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Lucy S. McGough

Anne R. Hughes

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CHARTED TERRITORY: THE LOUISIANA EXPERIENCE WITH THE UNIFORM CHILD CUSTODY JURISDICTION ACT

*Lucy S. McGough** and *Anne R. Hughes***

Forum contests in child custody cases impose enormous costs upon the legal system and upon the families who wage the battles. For over a century, legal scholars have agreed that the power of state courts to resolve interstate custody disputes ought not to be determined according to generally applicable in rem or in personam rules;[1] just what other rules ought to replace the ancient territorial tests, however, remains obscure. Only very recently has any consensus about custody-specific jurisdictional principles begun to emerge. In 1968, the National Conference of Commissioners on Uniform State Laws formulated these principles in its model statute, the Uniform Child Custody Jurisdiction Act (UCCJA).[2] Although the UCCJA is complex and arguably flawed by an overabundance of trial court discretion, it clearly represents an advance over the doctrinal chaos which existed prior to its promulgation.[3]

In 1978, the Louisiana legislature adopted the UCCJA which is now in force in all states except Texas and Massachusetts.[4] Since 1978,

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* Professor of Law, Louisiana State University. The author wishes to express appreciation to the Kellogg National Fellowship Program for having made possible her work on child custody dispute resolution of which this research is but a part.

** Third-year law student, Louisiana State University.

1. In Pennoyer v. Neff, 95 U.S. 714, 734-35 (1877), Justice Field first suggested that there was a category of "status" adjudications, which included at least marriage and divorce actions, which ought to be exempted from otherwise constitutionally binding due process restraints upon state court jurisdiction over a nonresident defendant. *See also* Ehrenzweig, *Interstate Recognition of Custody Decrees: Law and Reason v. the Restatement*, 51 MICH. L. REV. 345 (1953); Hazard, May v. Anderson*: Preamble to Family Law Chaos*, 45 VA. L. REV. 379 (1959); Stumberg, *The Status of Children in the Conflict of Laws*, 8 U. CHI. L. REV. 42 (1940). Intrastate venue disputes, of course, can impose similar costs on the parties; see *infra* text accompanying notes 26-30. The absence of federal constitutional limitations on trial situs *within* a state has tended to obscure the relationship between those costs and the powers of courts to impose them.

2. Uniform Child Custody Jurisdiction Act §§ 1-28, 9 U.L.A. 111-70 (1968) [hereinafter cited as UCCJA].

3. *See* Bodenheimer, *Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction Under the UCCJA*, 14 FAM. L. Q. 203 (1981) [hereinafter cited as Bodenheimer, *Interstate Custody*]; Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207 (1969); Ehrenzweig, *supra* note 1; Ratner, *Procedural Due Process and Jurisdiction to Adjudicate*, 75 NW. U. L. REV. 363 (1980).

4. Puerto Rico also has not enacted the UCCJA. *See* official records of the National Conference of Commissioners on Uniform State Laws (cited in Brief *amici curiae*

Louisiana appellate courts have decided fourteen cases construing the UCCJA.[5] The two principal purposes of this article are to analyze progress toward implementing the model Act in this state and to anticipate constructional problems not yet faced by the extant body of jurisprudence.

Part I of this article will provide some background discussion of the nature and scope of jurisdictional problems inherent in interstate child custody disputes. Part II of this article will focus upon the jurisdictional framework of the UCCJA. Part III will examine the congruence of Louisiana jurisprudence with the recorded intent of the Commissioners as well as with decisions from other adopting states. Part IV will discuss the basic changes in the UCCJA scheme for the enforcement of interstate custody judgments which have been accomplished by the federal Parental Kidnapping Prevention Act of 1980.[6] While no case governed by this federal statute has yet to reach the Louisiana appellate courts, critical readjustments in jurisdictional conceptualizations under the UCCJA are now necessary in order to ensure that Louisiana custody judgments will be entitled to full faith and credit in sister states.

I. RUFFLES AND FLOURISHES: THE EICKE CASE

Although the UCCJA has been in force for only five years in Louisiana, perhaps the most controversial case decided by any adopting state has come from the Louisiana Third Circuit Court of Appeal.

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for the National Conference of Commissioners on Uniform State Laws on Behalf of the Respondent at 5 n.2, Eicke v. Eicke, 103 S. Ct. 776 (1983) [hereinafter cited as Brief *amici curiae*]).

5. Gibson v. Gibson, 429 So. 2d 877 (La. App. 3d Cir. 1983); Dillon v. Medellin, 409 So. 2d 570 (La. 1982); Revere v. Revere, 389 So. 2d 1277 (La. 1980); Byrum v. Hebert, 425 So. 2d 322 (La. App. 3d Cir. 1982); Pittman v. George, 424 So. 2d 1200 (La. App. 1st Cir. 1982); Huston v. Granstaff, 417 So. 2d 890 (La. App. 3d Cir. 1982); Hust v. Whitehead, 416 So. 2d 639 (La. App. 2d Cir. 1982); Buchanan v. Malone, 415 So. 2d 259 (La. App. 2d Cir. 1982); Losey v. Losey, 412 So. 2d 639 (La. App. 2d Cir. 1982); Cata v. McKnight, 401 So. 2d 1221 (La. App. 2d Cir.), *cert. granted*, 404 So. 2d 264 (La. 1981); Eicke v. Eicke, 399 So. 2d 1231 (La. App. 3d Cir.), *cert. denied*, 406 So. 2d 607 (La. 1981), *cert. granted*, 456 U.S. 970 (1982), *cert. dismissed*, 103 S. Ct. 776 (1983); Hadley v. Hadley, 394 So. 2d 769 (La. App. 4th Cir.), *cert. denied*, 399 So. 2d 622 (La. 1981); Moore v. Moore, 379 So. 2d 1153 (La. App. 2d Cir. 1980); Parker v. Parker, 424 So. 2d 479 (La. App. 5th Cir. 1982), *writ denied*, 427 So. 2d 1198 (La. 1983) (although *Parker* is an intrastate jurisdictional dispute, the court's opinion does provide some dicta about the proper construction of the UCCJA).

6. 28 U.S.C. § 1738A (Supp. V 1981).

Eicke v. Eicke,[7] which held that Louisiana would ignore a Texas custody decree, became an overnight *cause celebre* when the United States Supreme Court accepted the petition for *certiorari*.[8] After thirty years of silence,[9] the Supreme Court now appeared ready to stir once more the historically muddy waters of interstate child custody jurisdiction. Undoubtedly the Supreme Court granted *certiorari* in the Louisiana case because the timing of its appearance seemed perfect. The *Eicke* case afforded the Court the opportunity to lay the final part in its reassembly of fundamental notions of state court power over non-domiciliary citizens which began in *International Shoe Co. v. Washington*[10] and continued through its most recent opinions in *Rush v. Savchuk*[11] and *World-Wide Volkswagon Corp. v. Woodson*.[12]

The Commissioners on Uniform State Laws reacted in alarm to the prospect of Supreme Court intervention and filed with the Court a brief *amicus curiae* which charged:

> If this Court grants full faith and credit to the subsequent Texas decree in this case, the decision will conflict with the provisions of the Uniform Child Custody Jurisdiction Act (UCCJA), which governed the decisions of the Louisiana courts, and is, also, in effect in 47 other states. The UCCJA was drafted to cure defects in the handling of interstate child

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7. 399 So. 2d 1231 (La. App. 3d Cir.), *cert. denied*, 406 So. 2d 607 (La. 1981), *cert. granted*, 456 U.S. 970 (1982), *cert. dismissed*, 103 S. Ct. 776 (1983).

8. 456 U.S. 970 (1982). Since 1962, the Supreme Court has been asked to review the constitutionality of interstate child custody judgments twelve times. *See* Miller v. Miller, 158 Conn. 217, 258 A.2d 89, *cert. denied*, 396 U.S. 940 (1969); Borri v. Siverson, 336 So. 2d 353 (Fla. 1976), *cert. denied*, 429 U.S. 1079 (1977); State *ex rel.* Fox v. Webster, 151 So. 2d 14 (Fla. Dist. Ct. App. 1963), *cert. dismissed*, 162 So. 2d 905 (Fla. 1964), *cert. denied*, 379 U.S. 822 (1964); Webb v. Webb, 245 Ga. 650, 266 S.E.2d 463, *cert. granted*, 449 U.S. 819 (1980), *appeal dismissed*, 451 U.S. 493 (1981) (want of jurisdiction); People *ex rel.* Loeser v. Loeser, 51 Ill. 2d 567, 283 N.E.2d 884 (1972), *cert. denied*, 409 U.S. 1007 (1972); Eicke v. Eicke, 399 So. 2d 1231 (La. App. 3d Cir.), *cert. denied*, 406 So. 2d 607 (La. 1981), *cert. granted*, 456 U.S. 970 (1982), *cert. dismissed*, 103 S. Ct. 776 (1983); Schwartz v. Schwartz, 26 Md. App. 427, 338 A.2d 386 (1975), *cert. denied*, 423 U.S. 1088 (1976); Joffe v. Joffe, 50 N.J. 265, 234 A.2d 232 (1967), *cert. denied*, 390 U.S. 1039 (1968); Berlin v. Berlin, 21 N.Y.2d 371, 235 N.E.2d 109, 288 N.Y.S.2d 44 (1967), *cert. denied*, 393 U.S. 840 (1968); Spence v. Durham, 283 N.C. 671, 198 S.E.2d 537 (1973), *cert. denied*, 415 U.S. 918 (1974); Proctor v. Proctor, 213 Pa. Super. 171, 245 A.2d 684 (1968), *cert. denied*, 396 U.S. 839 (1969); Terrazas v. Riggs, 612 S.W.2d 461 (Tenn. Ct. App. 1980), *cert. denied*, 450 U.S. 921 (1981).

9. May v. Anderson, 345 U.S. 528 (1953).

10. 326 U.S. 310 (1945).

11. 444 U.S. 320 (1980).

12. 444 U.S. 286 (1980).

> custody disputes created by past decisions of this Court. This Court has, by its decisions, encouraged state autonomy in the enforcement and modification of the decrees of another state. In turn, contestants in custody cases have been encouraged to relitigate cases from state to state, and to engage in undesirable self-help practices such as seize and run.[13]

Accusations that the United States Supreme Court has by its previous decisions created jurisprudential chaos, abetted state defiance of the constitutional command of full faith and credit, and encouraged parental childnapping are not the ordinary, supplicative matter of briefs *amici curiae* filed before the Supreme Court. The Uniform Child Custody Jurisdiction Act is the brainchild of the commissioners and their erudite reporters, but it was conceivable that the Act as currently written might not survive constitutional scrutiny by the Court.[14] Assuming the aggressive posture of a mother bear defending her cub, the *amicus* brief warned the Court off of the *Eicke* case.

Six months later, the Supreme Court vacated its grant of *certiorari* in *Eicke* and decamped without opinion.[15] What had occurred in the interim to change the Court's charted course? Perhaps the most influential development was the brief *amicus curiae* in opposition and the critical firepower of the National Conference of Commissioners on Uniform State Laws which it represented. Perhaps the Court decided to stay its re-entry into this area of conflicts of law until greater state experience had accumulated in utilizing the UCCJA, and until the provisions of the UCCJA had become more refined by judicial construction. Perhaps a more telling reason for the retreat might be the Court's recognition of the apparent intractability of child custody judgments and a certain understandable reluctance to dive into a morass in which the Court had floundered on more than one past occasion.[16]

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13. Brief *amici curiae, supra* note 4, at 2.

