesses before the court.

IV. JURISDICTIONAL CONCEPTS OF THE UCCJA

A. *Subject Matter Jurisdiction*

In his study of the child custody problem, Professor Ratner proposed that the appropriate jurisdiction for evaluation of a

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(a) who is domiciled in the state, or
(b) who is present in the state, or
(c) who is neither domiciled or present in the state, if the controversy is between two or more persons who are personally subject to the jurisdiction of the state.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 79 (1971).

[38] *See* Helton v. Crawley, 241 Iowa 296, 312, 41 N.W.2d 60, 70 (1950).

[39] 345 U.S. 528 (1953).

[40] Ratner, *Child Custody in a Federal System*, 62 MICH. L. REV. 795, 826 (1964).

custody dispute was "the last place where the child has lived with a parent for sufficient time to be integrated into the community."[41] He estimated that integration usually was complete within six months.[42]

Ratner's concept provided the basis jurisdictional unit of the Act—the "home state". Based on the assumption that this six month residence can generate a fund of significant data regarding the child, the Act gives jurisdiction to the home state court even though the child has been removed from that state. If the custodial parent remains in the state, the law provides a six month period following the child's departure during which the court retains jurisdiction.[43] The drafters intended the six month extension to create a procedure whereby the home state parent may initiate action in a local court. This would protect the custodial parent from the burden of following the abducting parent to a foreign jurisdiction.[44] This section of the Act abolishes any previous state jurisdiction rule requiring the child's presence.[45]

The drafters recognized that some children would have no home state. Consequently, they provided an alternative "significant contacts" test which requires substantial involvement of the child and at least one parent with the state.[46] The Commissioners warn that this alternative must be read in conjunction with the purposes of the Act[47] and subordinated to the "home state" rule to discourage abduction of a child to another jurisdiction. The drafters point out that they seek "maximum rather than minimum contact with a state."[48]

The Act contains a specific jurisdictional provision for the child physically present in the state and who either has been

[41] *Id.* at 815.

[42] *Id.* at 818.

[43] W. VA. CODE § 48-10-3(a)(1).

[44] Commissioners' Note, 9 U.L.A., *supra* note 35, at 3. The Commissioners' Notes are the official comments on the Law by the Commissioners on Uniform State Laws. Although courts are not bound by these comments, they are considered to be a persuasive indication of legislative intent and often are used in interpreting the Act.

[45] *See* W. VA. CODE § 48-10-3(c) which specifies that the presence of the child is not a jurisdictional requirement. Subsequent provisions ensure the child's appearance on other grounds.

[46] *Id.* at § 48-10-3(a)(2).

[47] *Id.* at § 48-10-1(a)(5).

[48] 9 U.L.A., *supra* note 35 at, 124.

abandoned or subjected to abuse by the custodial parent.[49] This section is intended to cover only limited situations of extreme emergency and is not designed to provide a forum for a custody battle. The Commissioner's Notes to the Act specify that "when there is child neglect without emergency or abandonment, jurisdiction cannot be based on this paragraph."[50]

Finally, jurisdiction may be established solely on the grounds that it is in the child's best interest to do so, provided it can be shown that no other state qualifies under the Act, or that a state, prior to the filing of the custody petition, has declined to accept jurisdiction.[51]

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[49] W. VA. CODE § 48-10-3(a)(3).

[50] Commissioners' Note, 9 U.L.A. *supra* note 35, at 124. It is clear that the Act's drafters did not intend for the court to use to the fullest its *parens patriae* power to establish jurisdiction. Professor Bodenheimer has indicated that the Commissioners intended that the "emergency jurisdiction rule" was only to provide for temporary custody orders. Comment, 62 CALIF. L. REV. 365, 379 n.72. It appears that the law has been so interpreted in at least three cases.

In Zillmer v. Zillmer, 8 Wis. 2d 657, 100 N.W.2d 564, *modified*, 8 Wis. 2d 663(a), 101 N.W.2d 703 (1960), the Wisconsin court held that it did not have jurisdiction over the custody dispute and directed the parties to return to the children's home state of Kansas. At the rehearing, the court considered evidence regarding the mental condition of the petitioning parent, however, and ordered that the children remain with the custodial grandparents for 60 days to allow initiation of proceedings in the Kansas court. *Id.* at 663(b); *id.* at 703.