14. It is anomalous to refer to Louisiana as "the UCCJA state" because in accepting initial jurisdiction in *Eicke*, the Louisiana court violated the provisions of its own UCCJA. *See infra* text accompanying notes 100-03. Thus, even if the United States Supreme Court had found a lack of jurisdiction in Louisiana, such a ruling would not necessarily have impaired the validity of the Act's design when properly applied. For an excellent discussion of potential constitutional flaws in the UCCJA, see Ratner, *supra* note 3. For a defense of the Act's constitutionality, see Bodenheimer & Neeley-Kvarme, *Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko*, 12 U.C.D. L. Rev. 229 (1979).

15. 103 S. Ct. 776 (1983).

16. Ford v. Ford, 371 U.S. 187 (1962); Kovacs v. Brewer, 356 U.S. 604 (1958); May v. Anderson, 345 U.S. 528 (1953); Kreiger v. Kreiger, 334 U.S. 555 (1948); New York *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1947).

Certainly there is much to support the need for a definitive constitutional decision by the Court on the enforceability of foreign child custody judgments. Furthermore, the *Eicke* case presented a commonly recurring fact pattern. According to the most recent census data, over one million divorces now occur in the United States each year which involve over 100,000 children.[17] In fact, focusing upon probability instead of fantasy, the Eickes may well represent today's "All American" family.

Elizabeth and Johannas Eicke remained married slightly over five years and produced two children before divorcing.[18] Today the average American marriage lasts 6.6 years and produces two to three children.[19] The combined effect of those two statistics is that there are a great many young children (*i.e.*, all of whom are under the age of six) whose custody must be determined either by consent or by a court when their parents decide to go their separate ways. Had the Eicke family remained in Texas to end the marriage where it had begun, the spectre of inconsistent, enforcement-numbing decrees from Texas and Louisiana would have been avoided. But, again, the Eickes acted predictably: deciding to separate, Elizabeth Eicke moved with the children to Louisiana. Every year seven million Americans change domicile,[20] many of whom migrate to establish new homes elsewhere because of separation and divorce.

Johannas Eicke and Elizabeth Eicke each sought a custody decree from his/her "home court"; unfortunately, as it all too frequently happens, each obtained a judgment entitling the bearer to the possession, care and control of the two children of the marriage. Paradigmatic interstate custody litigants, each Eicke parent was served with notice of the action for custody filed by the other, and each defaulted, preferring a collateral attack on the conflicting decree over a direct con-

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17. Jellinek & Slovik, *Divorce: Impact on Children*, 305 NEW ENG. OF MED. 557 (1981). The accelerating rise in the incidence of children of divorce is dramatic. Each year from 1972 to 1979 over a million new children under the age of eighteen experienced the divorce of their parents and the disruption of their families. J. WALLERSTEIN & J. KELLY, SURVIVING THE BREAKUP 5-6 (1980). It has been projected that thirty percent of all children growing up in the 1970's will experience the divorce of their parents. Bane, *Marital Disruption and the Lives of Children*, in DIVORCE AND SEPARATION 281 (G. Levinger & O. Moles ed. 1979).

18. These facts and all others regarding the Eicke family are found in the Louisiana appellate court opinion. *Eicke*, 399 So. 2d 1231.

19. NATIONAL CENTER FOR HEALTH STATISTICS, *Advance Report: Final Divorce Statistics, 1978*, MONTHLY VITAL STATISTICS REPORT, Vol. 29, No. 4 (July 31, 1980), *reviewed by* Jellinek & Slovik, *supra* note 17.

20. U.S. Dep't of Commerce, STATISTICAL ABSTRACT OF THE UNITED STATES 1973, at 37 (1973).

frontation in either forum. The only atypical behavior of the Eickes was that neither parent resorted to self-help by "childnapping"[21] or other bootstrapping conduct aimed at enhancing a claim of home forum jurisdiction. Prior to 1981 when the federal Parental Kidnapping Prevention Act of 1980[22] became effective, it was estimated that between 25,000 and 100,000 cases of child snatching by contesting parents occurred each year.[23]

As a result of the Supreme Court's ambivalence in the *Eicke* case, the ardor of debate about the constitutionality of the UCCJA will undoubtedly be dampened.[24] Yet the probability that the Court will not soon repeat last term's about-face means that the UCCJA will remain the controlling mechanism for resolving interstate jurisdictional disputes in the foreseeable future. Therefore, a thorough understanding of the Act's provisions is necessary for courts, lawyers, and custody litigants in all states, including Louisiana.

The UCCJA consists of a number of interlocking sections, each of which has a significant part to play in the operation of the statutory mechanism.[25] However, this article will be primarily concerned with those portions of the UCCJA which prescribe the basic tenets for initial and modification jurisdiction and those provisions which allow an empowered court in its discretion to decline to exercise jurisdiction.

II. THE STATUTORY SCHEME: THE UNIFORM CHILD CUSTODY JURISDICTION ACT

Applicability of the Uniform Child Custody Jurisdiction Act

The Uniform Child Custody Jurisdiction Act purports to control the resolution of potential jurisdictional conflicts between the courts

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21. *See infra* text accompanying notes 153-80.

22. *See infra* note 102.

23. *Parental Kidnapping Prevention Act of 1979: Joint Hearing on S. 105 Before the Subcomm. on Criminal Justice of the Senate Comm. on the Judiciary and the Subcomm. on Child and Human Dev. of the Senate Comm. on Labor and Human Resources*, 96th Cong., 2d Sess. 113 (1980) (statement of Sara Keegan, former Coordinator of the Single Parent Family Program, Dep't of Community Affairs, Providence, R.I.) [hereinafter cited as *Joint Hearing*].

24. *See, e.g.*, Ratner, *supra* note 3.

25. For a detailed analysis of the Act, see R. CROUCH, INTERSTATE CUSTODY LITIGATION: A GUIDE TO USE AND COURT INTERPRETATION OF THE UNIFORM CHILD CUSTODY JURISDICTION ACT (1981); Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978 (1977); Coombs, *Interstate Child Custody: Jurisdiction, Recognition, and Enforcement*, 66 MINN. L. REV. 711 (1982).

of two or more states. However, an identical potential for forum-shopping and conflicting decrees can and often does arise in the context of intrastate litigation under the guise of venue challenges. In many states, venue wars occurring within the microcosm of a state are still encouraged by the same atavistic policies of local control and territoriality[26] which finally prompted the promulgation of the UCCJA for the macrocosmic federal system.

By adopting the UCCJA, presumably a state has determined that the Act's purposes are wise and that its design is soundly constructed to achieve a better public order. In less abstract terms, it is difficult to understand, for example, how a court in Shreveport is more competent to assess evidence arising within a child's home in New Orleans than it would be if the child, instead, had always lived in Texarkana. In terms of the dislocation costs imposed upon the litigants themselves, it is surely no less expensive or discomfiting for a parent and child who live in Shreveport to try a custody case in New Orleans rather than in nearer Texarkana. Certainly, there is no choice of law issue in intrastate child custody disputes, but, likewise, there are no conflicts in substantive doctrine which are inherent in interstate contests. The universal standard governing the merits of custody proceedings between parents is "the best interests of the child."[27]

Some states have responded to this congruence of concerns by enacting child custody venue statutes parallel in purpose and design to the UCCJA.[28] *Parker v. Parker*[29] is the only Louisiana case to date which concerns the applicability of the UCCJA to conflicting jurisdictional claims by courts of different parishes. Although the fifth circuit in *Parker* found the UCCJA to be inapplicable to such intrastate disputes, it ultimately approved venue in the parish in which the child was residing at the time the custody proceeding was filed. Thus, as will be demonstrated later, the ruling in *Parker* is consistent with the values rubric of the UCCJA, even though the Act's finely tuned mechanisms for such decision-making were not utilized.[30]

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26. Hazard, *A General Theory of State Court Jurisdiction*, 1965 SUP. CT. REV. 241; Ratner, *supra* note 3; *see infra* text accompanying notes 222-24.

27. *See* McGough & Shindell, *Coming of Age: Best Interests of the Child Standard in Parent-Third Party Custody Disputes*, 27 EMORY L.J. 209 (1978).

28. *See, e.g.*, GA. CODE ANN. §§ 19-9-20 to -24 (1982 & Supp. 1983).

29. 424 So. 2d 479 (La. App. 5th Cir. 1982), *writ. denied*, 427 So. 2d 1198 (La. 1983).

30. In *Parker*, the competing claims to jurisdiction were as follows: A court in Iberia Parish had rendered the initial divorce decree and a subsequent modification of custody decree; Lafourche Parish was the domicile of the father; Jefferson Parish was the domicile of the child's maternal grandparents with whom the child had lived since June 1981. Although the mother claimed to have assumed a new domicile in Colorado, the appellate court observed that the record was devoid of the usual proofs

The UCCJA focuses upon the power of a potential forum to make a custody determination. According to the Act, a "custody determination" includes any court decision, order or even instructions "providing for the custody of a child, including visitation rights."[31] Though the term "custody" is nowhere defined in the Act, it is apparently to be understood in its common usage as a bundle of constituent rights to a child's possession, care, and control, including parental authority to make decisions affecting the course of a child's development during his minority.[32] The UCCJA takes into account the fact that custody determinations occur not only within actions for divorce or separation but also within a variety of other types of litigation. The commissioners' note to section 2 of the UCCJA indicates that "custody proceeding" is a generic term intended to be broadly applied to encompass habeas corpus actions, guardianship petitions, and all other comparable actions available under labels varying from state to state.[33] The Louisiana appellate courts have displayed no difficulty in using the jurisdictional provisions of the UCCJA to govern custody decision-making in the course of actions seeking separation;[34] divorce;[35] tutorship;[36] a change of custody,[37] including reduction of visitation rights;[38] habeas corpus;[39] and other actions to enforce an extant decree.[40]

What has yet to be decided by the Louisiana courts, however, is whether the UCCJA is applicable to interstate disputes arising from actions brought pursuant to the state's *parens patriae* power to remove

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of a change of permanent residence from Jefferson Parish. 424 So. 2d at 481. After the decision in *Parker*, the Louisiana legislature enacted article 74.2 of the Code of Civil Procedure which provides for venue in custody actions. 1983 La. Acts, No. 62, § 1.

31. UCCJA § 2(2), 9 U.L.A. 119 (1968) [LA. R.S. 13:1701(2) (1983)]. This section also explicitly excludes decisions about child support "or any other monetary obligation of any person." Consequently, the ruling was correct in Moore v. Moore, 379 So. 2d 1153, 1157 (La. App. 2d Cir. 1980), that the mother's action to increase child support should be governed by general jurisdictional rules rather than the special rules of the UCCJA.

32. *See* H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES § 17.5 (1968); LA. CIV. CODE art. 227.