The Colorado court likewise issued an ex parte temporary emergency custody order on the basis of a psychological evaluation of a child which indicated a need of psychiatric help. Ultimately, the court refused to accept jurisdiction and returned the child to the home state parent. The Colorado Supreme Court upheld the decision and specifically limited the court's power under this provision for temporary orders. In re Custody of Thomas, 36 Colo. App. 96, 537 P.2d 1095 (1975).

The Colorado court applied the same standard in Fry v. Ball, 190 Colo. 128, 544 P.2d 402 (1975). The court observed that guardianship of the children originally was awarded to the custodial grandparents while the parents were incarcerated and that subsequent efforts of the parents to regain custody of the children had resulted in the arrest of the parents. Accordingly, after declining jurisdiction over the dispute, the court awarded temporary custody to the grandparents, provided they petition a California court to initiate proceedings there.

For judicial determination that the requisite state of emergency to provide jurisdiction for temporary orders did not exist, *see* Woodhouse v. District Court, 196 Colo. 558, 587 P.2d 1199 (1978); Kraft v. District Court, 197 Colo. 110, 593 P.2d 321 (1979).

[51] W. VA. CODE § 48-10-3(a)(4).

It can be argued that the clearest expression of the drafters' intent is found in sections specifically prohibiting a court's exercise of jurisdiction. When read in conjunction with the stated purposes of the Act to minimize jurisdictional conflict[52] and to discourage the abduction of children,[53] these limiting clauses become the most authoritative of the entire statutory structure.

The UCCJA expressly prohibits a state court from initiating custody proceedings concurrent with those pending in a sister state.[54] The court must take affirmative action to ensure that simultaneous proceedings are not initiated inadvertantly.[55] Equally mandatory is the wording of a provision which closes the courthouse to a child snatcher. Codifing the "clean hands" doctrine often applied in pre-UCCJA cases of parental kidnapping,[56] the Act provides:

> Unless required in the interest of the child,[57] the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody.[58]

In cases where either the child has been wrongfully[59] removed from the state prior to issuance of an initial custody order or

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[52] *Id.* at § 48-10-1(a)(1-2).

[53] *Id.* at § 48-10-1(a)(3-5).

[54] *Id.* at § 48-10-6(a). *See also* the Commissioners' Note, 9 U.L.A., *supra* note 35, at 135, which indicates that jurisdiction should, in some cases be waived, even though the prior filing is made in a state which has not adopted the Act.

[55] W. VA. CODE § 48-10-6(b-c); *id.* at § 48-10-9.

[56] *See* Leathers v. Leathers, 162 Cal. App. 2d 768, 328 P.2d 853 (1958); Crocker v. Crocker, 122 Colo. 49, 219 P.2d 311 (1950); In re Mullins, 26 Wash. 2d 419, 174 P.2d 790 (1946).

[57] The drafters do not define the limitation they intended to create to protect a child's interests. They do, however, specify that "in the case of illegal removal or retention, refusal of jurisdiction is mandatory unless the harm done to the child by a denial of jurisdiction outweighs the parental misconduct." Commissioners' Note, 9 U.L.A., *supra* note 35, at 143.

[58] W. VA. CODE § 48-10-8(b).

[59] The Commissioners' Notes indicate that "wrongfully" was not meant to be synonomous with violation of a legal right, but rather conduct sufficiently objectionable as to preclude equitable exercise of jurisdiction. Commissioners' Note, 9 U.L.A., *supra* note 35, at 142-43.

where other provisions of a custody decree have been violated,[60] the court may exercise its discretion to decline jurisdiction of a case which otherwise qualifies under the provisions of the Act. Upon dismissing a custody petition under these provisions, the court may charge all expenses incurred by the party defending against the petition to the party initiating the proceedings in the improper forum.[61]

The court also may award expenses when it refuses to accept jurisdiction on the grounds that the forum chosen clearly is not a convenient one and another state is better equipped to hear the case.[62] Acknowledging that some cases which technically come within the state's jurisdictional guidelines may actually best be determined by the courts of another state, the Act provides a court discretionary power to decline jurisdiction and direct the case to the appropriate forum.[63] The drafters stress the need for cooperation and communication among the courts in order to facilitate this balancing of the child's interests.[64]

B. Notice Provisions

The erratic custody jurisdiction tests of the past often failed to provide any form of actual notice to the custodial parent of modification proceedings in a foreign state.[65] Existing judicial chaos increased as conflicting orders of custody were awarded by courts of sister states. The Act provides several precautionary tests to ensure that an effort is made to involve all necessary parties to a custody modification.