33. UCCJA § 2, commissioners' note, 9 U.L.A. 120 (1968).

34. Losey v. Losey, 412 So. 2d 639 (La. App. 2d Cir. 1982).

35. *Id.*

36. Huston v. Granstaff, 417 So. 2d 890 (La. App. 3d Cir. 1982).

37. Revere v. Revere, 389 So. 2d 1277 (La. 1980); Hust v. Whitehead, 416 So. 2d 639 (La. App. 2d Cir. 1982).

38. Moore v. Moore, 379 So. 2d 1153 (La. App. 2d Cir. 1980).

39. Buchanan v. Malone, 415 So. 2d 259 (La. App. 2d Cir. 1982).

40. Dillon v. Medellin, 409 So. 2d 570 (La. 1982); Cata v. McKnight, 401 So. 2d 1221 (La. App. 2d Cir.), *cert. granted*, 404 So. 2d 264 (La. 1981).

a neglected or endangered child from a custodian's care temporarily,[41] or permanently through an action to terminate parental rights.[42] According to previous analysis of the UCCJA's impact upon Louisiana law, the UCCJA was deemed inapplicable to public actions initiated or certified by any state official and also apparently to adoptions.[43] Nevertheless, in its definitions section, the UCCJA expressly states that the term "custody proceeding" includes "child neglect and dependency proceedings."[44] "Dependency proceedings," as state actions are known in many states,[45] would appear to encompass Louisiana proceedings variously known as "abandonment," "child in need of care" or "termination of parental rights" actions.[46] Furthermore, Professor Bodenheimer, the drafter and reporter for the UCCJA, has written that the UCCJA was intended to apply to all such actions.[47] Most importantly, the state's concerns in private custody disputes, adoptions, and neglect/abandonment actions are similar,[48] and logically the same jurisdictional rules should govern the resolution of all such matters which have interstate elements. As Professor Bodenheimer observed:

> In all these cases the core question is where and with whom a child should live when something has occurred to disrupt the family. The character of child custody adjudication is entirely different from child support proceedings and other actions involving monetary or property claims. . . . Courts no longer "dispose of" children like chattels or valuable prizes fought over by others. They recognize children as persons with rights and interests to be protected.[49]

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41. *See infra* note 226; *see also* LA. R.S. 13:1570-:1599 (1983).

42. LA. R.S. 13:1600-:1606 (1983); LA. R.S. 9:403-:407 (1965 & Supp. 1983).

43. *See The Work of the Louisiana Legislature for the 1978 Regular Session—Persons*, 39 LA. L. REV. 107, 108 n.9 (1978).

44. UCCJA § 2(3), 9 U.L.A. 119 (1968) [LA. R.S. 13:1701(3) (1983)].

45. Many states use the labels "neglect" and "dependency" interchangeably in their juvenile court jurisdictional provisions. There is, however, some discernible trend toward reserving the term "neglect" for willful parental misconduct and using "dependency" for lack of proper care due to physical, mental or financial inability of the parent or due to the parent's death or absence. For a discussion of terminology and recommendations, see THE PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 27-28 (1967).

46. *See* statutes cited *supra* note 42.

47. *See* Bodenheimer & Neeley-Kvarme, *supra* note 14, at 252-53.

48. Although beyond the scope of this article, there may be a distinction of constitutional magnitude between a state's power to affect a nonresident parent's rights to present custody and its power to terminate all parental rights of such a parent. Thus, if the UCCJA is properly to be construed as encompassing termination actions, a grave due process problem is engendered by the sweep of its authorization. For further discussion, see Ratner, *supra* note 3.

49. Bodenheimer & Neeley-Kvarme, *supra* note 14, at 232-33.

To date only one Louisiana case has raised the question of the UCCJA's applicability to interstate adoption proceedings. In that case, *Byrum v. Hebert*,[50] the third circuit ruled that the Texas adoption decree was entitled to full faith and credit. However, the court based its decision not upon the UCCJA but upon Article 10(1) of the Code of Civil Procedure.[51] The Louisiana Supreme Court has expressly reserved ruling on the applicability of the UCCJA to proceedings in the juvenile courts.[52]

Jurisdictional Bases

The Uniform Child Custody Jurisdiction Act reflects two paramount purposes: avoiding jurisdictional competition among states and promoting resolution of custody disputes by the forum deemed most likely to have the maximum amount of relevant information about the case.[53] Accordingly, the Act as a matter of fundamental policy rejects any "in rem" model for justifying jurisdiction. Short term or temporary presence of a child within a state is not likely to yield the best factual environment or assure that conflicts between judgments are unlikely. Instead, to meet these concerns, the Act sets up a hierarchy of jurisdictional tests by which a state court can determine whether it has power to render a custody decree which will be recognized by sister states. The system utilizes a scheme of potentially concurrent

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50. 425 So. 2d 322 (La. App. 3d Cir. 1982).

51. LA. CODE CIV. P. art. 10(1) provides:

> A court which is otherwise competent under the laws of this state has jurisdiction of . . .:
>
> (1) An adoption proceeding if the person who has legal custody of the child is domiciled, or the child is lawfully, in this state, and the court has personal jurisdiction over the adoptive parent; or if the latter is domiciled in this state, and the court has personal jurisdiction over the legal custodian.

It should be noted that under the UCCJA, the adoption decree would clearly have been entitled to full faith and credit since at the time of rendition Texas was the home state of the children.
See infra text accompanying notes 54-56.

52. *See* Dillon v. Medellin, 409 So. 2d 570, 575 n.4 (La. 1982).

53. Although there are nine enumerated purposes of the UCCJA, only one directly relates to the choice of a particular forum in preference to others. That purpose expressed in section 1(a)(3) is to:

> [A]ssure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state.

9 U.L.A. 117 (1968) [LA. R.S. 13:1700(A)(3) (1983)].

jurisdiction, albeit in descending preferential order, and provides mechanisms for declining the exercise of jurisdiction should this concurrence present a problem of competition between two or more states.

The basic jurisdictional requisites contained in section 3[54] of the UCCJA give the courts of a state the power to adjudicate a child's status when the forum fits into one of four categories. The first, and most preferred, category is commonly referred to as "home state" jurisdiction and is based solely upon the amount of time the child and at least one parent have resided in the state. "Home state" is defined as that state in which a child has lived with a parent or person acting as a parent for at least six consecutive months prior to the "time involved."[55] "Home state" jurisdiction arises when the state:

> (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody . . ., and a parent or person acting as parent continues to live in this State.[56]

Thus, the state in which the child has lived for at least six consecutive months becomes his home state for purposes of the Act. Conversely, even though the child is removed by one claiming the right to custody, that state will retain home state status for an additional six months, the time it would take to acquire a new home state. Implicit in the rank-order design of the UCCJA is the presumption that a child's best interests will ordinarily be served by the assumption of jurisdiction by his home state court.

The second category of jurisdiction, following the Act's rank-order, is generally called "significant connection" jurisdiction. This grant of jurisdiction is less directly dependent upon the time the family has spent in the state, although the operative factor in its application seems to be the closeness of a state's ties to the family.[57] The requirements for use of this section are that: (1) it must be in the best interest of the child; (2) the child and at least one parent must have

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54. 9 U.L.A. 122-23 (1968) [LA. R.S. 13:1702 (1983)].

55. UCCJA § 2(5), 9 U.L.A. 119 (1968) [LA. R.S. 13:1701(5) (1983)]. Presumably the phrase "time involved" refers to the time pivot used in the following jurisdictional section, *i.e.*, "the time of commencement of the proceeding." UCCJA § 3(a)(1), 9 U.L.A. 122 (1968) [LA. R.S. 13:1702(A)(1) (1983)].

56. UCCJA § 3(a)(1), 9 U.L.A. 122 (1968) [LA. R.S. 13:1702(A)(1) (1983)].

57. UCCJA § 3, commissioners' note, 9 U.L.A. 123-24 (1968).

a significant connection with the state; and (3) there must be within the state substantial evidence concerning the child.[58]

The commissioners' note discussing the interrelationship between "home state" and "significant connection" jurisdiction under the UCCJA indicates that courts possessing the latter type of jurisdiction are to exercise it

> if there is no home state *or* the child and his family have equal or stronger ties with another state. . . . If this alternative test produces concurrent jurisdiction in more than one state, the mechanisms provided in sections 6 [simultaneous proceedings] and 7 [inconvenient forum] are used to assure that only one state makes the custody decision.[59]

Apparently aware that this concurrent jurisdictional scheme would be controversial, the commissioners note that it was fashioned in such broadly worded terms in order to cover a variety of fact patterns and to insure flexibility consistent with the overriding purpose of the UCCJA. According to the drafters:

> The first clause of the paragraph is important: jurisdiction exists only if it is in the *child's* interest, not merely the interest or convenience of the feuding parties, to determine custody in a particular state. The interest of the child is served when the forum has optimum access to relevant evidence about the child and family. There must be maximum rather than minimum contact with the state.[60]

The commissioners next provided what has been called "emergency" jurisdiction, designed to apply when a child is found within a state abandoned, abused, or neglected. "Emergency" jurisdiction arises when "the child is physically present in this state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected [or dependent]."[61] Quite obviously, this type of jurisdiction appears to open a well-spring which could be tapped to justify the exercise of power in almost any custody controversy. To avoid unwarranted expansion of the emergency power, the commissioners cautioned that such "extraordinary jurisdiction is

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58. UCCJA § 3(a)(2), 9 U.L.A. 122 (1968) [LA. R.S. 13:1702(A)(2) (1983)].

59. UCCJA § 3, commissioners' note, 9 U.L.A. 123 (1968) (emphasis added). The access to information goal of the UCCJA is set out in subsection 1(a)(3), 9 U.L.A. 117 (1968) [LA. R.S. 13:1700(A)(3) (1983)].

60. UCCJA § 3, commissioners' note, 9 U.L.A. 124 (1968).

61. UCCJA § 3(a)(3), 9 U.L.A. 122 (1968) [LA. R.S. 13:1702(A)(3) (1983)].

reserved for extraordinary circumstances."[62] Allegations of inadequate or improper care are highly susceptible to distortion. In a state prosecution for neglect there is some objective mechanism for filtering out spiteful or exaggerated complaints of child neglect before proceeding with charges;[63] no such check exists in a private custody dispute. Consequently, under the UCCJA, a trial court must exercise great self-restraint in order to avoid lending a forum to specious claims of emergency by embattled parents. Nevertheless, when a child's life seems truly endangered and a state cannot meet the requirements for home state or significant connection jurisdiction, the state may assert jurisdiction to protect the child's welfare under this provision of the Act.

Finally, there is a "residual" category, which allows a state to assume jurisdiction over a custody dispute when no other state meets the requisites of the previous sections or when another state has declined to assert its jurisdictional power.[64] This section, like the emergency power, allows a court to depart from the Act's general rule that mere physical presence of the child in a state is insufficient to confer jurisdiction upon its courts.

Jurisdictional Determinations

The first inquiry under the UCCJA is always whether the forum state has jurisdiction under section 3, that is, whether it can meet the requirements of one or more of the four categories. The second inquiry is always whether or not another state has claim to jurisdiction. In order to minimize interstate friction and to preclude the entry of inconsistent state decrees, the UCCJA is purposively designed like a three-stage rocket: before a forum is authorized to proceed, the litigants must present information regarding the potential or actual pending jurisdiction of another state; the forum must then communicate with other potential forums; and finally, if the states having potential jurisdiction cannot agree upon which is to proceed, the deadlock is broken by an arbitrarily imposed priority-of-filing rule.[65]

The first stage of analysis provides a check by imposing a duty of disclosure upon the party litigants. The UCCJA requires all parties to provide the forum with all information necessary for it to learn of any prior judgments, pending proceedings, or potential claims to

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62. UCCJA § 3, commissioners' note, 9 U.L.A. 124 (1968); *see also infra* note 224.
63. See discussion in Griffith v. Roy, 263 La. 712, 269 So. 2d 217 (1972).
64. UCCJA § 3(a)(4), 9 U.L.A. 122 (1968) [LA. R.S. 13:1702(A)(4) (1983)].
65. *See* Bodenheimer, *supra* note 3, at 210-13.

jurisdiction which might be asserted by any other states.[66] As the commissioners' note to section 9 of the UCCJA cautions: "It is important for the court to receive the information listed and other pertinent facts as early as possible for purposes of determining its jurisdiction, the joinder of additional parties, and the identification of courts in other states which are to be contacted . . . ."[67] However, the UCCJA does not indicate what penalty, if any, is to be imposed if a party fails to disclose the existence of another state's potential jurisdiction.