Initially the Act requires that a petition for custody modification contain all available information regarding the legal and extra-legal contact between the child and all parties claiming custody rights. This would include a history of prior custody proceedings.[66] It is within the court's discretion to order all con-

[60] Other violations might include removal of a child from his home state by a custodial parent without permission of the court or of the non-custodial parent. The inevitable result of such action is to deprive the non-custodial parent of visitation rights. *See* Commissioners' Note, 9 U.L.A., *supra* note 35, at 143.

[61] W. VA. CODE § 48-10-8(c).

[62] *Id.* at § 48-10-7(g).

[63] *Id.* at §§ 48-10-7(e), (h).

[64] *See, e.g., id.* at § 48-10-7(d), (h), (i).

[65] *See generally* Adams v. Bowens, 230 S.E.2d 481, 483 (W. Va. 1976).

[66] W. VA. CODE § 48-10-9.

cerned parties to be joined as parties to the action and to require them to appear at the proceedings. If the child is in the custody of such a party, the court can order that the youngster be brought before the court.[67]

Due process standards require that reasonable notice and an opportunity to be heard be afforded all the parties.[68] The Act sets forth a system for contacting the contestants which, consistent with the stated goals of the legislation, provides a practical mechanism for ensuring that actual notice be provided wherever possible. The petitioner appears to be given the option of complying with the notice requirements of either the state from which the notice is issued or that state in which it is received.[69] Specific provision is made for service by certified mail or by publication.[70] Ultimately, approval for the form of notice provided is within the discretion of the trial court.[71]

C. *Enforcement Provisions*

Answering, at last, the question which the Supreme Court has refused to entertain, the UCCJA establishes the binding nature of a custody decree entered in a manner consistent with the jurisdictional and notice requirements of the Act.[72] The UCCJA specifically provides that the order of the court of original jurisdiction shall bind all parties afforded an opportunity to be heard until the order is modified under the Act. Put to rest is the historic argument that courts are competent to modify all custody decrees on the grounds that such orders are not *res ju-*

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[67] *Id.* at § 48-10-10 to -11.

[68] *Id.* at §§ 48-10-4.

[69] *Id.* at § 48-10-5(a).

[70] *Id.* at § 48-10-5. It is worthwhile to note that the drafters do not list publication as a suggested form of notice, although a court has discretionary power to use it under the model Act when all other forms fail. The Commissioner's Notes indicate the publication notice was excluded because of its constitutional weakness. The drafters stated their intent that it be used by a court in addition to those forms of notice more likely to impart actual warning. Commissioners' Note, 9 U.L.A., *supra* note 35, at 131-32.

[71] *See, e.g.*, § 48-10-5(b).

[72] *Id.* at § 48-10-13,

See also the Parental Kidnapping Act of 1980, *reprinted in* [1980] U.S. CODE CONG. & AD. NEWS 3566, which extends the constitutional protection of full faith and credit to custody orders made in compliance with the principles of the Uniform Act.

dicata and therefore not entitled to the protection afforded final and binding orders.[73]

Crucial to the drafters' ideal of increased stability for the interstate child of divorce are those sections of the Act mandating judicial enforcement of the terms of the custody decree of a sister state.[74] These provisions preclude modification by a foreign court of the terms of a UCCJA custody order unless it is shown that the court of original jurisdiction can no longer maintain its authority and jurisdiction can be lawfully established in the foreign court.[75] The Commission's Notes to the Act offer a hypothetical situation in which the court which entered the original order would be forced to surrender jurisdiction.

> For example, if custody was awarded to the father in state 1 where he continued to live with the children for two years and thereafter his wife kept the children in state 2 for 6½ months (3½ months beyond her visitation privileges) with or without the permission of the husband, state 1 has preferred jurisdictiion to modify the decree despite the fact that state 2 has, in the meantime, become the 'home state' of the child. If, however, the father also moved away from state 1, that state loses modification jurisdiction interstate, whether or not its jurisdiction continues under local law. . . [A]lso, if the father in the same case continued to live in state 1, but let his wife keep the children for several years without asserting his custody rights and without visits of the children in state 1, modification jurisdiction of state 1 would cease.[76]

It is clear that the Act supports the concept of continuing jurisdiction of the divorce court, and thus compels sister states to enforce the terms of custody decrees and modifications issued by that court. Some authorities suggest a problem which may arise from this broad grant of authority. Case law indicates that judges have not always based their decisions on the best in-

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[73] *See* Adams v. Bowen, 230 S.E.2d 481 (W. Va. 1976); Cantrell v. Cantrell, 143 W. Va. 826, 106 S.E.2d 768 (1953); Stapler v. Leamons, 101 W. Va. 235, 132 S.E. 507 (1926). *See also* treatment of this argument applied to the issue of alimony in Barber v. Barber, 323 U.S. 77 (1944); Sistare v. Sistare, 218 U.S. 1 (1909).