The recognition section of the Act is ambiguous: "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 Act or which was made *under factual circumstances meeting the jurisdictional standards of the Act* . . . ."[68] At least one state has construed this section as incorporating the duty of disclosure as a jurisdictional prerequisite. In the only case which has clearly presented this issue under the UCCJA, the Ohio Supreme Court ruled that the petitioner's failure to disclose the foreign proceedings vitiated the jurisdictional foundation of his decree, and thus the decree need not be accorded full faith and credit.[69]

Obviously, this issue of whether disclosure is a jurisdictional prerequisite is a matter of grave constitutional concern. The United States Supreme Court has indicated that when a foreign judgment is presented for recognition in a sister state, the sole inquiry permitted under the Full Faith and Credit command is whether the state of rendition possessed jurisdiction. Defects in pleadings or the form of the judgment must be ignored.[70] In their brief *amicus curiae* filed with the Supreme Court in the *Eicke* case, the commissioners apparently take the position that the parties' duty of disclosure under the UCCJA is mandatory: that the withholding of information results in a fatal-

66. Subsections 9(a)(1)-(2), 9 U.L.A. 145 (1968) [LA. R.S. 13:1708(A)(1)-(2) (1983)] impose the duty of disclosure of any other litigation concerning the custody of the child as a part of the party's affidavit which must accompany any first pleading. This disclosure duty is expressly made a continuing responsibility for the duration of the current action. UCCJA § 9(c), 9 U.L.A. 146 (1968) [LA. R.S. 13:1708(C) (1983)].

67. UCCJA § 9, commissioners' note, 9 U.L.A. 146 (1968).

68. UCCJA § 13, 9 U.L.A. 151 (1968) (emphasis added) [LA. R.S. 13:1712 (1983)].

69. Pasqualone v. Pasqualone, 63 Ohio St. 2d 96, 98-99, 406 N.E.2d 1121, 1124 (1980); *see also*, Paltrow v. Paltrow, 37 Md. App. 191, 376 A.2d 1134 (1977), *aff'd*, 283 Md. 291, 383 A.2d 547 (1978); Moser v. Davis, 364 So. 2d 521 (Fla. Dist. Ct. App. 1978).

70. *See* Milliken v. Meyer, 311 U.S. 457 (1940); Williams v. North Carolina, 325 U.S. 226 (1945).

ly flawed judgment not entitled to full faith and credit from sister states.[71]

As a double-check against interstate conflict, the UCCJA clearly envisions that all potential forums will informally discuss their competing jurisdictional claims "with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties."[72] This requirement is one of the most innovative features of the UCCJA. Because state courts are unused to such forms of informal communication, it is not surprising that state courts,[73] including Louisiana trial courts,[74] have often ignored this duty. Yet, at least one appellate court, the Court of Appeals of New York, has ruled that the failure of its trial court to communicate and defer to a potential claim of jurisdiction in a sister state was reversible error, "contrary to the avowed purposes of the legislation adopted by both States."[75]

If a custody proceeding is pending in a sister state, the forum is required under the UCCJA to stay its hand pending an inter-court determination of which state should proceed to adjudicate the dispute.[76] If the two courts cannot agree, the Act gives the right of way to the forum where the pending action was first filed.[77] If a custody judg-

71. "[W]hen the error goes to the very jurisdiction of the court making the judgment [as section 9 of the UCCJA so requires], it is a matter of the jurisdiction, itself. And lack of jurisdiction allows a sister state to deny full faith and credit." Brief *amici curiae, supra* note 4, at 16. In an opinion rendered by the Louisiana Third Circuit Court of Appeals, the court refused enforcement of the Texas custody decree because Texas law was not in substantial conformity with Louisiana law and the requirements of the UCCJA. *Eicke*, 399 So. 2d at 1235-36. Implicit in that ruling is an apparent determination that the Act's disclosure and communication requirements are jurisdictional. For a discussion of the initial custody decree entered by the Louisiana trial court, see *infra* text accompanying notes 100-03.

72. UCCJA § 7(d), 9 U.L.A. 138 (1968) [LA. R.S. 13:1706(D) (1983)].

73. *See, e.g.*, Webb v. Webb, 245 Ga. 650, 266 S.E.2d 463, *cert. granted*, 449 U.S. 819 (1980), *appeal dismissed*, 451 U.S. 493 (1981). In states where the UCCJA has been in force for several years, there is, however, evidence of increasing trial court obedience to the communication requirements. *See, e.g.*, William L. v. Michele P., 99 Misc. 2d 346, 355, 416 N.Y.S.2d 477, 483 (Fam. Ct. 1979); Paltrow v. Paltrow, 37 Md. App. 191, 376 A.2d 1134 (1977), *aff'd*, 283 Md. 291, 388 A.2d 547 (1978).

74. *See, e.g.*, Moore v. Moore, 379 So. 2d 1153 (La. App. 2d Cir. 1980); *see infra* text accompanying notes 123-27.

75. Vanneck v. Vanneck, 49 N.Y.2d 602, 611, 404 N.E.2d 1278, 1282, 427 N.Y.S.2d 735, 739 (1980).

76. UCCJA § 6, 9 U.L.A. 134 (1968) [LA. R.S. 13:1705 (1983)]; UCCJA § 7(d), 9 U.L.A. 138 (1968) [LA. R.S. 13:1706(D) (1983)].

77. UCCJA § 6, 9 U.L.A. 134 (1968) [LA. R.S. 13:1705 (1983)]; *see* Lopez v. District

ment has been previously entered by a court having jurisdiction which meets the tests provided by the Act, then the forum can proceed only in conformity with the special rules governing the more limited exercise of modification power.[78]

When, after assessing its claim to adjudicate, a forum determines that it does indeed have jurisdiction, a number of additional controls provided by the Act require the forum to decide whether or not it is appropriate to exercise it. A forum "may decline" jurisdiction if, using five broadly-worded factors as guidelines, it determines that it is an "inconvenient forum"[79] or that its claim to jurisdiction is based wholly or in part upon the "reprehensible conduct of a party to the custody litigation pending before it."[80]

In fashioning the UCCJA framework, the commissioners chose communication, discretion and deference among potential forum courts as the means of resolving the conflicting claims inherent in concurrent jurisdiction. In this sense, the motivation behind the Act is visionary and, arguably, merely aspirational. The commissioners relied upon the premise that a new era of partnership among state courts not only would be encouraged but also would in fact result from the implementation of the Act's provisions.[81] The Louisiana cases in the next section of this article illustrate some of the tensions prevalent in custody disputes, as well as the manner in which the UCCJA would direct the choice between what are often competing policies.

III. LOUISIANA APPELLATE DECISIONS CONSTRUING THE UNIFORM ACT

Initial Decree Jurisdiction

The question when a Louisiana court can properly exercise the power to enter an initial decree of custody in an interstate dispute has been implicitly before the appellate courts in three cases. *Losey*

Court, 199 Colo. 207, 606 P.2d 853 (1980); *see also* UCCJA § 6, commissioners' note, 9 U.L.A. 134-35 (1968).

78. UCCJA § 14, 9 U.L.A. 153-54 (1968) [LA. R.S. 13:1713 (1983)].

79. UCCJA § 7(c), 9 U.L.A. 137-38 (1968) [LA. R.S. 13:1706(C) (1983)].

80. UCCJA § 8, 9 U.L.A. 142 (1968) [LA. R.S. 13:1707 (1983)]. This is the so-called "clean hands" limitation which is discussed further *infra* text accompanying notes 153-80.

81. As the Commissioners' Prefatory Note to the UCCJA observes:

> Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment

v. Losey,[82] decided by Louisiana Second Circuit Court of Appeal, presented a commonly recurring fact pattern. Although in *Losey* the parents were married in Louisiana, the "matrimonial" or "family" domicile was established in Delaware. After the husband found work in Louisiana, the wife refused to move with him. Within the month, the husband returned to Delaware where he took possession of the children.[83]

Within a month after bringing both children to Louisiana, the father filed suit in this state seeking both a decree of separation and custody of the children. Without revealing its rationale, the trial court "declined to exercise jurisdiction over the child custody issue while retaining jurisdiction for the divorce proceeding."[84] This decision of the trial court was not appealed; the sole issue before the appellate court was the propriety of the trial court's judgment in favor of the defendant-mother for reimbursement of her expenses in the Louisiana litigation.[85]

Although it appears that the trial and appellate courts were correct in concluding that a Louisiana court should not *exercise* jurisdiction upon these facts, the more fundamental question is whether Louisiana *possessed* any jurisdiction at all to decide this child custody case. In other words, a ruling that a court "declines jurisdiction" presupposes that it in fact possesses jurisdiction and is simply staying its hand. Certainly, the Louisiana trial court's jurisdiction to affect the marital status of the parties does not necessarily include the power to award custody of the children to either parent.[86] In *Losey*, the trial

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> which transcends state lines and considers all claimants, residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child. If this can be achieved, it will be less important *which* court exercises jurisdiction but that courts of the several states involved act in partnership to bring about the best possible solution for a child's future.

9 U.L.A. 114 (1968).

82. 412 So. 2d 639 (La. App. 2d Cir. 1982).

83. The significance of these acts under the "clean hands" limitation is discussed *infra* text accompanying notes 153-80.

84. 412 So. 2d at 640.

85. This aspect of the UCCJA is discussed *infra* text accompanying notes 175-78.

86. According to the United States Supreme Court, actions of separation or divorce proceed on jurisdictional considerations radically different from those controlling actions for support or, presumably, child custody. Kulko v. Superior Court, 436 U.S. 84 (1978) (child support); Williams v. North Carolina, 325 U.S. 226 (1945) (divorce). In May v. Anderson, 345 U.S. 528 (1953), four members of the Court analogized child custody proceedings to support and alimony proceedings thus requiring in personam jurisdiction over both spouses; the three dissenters treated child custody disputes as "status" controversies which are constitutionally indistinguishable from separation and

court properly acted within its power in retaining jurisdiction of the separation action while declining to adjudicate the custody dispute.

Do the facts of the *Losey* case justify the assumption of jurisdiction over the child custody claims under the UCCJA? The child had been in Louisiana for only one month at the time the father's action was filed. Consequently, under Louisiana Revised Statutes 13:1702,[87] Delaware had been the home state of the child and would remain so for six months after the child had left the state. The children, eight and three years of age, had lived their entire lives within the borders of Delaware until taken from that state by their father. Furthermore, there were no allegations of abuse or abandonment upon which a claim of emergency jurisdiction could be said to have arisen in Louisiana. This state's only claim to jurisdiction must have rested, if at all, within the grant of authority known as significant connection jurisdiction.

In order to establish significant connection jurisdiction, the father in *Losey* would have had to demonstrate that:

(1) "the child and his parents, or the child and at least one contestant, have a significant connection with this State;" and

(2) "there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;" and

(3) "it is in the best interest of the child that a court of this State assume jurisdiction."[88]

It could be argued on behalf of the father that the children were then with him and that not just "substantial" evidence but *all* evidence concerning his plans for their present and future care and training was within Louisiana, where he and the children then resided. On his behalf, an ingenious lawyer might even note that the substantial connection jurisdictional base focuses upon evidence of "present and future" care rather than evidence of past care; therefore, any evidence accumulated during the child's previous domicile in Delaware is irrelevant for purposes of affixing jurisdiction,[89] although it might well

divorce actions for jurisdictional determinations. Furthermore, as the commissioners' note to section 3 of the UCCJA explicitly declares: "The submission of the parties to a forum, perhaps for purposes of divorce, is not sufficient without additional factors establishing closer ties with the state. Divorce jurisdiction does not necessarily include custody jurisdiction." 9 U.L.A. 124 (1968). For an excellent discussion of a potential unifying jurisdictional theory for all interstate disputes, see Hazard, *supra* note 26.

87. [UCCJA § 3, 9 U.L.A. 122-23 (1968)].

88. LA. R.S. 13:1702(A)(2) (1983) [UCCJA § 3(a)(2), 9 U.L.A. 122 (1968)].

89. *See* Revere v. Revere, 389 So. 2d 1277, 1281 n.6 (La. 1980).

be considered by the Louisiana court in making a decision on the merits of the competing parental claims to custody.[90]

On its face, the substantial connection basis of jurisdiction is so broadly worded that it gives rise to such arguments; indeed, it would seem to confer jurisdiction upon almost any court asked to decide a case. Where the child and one parental contestant[91] are now residing within a state, *a fortiori*, important evidence regarding *at least that contestant's claim* will be available to the forum. What just as obviously may be missing, however, is information supporting the other parent's claim. The UCCJA makes access to information about the "child and his family" and the child's multilateral "personal relations" its principal jurisdictional criterion.[92]

The Act explicitly states: "Except under Paragraphs (3) and (4) of Section A [emergency and residual jurisdiction], physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination."[93] This provision does not distinguish between presence coupled with a claim of domicile (as might be asserted by the father in *Losey*) and presence without such a claim. The UCCJA clearly seeks to avoid the sophistry of past analyses which have attempted to make custody jurisdiction turn upon a finding of the "legal domicile" of a minor child.[94] As recorded by Professor Bodenheimer, the "mere presence" rule was fashioned to limit jurisdiction:

> Frequently, children are surreptitiously removed to another state prior to any custody litigation or pending custody pro-

90. Under LA. R.S. 13:1717 & :1718 [UCCJA §§ 18 & 19, 9 U.L.A. 161-62 (1968)], the forum is authorized to obtain and consider information found within another jurisdiction, including the power to request that a sister court conduct hearings and acquire evidence thought important to the forum's resolution of the controversy.

91. Although this article uses the term "parent" throughout, it should be noted that the UCCJA does not distinguish between parents and other persons "acting as parent." Party status is conferred upon a party as well as "a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody." UCCJA § 2(9), 9 U.L.A. 120 (1968) [LA. R.S. 13:1701(9) (1983)]. Under the Act, this can mean that a forum has custody jurisdiction even when it lacks in personam jurisdiction over either of the child's biological parents. For criticism that this aspect of the UCCJA is unconstitutional, see Ratner, *supra* note 3.

92. UCCJA § 1(a)(3), 9 U.L.A. 117 (1968) [LA. R.S. 13:1700(A)(3) (1983)]; *see* text of subsection 1(a)(3) *supra* note 53.

93. UCCJA § 3(b), 9 U.L.A. 122-23 (1968) [LA. R.S. 13:1702(B) (1983)].

94. *See* Stansbury, *Custody and Maintenance Law Across State Lines*, 10 LAW & CONTEMP. PROBS. 819, 821 (1944).

ceedings; or they fail to be returned at the end of an agreed upon out-of-state visit prior to litigation. The Uniform Act generally withholds jurisdiction from the state of refuge and confers jurisdiction on the state of the child's former home.[95]

When a forum is asked to take "significant connection" jurisdiction, its threshold inquiry must be whether it possesses any jurisdiction whatsoever under the Act. Only if the forum determines that it has more than the mere presence of the child and parent, that it has "maximum" rather than "minimum" contacts with the family,[96] does it reach the second or third stages of analyses, *i.e.*, whether it is an inconvenient forum[97] or whether the petitioner lacks "clean hands."[98] In construing the Act, the overwhelming majority of states have taken this position.[99] The result reached by the Louisiana Third Circuit Court of Appeal in *Losey* cannot be impeached. The only legitimate criticism of its opinion is that the court failed expressly to hold that a Louisiana trial court lacks significant connection jurisdiction in such a situation.[100]

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95. Bodenheimer, *supra* note 3, at 205.

96. UCCJA § 3 & commissioners' note, 9 U.L.A. 122-25 (1968) [LA. R.S. 13:1702 (1983)]. Prior to the enactment of the UCCJA, jurisdiction over the status of minors was governed by article 10(A)(5) of the Louisiana Code of Civil Procedure, which requires only that a minor be domiciled or present in this state. This minimal requirement of physical presence is expressly denounced by the UCCJA. UCCJA § 3(b), 9 U.L.A. 122-23 (1968) [LA. R.S. 13:1702(B) (1983)]. Thus, it would seem that the dictum found in Moore v. Moore, 379 So. 2d 1153, 1154 (La. App. 2d Cir. 1980), was overinclusive: "The basic goals of the Act do not appear to vitiate completely the broad grant of jurisdiction by LSA—C.C.P. Art. 10(A)(5) . . . ." The thorough analysis done by the court in this case, however, indicates an understanding of how the UCCJA has closed the door on prior law. But see Pittman v. George, 424 So. 2d 1200 (La. App. 1st Cir. 1982), in which the first circuit demonstrated an apparent lack of understanding on this same issue. For a fuller discussion, see Lowe & Hauver, *Conflict of Laws in Support and Custody Cases*, 29 LA. B.J. 241, 243 (1982).

97. See the factoring process of UCCJA § 7(c), 9 U.L.A. 137-38 (1968) [LA. R.S. 13:1706(C) (1983)].

98. UCCJA § 8, 9 U.L.A. 142 (1968) [LA. R.S. 13:1707 (1983)].

99. On facts quite similar to *Losey*, an early Michigan case held that despite the fact that a child had been attending school in Michigan for a few months and had been living with his father there, this did not amount to the "maximum contact" required to satisfy the "significant connection" basis for jurisdiction. As the court observed, Michigan could have claimed jurisdiction only "by exaggerating its minimum contacts. We refuse to distort the intent and plain meaning of the Uniform Child Custody Jurisdiction Act to allow this state's assertion of jurisdiction." Bacon v. Bacon, 97 Mich. App. 334, 339 n.3, 293 N.W.2d 819, 821 n.3 (1980); *accord*, Ben-Yehoshua v. Ben-Yehoshua, 91 Cal. App. 3d 259, 154 Cal. Rptr. 80 (1979); Holman v. Holman, 77 Ill. App. 3d 732, 396 N.E.2d 331 (1979); *cf. In re* Weinstein, 87 Ill. App. 3d 101, 408 N.E.2d 952 (1980).

100. 399 So. 2d 1231 (La. App. 3d Cir.), *cert. denied*, 406 So. 2d 607 (La. 1981), *cert. granted*, 456 U.S. 970 (1982), *cert. dismissed*, 103 S. Ct. 776 (1983).

Eicke v. Eicke was the second Louisiana case in which the significant connection jurisdiction issue arose. In *Eicke*, the mother and father had separated while in the family domicile of Texas, and the mother moved with the children to Louisiana. Within two months after her arrival in Louisiana, the mother filed for a legal separation and for an initial decree of custody. Because six months had not elapsed, Texas was still the home state of the children. On the facts alleged in the petition, Louisiana could assert jurisdiction based only upon a claim to significant connection jurisdiction. Compared with the *Losey* case, the *Eicke* case presents only a slightly stronger fact pattern supporting such an assumption of jurisdiction. At least one close relative, the children's maternal grandmother, resided in Louisiana, and the Eicke family had lived in Louisiana for a period of at least four months before returning to Texas where the family ultimately split apart.[101]

Based upon such a minimal number of contacts with the family, the Louisiana trial court properly should have found that it lacked jurisdiction, at least until the point at which the home state jurisdiction of the Texas court had evaporated.[102] In *Eicke*, the assumption of initial jurisdiction by the Louisiana trial court when Texas possessed greater connections with the family appears unwarranted and violative of the access-to-information purposes of the UCCJA.[103]

In *Revere v. Revere*,[104] the Louisiana Supreme Court faced the question whether Louisiana had jurisdiction to modify its own decree after the child and one parent had resided in another state for several

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101. According to reported facts, the Eicke family moved to Louisiana in 1978 and remained in the state "for a short time" before returning in April 1979 to Texas. The Eickes separated in Texas on August 9, 1979, and Mrs. Eicke and the children moved to Louisiana. On October 26, 1979, the Louisiana action was commenced by Mrs. Eicke. 399 So. 2d at 1232.

102. The Parental Kidnapping Prevention Act of 1980, § 8(a), 28 U.S.C. § 1738A (Supp. V 1981) was signed by President Jimmy Carter on December 28, 1980, but did not become effective until July 1, 1981. Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, § 2, 94 Stat. 3566, 3567. Had the Act been in force during the initial round of the *Eicke* case, the trial court should have refused the case so long as another state had "home state" jurisdiction. Otherwise, the initial decree entered by the Louisiana court would not have been entitled to full faith and credit elsewhere. 28 U.S.C. § 1738A(c)(2)(B)(i) (1983); see discussion of the Act *infra* text accompanying notes 190-221.

103. Indeed, one of the ironies of the commissioners' Brief *amici curiae*, *supra* note 4, is that it is forced to defend the actions of the Louisiana trial courts, in attempting to dissuade the Supreme Court from intervening. While Louisiana's denial of enforcement to the Texas decree may have been proper under the UCCJA, the initial assumption of jurisdiction leading to the Louisiana decree was clearly improper.

104. 389 So. 2d 1277 (La. 1980).

months. Since no out-of-state decree was involved, the trial court properly resolved the jurisdictional question by analyzing whether a Louisiana court could enter an initial decree.[105] In *Revere*, Louisiana was the matrimonial domicile of the parents and birthplace of the child. After the mother's desertion, the father filed for and obtained in Louisiana an award of divorce and custody of the child. With the aid of the paternal grandparents, the father raised the child until his sudden death in an accident.

Within one week of the father's death, the mother came to Louisiana, claimed her son,[106] and returned with him to Texas where she had been living since her remarriage. After the child's departure to Texas, the grandparents sought custody of the child in Louisiana. Not surprisingly, the mother excepted to the jurisdiction of the Louisiana courts. The trial court overruled the exception, and the appellate court denied the mother's application for supervisory writs. The Louisiana Supreme Court granted *certiorari*,[107] and in its opinion took the opportunity to discuss the jurisdictional bases of the UCCJA.

The supreme court noted that, arguably, the trial court had either home state or significant connection jurisdiction. The Louisiana court's home state jurisdiction was in doubt because the precise date of the child's departure from the state was disputed. The supreme court therefore resolved the case upon the alternative basis of significant connections. The *Revere* decision details those facts which indicated that the stronger family ties were with Louisiana rather than Texas. The parents had been married and had established a matrimonial domicile in Louisiana. The child had been born in Louisiana and had spent all of his life in the state, except for approximately six months preceding the commencement of this action. Except for the mother and child, all relevant witnesses resided in the state. Additionally, the child's major asset was a claim for the wrongful death of his father which was at that time pending in a Louisiana court. Finally, the court found that the grandparents' petition raised substantial questions as to the mother's fitness as a parent and that the events upon which the allegations were made had taken place in Louisiana.