[74] *See* Commissioners' Notes, 9 U.L.A., *supra* note 35, at 151. *See also* W. VA. CODE §§ 48-10-14 to -16.

[75] W. VA. CODE § 48-10-15(a).

[76] Commissioners' Notes, 9 U.L.A., *supra* note 35, at 154.

terests of the child. In some cases, an impertinent or uncooperative party has angered the judge. The custody decisions which result have overtones of a punitive nature.[77] Enforcement of these orders is not necessarily conducive to increased stability of the child nor does it contribute significantly to judicial efficiency. It has been proposed that the courts should be relieved of enforcement of such orders,[78] but no specific exception is included in the law.[79]

D. Reporting Provisions

The UCCJA legislative scheme would be unenforcable if it was premised on the good faith of the contestants to provide the court with all relevant information. Accordingly, the Act requires the petitioning party to inform the court under oath of the case's judicial history. The petitioner also must provide all relevant factual information regarding actual custody of the child for the preceding five years.[80]

In addition, the Act requires a court to take affirmative action to search out available court records of the custody decree under attack.[81] One source for identifying these records is the

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[77] *See* Berlin v. Berlin, 21 N.Y.2d 371, 235 N.E.2d 109 (1967); Brooks v. Brooks, 20 Or. App. 43, 530 P.2d 547 (1975).

[78] *See* UCCJA § 13 and Commissioners' Notes, 9 U.L.A., *supra* note 35, at 152. *See also id.* at 155. *See also*, Bodenheimer, *The Rights of Children and the Crisis in Custody Litigation: Modification of Custody In and Out of State*, 46 U. COLO. L. REV. 495, 504 (1975). Professor Bodenheimer suggests that the goals of the Act would be furthered if a court, rather than simply refusing to recognize the modification order designed to punish, would contact the issuing court and attempt to resolve the behavorial problem which resulted in the order.

[79] *See* In re Lang, 9 N.Y. App. Div. 2d 401, 405, 410, 193 N.Y.S.2d 763, 767, 771 (1959) in which Justice Breitel suggests that enforcement of the punitive orders of sister states can do little to further the interests of the child.

> The dignity of the several courts would be perserved, but the welfare of the children would be destroyed. The answer is, of course, that the parents contempts of the courts must be a subordinate consideration.
>
> The New York courts can well survive this offense to their dignity; the children should not, however, suffer further offense to their welfare.

Id. at 667, 671.

[80] W. VA. CODE § 48-10-9(a).

[81] *Id.* at §§ 48-10-6, 7 and 23.

registry of custody orders to be maintained in the local court clerk's office.[82]

IV. FEDERAL LAW SUPPORTING UCCJA ENFORCEMENT

A. *Parental Kidnapping Prevention Act of 1980.*

The federal Parental Kidnapping Act of 1980 forces those three jurisdictions[83] which have failed to adopt the UCCJA to comply with its principles. Enacted during the last days of the 96th Congress, the federal statute provides the "teeth" which should make it possible to test the effectiveness of the jurisdictional network created by the UCCJA.

The federal legislation,[84] which is similar but not identical to the UCCJA, strives for the same goals of national cooperation and consistency.[85] Jurisdictional standards consistent with those embodied in the Uniform Act[86] are incorporated to establish a national policy that the court with greatest access to information regarding the child is the proper court to determine custody. Strict prohibitions are imposed on concurrent custody proceedings in sister states.[87]

Discovery of the whereabouts of an abducting parent frequently is an insurmountable hindrance to enforcement of the Uniform Act. The federal law makes available to the custodial parent the services of the Federal Parent Locater Service.[88] Through the cooperative efforts of the individual state and the office of the Secretary of Health and Human Services, the same mechanism used to locate parties who default on child support obligations may be used to provide information on the whereabouts of a kidnapping parent.

In addition to the provisions for civil authority, the new statute establishes criminal penalties for kidnapping by parents.

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[82] *Id.* at §§ 48-10-16 to -17.

[83] Only Massachusetts, Mississippi and the District of Columbia have not enacted UCCJA legislation as of July 1, 1981. This does not mean that all of the states have adopted the entire Uniform Act. *See* TEX. FAM. CODE ANN. § 11.01-.20 (Vernon Supp. 1980). *See also* Murphy v. Murphy, 404 N.E.2d 69 (Mass. 1980), in which the Massachusetts court applies UCCJA standards.