Based upon all these factors, the supreme court determined that

105. Modification of out-of-state decrees is governed by section 14 of the UCCJA, 9 U.L.A. 153-54 (1968) [LA. R.S. 13:1713 (1983)]. *See infra* text accompanying notes 120-22.

106. It should be noted that the mother did not act improperly. She petitioned for a change of custody and obtained an *ex parte* custody order from the St. Tammany Parish District Court. The validity of this order was never questioned before the Louisiana Supreme Court. 389 So. 2d at 1278.

107. 384 So. 2d 804 (La. 1980).

Louisiana had the requisite connections with this family to assume jurisdiction under the significant connection standard. In detailing the length of time the child and his family had spent in this state, as well as the other related factors, the court was responsive not only to the letter but also to the spirit of the Act's limited authorization of significant connection jurisdiction. Having approved the finding of jurisdiction in the Louisiana trial court, the supreme court then correctly observed that a significant connection court is not always required to defer to the home state court.[108] In making that determination under the UCCJA, the forum is to apply the five-factor inconvenient forum test set out in Louisiana Revised Statutes 13:1706(C).[109] The supreme court concluded that Louisiana was a convenient forum under these criteria and therefore affirmed Louisiana's exercise of jurisdiction. The court's cautious use of the significant connection basis for jurisdiction, as well as its analytical method for resolving conflicts of concurrent jurisdiction, makes the *Revere* decision an excellent model for future cases, whether the issue is one of initial or modification jurisdiction.

Revere also seems to be in accord with decisions of other jurisdictions in terms of its circumspect use of the significant connection standard. In *Holland v. Holland*,[110] for example, a North Carolina court considered a petition for original custody filed by a mother domiciled in that state. The father was domiciled in Georgia where the child had lived for six years. The child went to live with his father at the age of five; at the time of the custody action, the child was eleven. The North Carolina court found that the most recent evidence concerning the child's community, school and health existed in Georgia. Additionally, although the mother contended that a number of witnesses in North Carolina could testify as to the family situation which would exist in that state, the court found that the most relevant witnesses resided in Georgia where the child and his father had lived for the past six years. Thus, there was no jurisdiction in North Carolina.

In *Brokus v. Brokus*,[111] an Indiana court was required to decide whether significant connection jurisdiction had arisen during the five months a mother and her children had resided in the state. During that period of time, the children had been enrolled in school and had joined and regularly attended a local church. Since there were neither

108. *See supra* text accompanying note 59.
109. [UCCJA § 7(c), 9 U.L.A. 137-38 (1968)].
110. 56 N.C. App. 96, 286 S.E.2d 895 (1982).
111. 420 N.E.2d 1242 (Ind. Ct. App. 1981).

equal nor superior contacts between the family and any other state, the court found that the contacts were sufficient to vest jurisdiction in the Indiana courts.

Under the UCCJA, as an alternative to home state or significant connection jurisdiction, a forum may have emergency jurisdiction to enter an initial custody decree. Although there is as yet no binding precedent in Louisiana,[112] the Louisiana Supreme Court's opinion in *Dillon v. Medellin*[113] contains important dicta about both the nature and scope of emergency jurisdiction under the Act. Justice Calogero's discourse on emergency jurisdiction is all the more compelling for future Louisiana cases because it poses the converse of the question actually before the Court in *Dillon.*

> Another way of looking at the legal question is this: if the roles of the Texas and Louisiana courts were reversed, and the *father* was the Louisiana resident asking our courts [to take emergency jurisdiction and] to grant him custody of his child, a Texas domiciliary, would a Louisiana court be the proper forum for resolving this custody matter?[114]

Among other judgments under view in *Dillon* was a Texas order naming the father temporary managing conservator of the child. This order had resulted from a modification petition filed in Texas by the father while exercising visitation rights with his child in Texas. Emergency jurisdiction was based upon claims that the child had reported a use of marijuana and "sexual games" in the mother's home in Louisiana which justified the father's not relinquishing the child to her.[115] In reaching its decision that the Texas decree was not bind-

112. Huston v. Granstaff, 417 So. 2d 890 (La. App. 3d Cir. 1982), is a case in which a father sought a custody decree from a Louisiana trial court based upon emergency jurisdiction. The parents, unmarried cohabitants, conceived a child in Louisiana, but before her daughter's birth, the mother moved to Texas. Shortly after the child was born, the father went to Texas and under the ruse of a week's visit, brought the child to Louisiana and filed a tutorship petition. The trial court named the father provisional tutor; however, later upon petition by the mother to nullify that decree for want of any emergency jurisdiction, the trial court admitted error. The third circuit by implication affirmed the lack of emergency jurisdiction although this issue is not discussed in its opinion. In Gibson v. Gibson, 429 So. 2d 877 (La. App. 3d Cir. 1983), the third circuit found little on the facts to support the bona fide assertion of emergency jurisdiction and cited as authority, Dillon v. Medellin, 409 So. 2d 570 (La. 1982), discussed *infra* text accompanying notes 113-19. The *Gibson* opinion devotes only a few sentences to the consideration of emergency jurisdiction.

113. 409 So. 2d 570 (La. 1982).

114. *Id.* at 573-74.

115. *Id.* at 572. *Dillon* is yet another Texas-Louisiana dispute complicated by the fact that Texas has not yet adopted the UCCJA in substantial part. Texas law does

ing for lack of jurisdiction, the Louisiana Supreme Court made two important observations about the nature of emergency jurisdiction under the UCCJA.

First, Justice Calogero recognized that emergency jurisdiction under the UCCJA is to be sparingly assumed "only if the *immediate* needs of the child require it because the child has been abandoned or otherwise mistreated, abused, or neglected."[116] The opinion then distinguishes between a neglect proceeding initiated in the juvenile courts by the state as *parens patriae*[117] and allegations of neglect within a "civil custody matter between two competing parents."[118]

Secondly, the supreme court limited the assertion of emergency jurisdiction to allegations of neglect or abuse occurring within the forum. The linchpin of the UCCJA, maximizing access to relevant information, would be violated if a forum attempted to resolve evidentiary disputes about neglect and abuse which allegedly occurred in another state. In *Dillon*, Texas can be properly characterized as the "asylum" state where the child was wrongfully being held over after a period of visitation; Louisiana was the home state of the child. The father filed his action in the asylum state seeking a review of injurious conditions which allegedly existed in the home state. As Justice Calogero emphasized:

> The statute contemplates that *conditions in the asylum state* and the *immediacy* of those conditions will provide both the necessity and the justification for the asylum state's assuming jurisdiction over a custody matter not otherwise within its province. . . . We do not construe La.R.S. 13:1702(A)(3) to mean that a child visiting an asylum state may be found to be in an emergency state of mistreatment, abuse, neglect or dependency because of allegations concerning conditions purportedly existing in the home state, conditions more appropriately and conveniently subject to the scrutiny of the courts of the domicile state.[119]

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confer emergency jurisdiction upon its court in custody cases, Tex. Fam. Code Ann. § 11.045(a)(2)(B) (Vernon Supp. 1983); however, the exercise of such power by the Texas court on these facts was inconsistent with the emergency jurisdiction limitations of the UCCJA. *See, e.g.*, Caskey v. Pickett, 274 Ark. 383, 625 S.W.2d 473 (1981). Of course, if a Louisiana trial court is presented with a custody decree from a sister state which had taken jurisdiction under the UCCJA or laws "substantially in accordance with" the UCCJA, Louisiana would be required to enforce any resulting foreign decree. LA. R.S. 13:1712 (1983) [UCCJA § 13, 9 U.L.A. 151 (1968)].

116. 409 So. 2d at 575.

117. *See* CRIMINAL CODE: LA. R.S. 14:74-:75.2 (1974 & Supp. 1983).

118. 409 So. 2d at 575 n.4.

119. *Id.* at 575 (emphasis added).

Subsequent Dispute Jurisdiction: Enforcement and Modification Actions

The UCCJA affects not only the determination of which forum has initial decree jurisdiction but also the determination of which forum has jurisdiction to modify a prior custody judgment. Provisions limiting modification jurisdiction are necessary because the keystone of any scheme which would rectify the historic abuse committed in the name of full faith and credit must be the regulation of modification power. If a potential modification forum possesses the power freely to alter the terms of a prior foreign judgment, then the initial decree may become merely a meaningless gesture feebly made by a sister state and a mockery of federalism.

Unlike other judgments, a child custody decree may not forever fix the rights and obligations of the parent parties nor necessarily diminish their continuing controversies over the child's care and control. For, unlike divorce, the initial custody judgment severs neither the personal relationship between parent and child nor the personal relationship between the two adults as parents of the same child. Instead, an initial custody judgment simply creates a new triad of legal relationships which govern the child's care during his minority.

In the period of transition following divorce, most parents are able to resolve amicably any unanticipated problems and ambiguities of their custody decree. Some parents, however, cannot agree and continue to seek redress through litigation. Where the parents now reside in different states, the costs of relitigating one parent's post-decree claims in the other parent's domicile can be substantial; therefore, each parent desires to have the modification contest heard in his or her own home state. A custody decree is never final, in the sense that it may always be modified by the rendering court or another proper court.[120]

The basic framework of modification jurisdiction under the UCCJA is contained in Louisiana Revised Statutes 13:1713(A),[121] which provides:

> If a court of another state has made a custody decree, a court of this state shall not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this Part or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

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120. *See, e.g.*, New York *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1947).
121. [UCCJA § 14(a), 9 U.L.A. 153-54 (1968)].

This section of the Act incorporates the requirements of initial decree jurisdiction in two ways: the modifying court must determine, under one of the jurisdictional categories listed in Louisiana Revised Statutes 13:1702[122] that (1) it has jurisdiction and (2) the court which rendered the original decree does not have jurisdiction over the action at the time the action is filed.

In *Moore v. Moore*,[123] the first case to discuss the UCCJA as enacted in Louisiana, the court was faced with a petition brought by a custodial parent for modification of an out-of-state custody decree. The family involved in this action initially lived in New Mexico, where the mother had filed for divorce and custody before moving to Louisiana in July, 1978. The final decree was rendered in New Mexico in October of the same year. It awarded the mother a divorce and custody of the child, with additional provisions addressing visitation rights and child support. The following March, some eight months after mother and child moved to Louisiana, the mother filed a rule in the Louisiana court to show cause why the visitation should not be decreased and the child support increased.[124]

The trial judge dismissed the rule based upon the first inquiry under the UCCJA, *i.e.*, that Louisiana lacked jurisdiction over the action. The Louisiana Second Circuit Court of Appeal reversed, finding that under the criteria set forth in the UCCJA Louisiana was the home state of the child.[125] The court recognized, however, that this finding did not dispose of the case since this was an action for modification of an existing decree. The court was therefore also required to find that New Mexico was without jurisdiction over the dispute.

In making the second inquiry under the UCCJA, the court addressed the initial decree's jurisdictional bases and eliminated them, one by one. When the action was filed, New Mexico was clearly no longer the child's home state. The court then applied the significant connection standard, which was New Mexico's best claim to jurisdiction.[126] According to the evidence, New Mexico's only remain-

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122. [UCCJA § 3, 9 U.L.A. 122-23 (1968)].

123. 379 So. 2d 1153 (La. App. 2d Cir. 1980).

124. Although the assessment of jurisdiction to award or modify child support is not governed by the UCCJA, *see supra* note 31, there remains grave doubt about the trial court's power to alter the support duties of a nonresident defendant. *See* Kulko v. Superior Court, 436 U.S. 84 (1978).

125. 379 So. 2d at 1155.

126. Emergency and residual jurisdiction could be summarily rejected on these facts and the court relegated their consideration to a footnote. *Id.* at 1155 n.4.

ing connections were that the father lived there and that the child had resided there throughout infancy. The only information available about the child in New Mexico was that which her father could provide. Since the child was only about two years old, the most recent one-third of her life had been spent in Louisiana with her mother and maternal grandmother. Considering these circumstances, the second circuit concluded that Louisiana was the state with optimum access to information regarding the child. Although the *Moore* decision is a close call, a trial court would be well within its discretion in finding that the previous jurisdiction of the New Mexico court had become too attenuated to justify its continuing power over this subsequent skirmish.[127]

Of course, a great deal of costly time and effort could have been saved in the *Moore* litigation had the trial court simply communicated with its sister court and obtained its declination of jurisdiction. In gray area decision-making such as was involved in the significant connection assessment in *Moore*, a trial court should make every effort to avoid the potential jurisdictional impasse by obtaining the original forum's formal declination. While the UCCJA does not mandate such a procedure by a forum when no foreign action is currently pending, this approach seems patently more efficient than the procedure followed in *Moore*.

The modification section of the UCCJA makes mandatory the two-fold inquiry made by the second circuit in *Moore*. If the state which rendered the original decree retains, under the Act, jurisdiction over the status of the child, another state cannot modify that decree. This mandate is made clear by the commissioners' note to the Act, which states: "In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3."[128]

This analysis has also been accepted as correct in other jurisdictions. In *Leslie L.F. v. Constance F.*,[129] the New York court did not engage in a detailed review of California's potential jurisdiction as did the Louisiana court in *Moore*; however, it did determine that California was not the home state and that the California court had failed to respond to overtures made by the New York court about which state should adjudicate the dispute. Thus, the New York court

127. But see discussion of continuing jurisdiction under the Parental Kidnapping Prevention Act of 1980, *infra* text accompanying notes 208-21.

128. UCCJA § 14, commissioners' note, 9 U.L.A. 154 (1968).

129. 110 Misc. 2d 86, 441 N.Y.S.2d 911 (Fam. Ct. 1981).

determined there was a reasonable argument that California either did not have jurisdiction or had declined to exercise it.

Unfortunately, the model of UCCJA analysis established by the Louisiana second circuit has not been universally followed. An example is the fourth circuit's decision in *Hadley v. Hadley*.[130] *Hadley* not only expanded the interpretation of significant connection jurisdiction beyond that contemplated by the UCCJA but also violated the Act's restrictions on modifications.

The family involved in *Hadley* originally lived in Rhode Island. In 1976, the mother was there awarded a divorce and custody of the child of the marriage. The parents continued to struggle over custody and visitation even after the mother remarried and moved a short distance away to Massachusetts. On April 4, 1979, the third custody hearing between the parties was held in Rhode Island at which "physical possession" of the child was transferred from the mother to the father. The mother later claimed that she had not been notified of either the hearing or the change of custody.

Yet within two weeks, in mid-April, 1979, the mother, stepfather, and child moved to Louisiana. During the same month, procedural developments in Rhode Island culminated in a kidnapping warrant for the mother's arrest. On June 6, 1979, on the strength of that warrant, the mother was arrested by parish authorities but was subsequently released. Five days later,[131] she filed a rule in the Louisiana district court for a change of custody; the trial judge overruled the exception to jurisdiction and then awarded custody of the child to the mother.

The fourth circuit first considered whether Louisiana possessed jurisdiction under the UCCJA. Since the child had been within the state for only two months when the mother's action was filed, the conclusion is inescapable that home state jurisdiction was nonexistent. However, the court tortured the significant connection basis to affirm that Louisiana had jurisdiction over the dispute. The panel majority discounted the facts that the child had lived elsewhere for almost all of the five-plus years of his life, that the father and his family continued to reside in Rhode Island, and that all potential disinterested (nonrelated) witnesses to the pre-existing Hadley family interactions lived in Rhode Island.

Just how far the majority was willing to go to afford the mother

130. 394 So. 2d 769 (La. App. 4th Cir.), *cert. denied*, 399 So. 2d 622 (La. 1981).
131. *Id.* at 776 (Samuel, J., dissenting).

the protection of a Louisiana forum is demonstrated by the following passage from its opinion:

> *At the time of trial*, the husband was working and the family was living in Chalmette, Louisiana in a rented house with plans to build their own. Eric, who was six years old at the time of the trial in St. Bernard, had just begun school in that parish. Denise's parents had also moved from Massachusetts and were living in New Orleans. One of Denise's brothers and his wife had also moved to Louisiana with their daughter. A younger brother and his wife were contemplating moving from New England to this state.[132]

The clear inference from the court's language is that no member of the family, nuclear or extended, had any connection with Louisiana *at the commencement of this action*, which is the critical point under the UCCJA for the jurisdictional determination.[133]

On the fact pattern of the *Hadley* case, it is difficult to justify the finding of significant connection jurisdiction in Louisiana consistent with the limited use of this jurisdictional base envisioned by the UCCJA.[134] Even more troubling is the fourth circuit's failure to follow the analytical requirements for modification jurisdiction under the UCCJA and the model *Moore* decision of the second circuit. The Louisiana action in *Hadley* was for modification of an out-of-state (Rhode Island) decree, which required the court to find both that Rhode Island *did not* have jurisdiction, and that Louisiana *did* have jurisdiction.

Under the criteria set forth in the Act, there were potentially

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132. *Id.* at 771 (emphasis added).

133. *See supra* note 55. The hearing on the jurisdictional challenge was not held until February 6, 1980, some seven months after the action was initiated. 394 So. 2d at 770. It should be noted that according to section 24 of the UCCJA: "Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this Act the case shall be given calendar priority and handled expeditiously." 9 U.L.A. 168 (1968) [LA. R.S. 13:1723 (1983)]. The speedy determination of jurisdictional challenges can minimize the temptation to consider developments occurring after the commencement of the action as relevant or competent jurisdictional evidence. In addition, as the commissioners' note to section 24 of the UCCJA observes:

> Judicial time spent in determining which court has or should exercise jurisdiction often prolongs the period of uncertainty and turmoil in a child's life more than is necessary. The need for speedy adjudication exists, of course, with respect to all aspects of child custody litigation. The priority requirement is limited to jurisdictional questions because an all encompassing priority would be beyond the scope of this Act.

9 U.L.A. 168-69 (1968).

134. *See supra* text accompanying note 60.

two other states with jurisdiction in the *Hadley* case. Rhode Island, the state of initial decree rendition, clearly seems to have qualified for significant connection jurisdiction in view of the child's having spent five years of his life there; indeed, it was the only state where he had lived for any sustained period. It is also quite possible that Massachusetts had acquired home state jurisdiction under the Act.[135] In failing to consider whether any state other than Louisiana had an equal or paramount claim to jurisdiction over the continuing parental controversies, *Hadley* confuses the issue to be decided on the merits with the issue of which court should do the deciding. The case holds in effect that it is proper to exercise significant connection power whenever it is "in the best interests of the child." Clearly, the assumption underlying the entire jurisdictional plan of the UCCJA is that only courts authorized according to the Act's prioritized scheme are likely to arrive at the correct decision about what is, on the merits, in the best interests of the child. Although the significant connection provision is the only jurisdictional standard which expressly mentions "the best interests of the child," the phrase is clearly used in the statute as a limitation rather than as a license for freely taking jurisdiction. Only when the Act is obeyed in its interlocking entirety, including the prerequisite of optimal connections with the forum, are the best interests of the child served according to the overall purposes of the Act.

Cata v. McKnight[136] is one of the more curious appellate cases applying the UCCJA. The Louisiana second circuit cited and apparently followed the erroneous *Hadley* model of the fourth circuit and wholly ignored its own superior construct which had been developed in *Moore v. Moore*.[137] In *Cata*, the Louisiana proceedings began with an action for enforcement of an out-of-state decree which was met with a reconventional demand for modification of the decree. In this case, the family originally lived in Oklahoma. In September of 1980, the father moved with his two children from Oklahoma to Louisiana. Although the Oklahoma court had rendered a custody decree in the father's favor prior to his departure, the court had also issued a restraining order prohibiting him from removing the children from the state. The restraining order was issued in response to the mother's petition for modification of the original decree.

135. The opinion omits the critical fact of when the child was moved from Rhode Island to Massachusetts.

136. 401 So. 2d 1221 (La. App. 2d Cir.), *cert. granted*, 404 So. 2d 264 (La. 1981).

137. 379 So. 2d 1153 (La. App. 2d Cir. 1980). Two of the three members of the panels in both *Cata* and *Moore* were Judges Hall and Marvin.

Three months after the move to Louisiana, the Oklahoma court awarded the mother permanent custody of the two children. She then followed the father to Louisiana and petitioned the court for enforcement of her new decree. The father answered with a challenge to the new decree and asked the Louisiana court to change custody. The trial court declined to exercise jurisdiction in this case and ordered a stay of the Louisiana proceeding, allowing the father fifteen days in which to file his action in the proper Oklahoma court.[138]

The court of appeal's analysis of the jurisdictional issues in *Cata* is troublesome for several reasons. First, the court boldly asserted, without any factual discussion or analysis, that it had significant connection jurisdiction. However, at the time the action was filed in Louisiana, the father and children had been in Louisiana only three months and had left Oklahoma in violation of Oklahoma's restraining order.[139] The opinion in *Cata* gives no inkling of any evidence on the record which would bear upon the children's family, schooling, community integration or other factors which might establish a significant connection with Louisiana. In fact, upon its face, the finding of Louisiana jurisdiction seems to violate the Act's "mere presence" rule.[140]

The second troublesome feature of *Cata,* is that once the court had mistakenly assumed jurisdiction, it repeated the *Hadley* court's error by failing to address the modification jurisdiction issue. The court bypassed the second inquiry required by the Act, specifically, whether jurisdiction still existed in Oklahoma. Had the court followed the Act, it would have ultimately reached the same correct conclusion albeit by way of the correct analysis.

As it was, the court deferred to Louisiana Revised Statutes 13:1706,[141] and decided that Louisiana was an inconvenient forum in which to litigate this case. Although that finding was arguably correct, the inconvenient forum consideration is *not* a substitute for determining whether the power to modify exists under Revised Statutes 13:1713.[142] As a matter of doctrinal logic, only a court with power to

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138. The second circuit initially denied supervisory writs, but the Louisiana Supreme Court reversed and remanded for "a hearing and decision on the merits." 404 So. 2d 264 (La. 1981). The second circuit construed this mandate to call for a decision on the "jurisdictional merits." 401 So. 2d at 1222.

139. There is no mention in the *Cata* opinion of the "clean hands" provision of the UCCJA. *See infra* text accompanying notes 173-75.

140. *See supra* text accompanying notes 93-95.

141. [UCCJA § 7, 9 U.L.A. 137-38 (1968)].

142. [UCCJA § 14, 9 U.L.A. 153-54 (1968)]. For further discussion of inconvenient forum analysis, see *infra* text accompanying notes 181-89.

decide can ever reach the question of whether it would be convenient to exercise that power. Fabricating jurisdiction, even when the court thereafter refuses to exercise it, is a questionable practice not only because it offends the niceties of a doctrinal syllogism but also, as will be discussed in more detail below, because it invites unjustified, duplicative, and expensive litigation.