[84] [1980] U.S. CODE CONG. & AD. NEWS 3568.

[85] *Id.* at 3569 (to be codified as 28 U.S.C. § 1738A(7)(a)).

[86] *Id.* at 3571 (*Id.* at § 1738A(c)).

[87] *Id.* (*Id.* at § 1738A(g)).

[88] 42 U.S.C. 654 (Supp. 1980), *as amended, id.*

The Department of Justice and federal law enforcement agencies traditionally have refused to extend the Fugitive Felon Act[89] to such cases. Even where the abduction violated state felony laws, authorities have refused to provide federal law enforcement services.

The Paternal Kidnapping Prevention Act extends existing federal statutes to "apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable state felony statutes."[90] As a result, the F.B.I. may now assist in locating a kidnapping parent and returning him or her to the jurisdicton where the abduction took place, if that state indicates its willingness to prosecute.

B. Tort Remedy in Federal Courts

Federal courts had evidenced a willingness to participate in the national effort to eradicate child snatching prior to the enactment of the federal statute. The U.S. Court of Appeals for the Fifth Circuit upheld a jury verdict in *Fenslage v. Dawkins*[91] which awarded the custodial mother $65,000 in compensatory damages suffered as a result of the abduction of her children. An additional $65,000 was awarded in punitive damages.

The children had been placed in their mother's custody at the time of her divorce. During a summer visit with their father, they were abducted to Canada and secreted from their mother. The father's parents, his siblings and his nephew denied knowledge of the whereabouts of the children. The lower court determined that the ex-husband and his family had conspired in the abduction and all of the parties were held jointly liable for it.

The Court of Appeals upheld the trial court's decision. As authority, it cited a provision of the Restatement (Second) of

[89] 18 U.S.C. 1073 (1976). The Fugitive Felon Act makes it a crime to move in interstate commerce to avoid prosecution under state felony statutes or to flee in order to avoid testifying under such laws.

[90] *See* 126 CONG. REC. 15944 (1980) (Remarks of Senator Wallop)

> The conference agreement is not without shortcomings. It does not provide the uniform deterrent embodied in the proposed misdemeanor felony provision [an earlier version of the Bill included a proposed criminal statute] because it depends on the existence of state felony antiabduction statutes which vary in kind and quality throughout the country. While 38 states have felony laws on point, not all of these will facilitate F.B.I. involvement under this pending proposal.

[91] 629 F.2d 1107 (5th Cir. 1980).

Torts which details a tort cause of action arising from the abduction of a child from his or her parent's lawful custody.[92] The decision refers to Restatement comments authorizing an award for mental anguish damages suffered as a result of the abduction, as well as providing for recovery of expenses incurred in regaining rightful custody of the child.

V. CONCLUSION

The UCCJA does not resolve all of the problems faced by the courts in determining workable and humane custody plans for the children of divorce.[93] Like any other law, it is subject to the sometimes questionable interpretation of a local judge.[94] A considerable period of time will be required to allow state courts to facilitate the mechanism for efficient exchange of judicial information. The uniform model is not designed to help the victims of parental kidnapping in those cases where the child is not taken across state lines. West Virginia law does not address that problem either.[95]

The Act does, however, represent a profound change of the concept of judicial responsibility in custody proceedings. In light of the chaotic history of this area of the law, there is every reason to hope the change will be for the better. Recognizing continuing responsibility for the effects of their orders of custody, judges may be expected to weigh the determining factors more carefully than in the past.

Ultimately, the greatest impact of the UCCJA will register on those seeking to avoid it. The United States Congress, the federal courts and the legislatures of 48 states have joined together in an enlightened effort to address a national problem. They have identified the state court judge as the figure with ultimate responsibility for enforcing the remedial provisions de-

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[92] One, who with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent legally entitled to its custody or not to return to the parent after it has been left him, is subject to liability to the parent. RESTATEMENT (SECOND) OF TORT § 700 (1977).

[93] *See* Hudak, *Seize, Run and Sue: The Ignominy of Interstate Child Custody Litigation in American Courts*, 39 MO. L. REV. 521, 547 (1974).

[94] *See* Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974).

[95] *But see* 42 PA. CONS. STAT. ANN. § 5634 (Purdon 1981) which applies UCCJA to intrastate custody battles.

signed to meet the problem. It is in the decisions of these judicial leaders that the success or failure of the UCCJA will be found.