In fact, what may have been troubling to the Louisiana courts in both *Hadley* and *Cata* was a suspicion that the sister state's modification of its original decree and abrupt switching of custody were "punitive." A "punitive decree" is a judgment not premised upon the child's best interests but, instead, aimed at punishing a parent for having left the State or for having failed to appear to litigate the merits.[143] Just what credit is due punitive child custody judgments is an issue which has badly divided American jurisdictions, but some states refuse to honor them.[144] Nevertheless, the legislatures of states which have adopted the Act have presumably directed their own courts not to fabricate jurisdiction simply because a foreign state's decree appears punitive. Instead, the UCCJA directs aggrieved parties to seek redress in the state which rendered the suspect decree.

The modification actions presented in *Moore*, *Hadley* and *Cata* were all brought by the custodial parent who had recently moved with the child to Louisiana. While either the custodial or the noncustodial parent may seek relief from the terms of a now chafing initial decree, more often than not it is the noncustodial parent who either initiates relitigation or precipitates it by provocative conduct. The overwhelming majority of initial custody judgments still result in the denomination of one parent as the child's "legal custodian," while the other parent retains only vestiges of the authority and access enjoyed before the family unit was dissolved.[145] Such vestigial parenting (composed primarily of consultation and visitation rights) can be a very

143. *See, e.g.*, State *ex rel.* Fox v. Webster, 151 So. 2d 14 (Fla. Dist. Ct. App. 1963), *cert. dismissed*, 162 So. 2d 905 (Fla. 1964), *cert. denied*, 379 U.S. 822 (1964). However, the dissenting judge there observed: "It is my view that a respect for law is an essential qualification for one seeking custody of a child." 151 So. 2d at 17 (Pearson, C.J., dissenting).

144. For a collection of cases and further discussion, see Bodenheimer, *supra* note 25, at 1003-09.

145. Many states like Louisiana have now enacted "Joint Custody" statutes. *See* LA. CIV. CODE arts. 146, 157; Comment, *Joint Custody in Louisiana*, 43 LA. L. REV. 99-101 (1982). Whether or not such statutes actually decrease acrimony is, of course, a matter of continuing debate. *Compare* J. GOLDSTEIN, A. FREUD & A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 37-38 (1973) *with* Folberg & Graham, *Joint Custody of Children Following Divorce*, 12 U.C.D. L. REV. 523 (1979).

frustrating role for the noncustodian, often leading to acts in defiance of an initial decree or to proceedings to modify what is perceived as an intolerable initial judgment.

For example, in *Buchanan v. Malone*,[146] the father gave notice to the custodian-mother that he would not return the children at the end of their summer visitation in Louisiana; subsequently, he filed an action in Louisiana to modify the Washington custody decree. Similarly, in *Hust v. Whitehead*,[147] the non-custodial father went to Texas and took possession of his children from their grandmother in whose temporary care the mother had left them; he returned with the children to Louisiana and, three days later, filed for a modification of the Texas decree.

A parent who takes possession of his child in violation of a custody decree is rarely motivated by anything other than genuine concern for the child. Thus, such conduct is often known by the somewhat gentler term of "childnapping" or "child snatching" to distinguish it from kidnapping, the wrongful taking of a child for mistreatment or profit.[148] Yet, the National Conference of Commissioners on Uniform State Laws has observed that the "simple fact is that each state's capacity to ignore the enforcement of other state's decrees, and to modify them, created a legal climate favoring forum-shopping, seize and run tactics between custody contestants, and aggravated prolonged litigations."[149] In large measure, this type of parental misconduct inspired the promulgation of the UCCJA.[150] Furthermore, deterrence of childnapping is clearly the purpose underlying Revised Statutes 13:1707,[151] the so-called "clean hands" limitation,[152] which is one of the most powerful restraints upon the exercise of jurisdiction under the Act.

The "Clean Hands" Limitation Upon an Exercise of Jurisdiction

At the outset, three important points need be made about the operation of the "clean hands" limitation under the Act. First, and

146. 415 So. 2d 259 (La. App. 2d Cir. 1982).

147. 416 So. 2d 639 (La. App. 2d Cir. 1982).

148. It should be noted, however, that the United States Congress expressly declared its intent to have "childnapping" considered a federal crime. Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, § 10(a), 94 Stat. 3566, 3573; *see* 18 U.S.C. § 1073 (1976).

149. Brief *amici curiae*, *supra* note 4, at 9.

150. *See* UCCJA, Commissioners' Prefatory Note, 9 U.L.A. 113 (1968).

151. [UCCJA § 8, 9 U.L.A. 142 (1968)].

152. The labeling arises out of a discussion by Professor Albert Ehrenzweig in his article cited *supra* note 1, at 357.

perhaps most important, a consideration of a parent's alleged misconduct under this provision is appropriate only *after* a trial forum determines that it in fact possesses either initial jurisdiction or modification jurisdiction. Second, although more frequently the "clean hands" limitation arises in the course of an action to modify a decree, it also restrains the exercise of initial jurisdiction. Third, this limitation applies to a broad category of misconduct committed by either the custodial or the non-custodial parent.

The first point, the necessity for jurisdiction, would seem to be obvious; however, apparently there remains some confusion on this issue among Louisiana courts.[153] *Gibson v. Gibson*[154] is an excellent example of a proper recognition of this threshold issue, despite poignant facts including childnapping by both parents. In *Gibson*, the husband moved to Louisiana leaving behind his wife and infant daughter in Virginia. Some seventeen months later, he returned to Virginia on Christmas Eve and "watched the residence of [his wife] for an undetermined length of time."[155] After obtaining his wife's permission to take the child shopping on Christmas Day, the husband instead returned with the child to Louisiana. He sought custody from a Louisiana court, and the wife sought custody from a Virginia court. Ignoring the pending Virginia action, the Louisiana trial court took jurisdiction and awarded custody to the husband. Thereafter on some undisclosed date, the wife retaliated by snatching the child back in defiance of the Louisiana decree.

The third circuit disposed of what appears to be a complex legal tangle by the simple determination that Louisiana lacked initial jurisdiction to hear the dispute under the Act's criteria. Consequently, there was no need to reach the issue of whether the "clean hands" proviso would direct that jurisdiction be declined.

Subsection A of Revised Statutes 13:1707 governs the applicability of the limitation to initial custody decree jurisdiction. Subsection A provides that a court *may* decline to exercise jurisdiction when a petitioner for an initial decree wrongfully removes a child from a state or engages in "similar reprehensible conduct."[156] The commissioners'

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153. In both Losey v. Losey, 412 So. 2d 639 (La. App. 2d Cir. 1982), and Buchanan v. Malone, 415 So. 2d 259 (La. App. 2d Cir. 1982), the trial courts declined to exercise jurisdiction for reason of misconduct under LA. R.S. 13:1707 [UCCJA § 8, 9 U.L.A. 142 (1968)] without deciding the threshold question of whether or not jurisdiction was possessed under the UCCJA.

154. 429 So. 2d 877 (La. App. 3d Cir. 1983).

155. *Id.* at 878.

156. [*Id.* § 8(a)].

note explains that, under this subsection, which applies only where there is no existing custody decree, "wrongfully taking" does not mean that a legal right has been violated. Rather, "wrongfully taking" means that "one party's conduct is so objectionable that a court in the exercise of its inherent equity powers cannot in good conscience permit that party access to its jurisdiction."[157]

An illustration of the proper application of this restraint in the context of pre-decree conduct of a parent is *Losey v. Losey*.[158] When the father was mustered out of the military, he moved to Louisiana, but the mother elected to remain with the children in their family home in Delaware. Shortly after the move, the father returned to Delaware on two occasions in order to remove both children from their home and to move them to Louisiana. Within the month, the father filed a petition for custody in the Louisiana trial court.[159] The trial court ultimately concluded that it would decline to exercise jurisdiction because the father had brought the children to Louisiana under "less than satisfactory" circumstances.[160] In its independent review of the record, the court of appeal found that there was ample evidence to support the conclusion that the father had wrongfully removed the children from their home in Delaware.

Subsection B of Revised Statutes 13:1707[161] is directed at a parent who violates the terms of an existing decree.

> Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without the 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. If the petitioner has violated any other provision of a custody decree . . . the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

Thus, the Act distinguishes between what may be termed presumptively improper conduct—abductions and retentions—and less serious types of judgment violations. In *Hust v. Whitehead*,[162] despite widely

157. UCCJA § 8, commissioners' note, 9 U.L.A. 143 (1968).
158. 412 So. 2d 639 (La. App. 2d Cir. 1982).
159. For a discussion of Louisiana's jurisdiction in the matter, see *supra* text accompanying notes 82-92.
160. 412 So. 2d at 641.
161. [UCCJA § 8(b), 9 U.L.A. 142 (1968)].
162. 416 So. 2d 639 (La. App. 2d Cir. 1982).

divergent accounts of the means of removal of the children from Texas to Louisiana, the trial court found that the father had abducted the children. After hearing evidence the trial court dismissed the father's action for modification on this basis, as well as on a finding that Louisiana was "a most inconvenient forum."[163] *Buchanan v. Malone*[164] is an example of an improper retention after the end of a decreed visitation period; however, neither the trial nor the appellate court definitively ruled upon the jurisdictional issue.[165]

In acknowledging the "clean hands" limitation on jurisdiction, other states have reached results similar to those in the *Hust* decision. In *Craighead v. Davis*,[166] a Georgia court was faced with a petition for modification by a father who had wrongfully brought his child to that state two months earlier. The child involved had lived in Florida for five years before his father abducted him; the court held that two months was an insufficient length of time in which to establish the significant connections required by the Act. The court further stated that even if jurisdiction existed, the court would decline its exercise due to the policy that Georgia would not provide a forum for a noncustodial parent who improperly removes a child from the possession of a custodial parent.

Even Florida courts, which have historically been unusually willing to accept jurisdiction after childnappings,[167] have strictly construed the UCCJA's "clean hands" limitation. In *Brown v. Tan*,[168] a mother was visited by her child, who resided in Singapore with his father. At the end of the two-week visitation period, the mother petitioned the Florida court for a change of custody, informing the father of her intention to retain physical possession of the child. The court found that there was insufficient contact with Florida for its courts to assert jurisdiction because the child had resided in Singapore for twelve years, visiting Florida only infrequently. The court further found that, even if there were jurisdiction, the mother's act of retaining the child

163. The appellate court bypassed the "clean hands" issue by affirming the refusal to exercise jurisdiction on the basis of LA. R.S. 13:1706(G) [UCCJA § 7(g), 9 U.L.A. 138 (1968)], the inconvenient forum section.

164. 415 So. 2d 259 (La. App. 2d Cir. 1982).

165. Instead, the appellate court simply held that even after the adoption of the UCCJA, a habeas corpus petition is an appropriate pleading to enforce a foreign decree of custody in this state. Although the opinion is not without ambiguity, apparently the court also approved the refusal of modification jurisdiction where the trial court finds that there has been an improper retention by a noncustodian. *See id.* at 264.

166. 162 Ga. App. 145, 290 S.E.2d 358 (1982).

167. R. CROUCH, *supra* note 25, at 20.

168. 395 So. 2d 1249 (Fla. Dist. Ct. App. 1981).

was wrongful, and the court should decline jurisdiction in any case.[169]

Violations of decree provisions which fall short of abductions or improper retentions of a child are subject to a less stringent standard for declining jurisdiction under Revised Statutes 13:1707.[170] The commissioners' note states that the most common use of this power will occur when the custodial parent removes a child in order to frustrate the noncustodial parent's visitation rights. Refusal to exercise jurisdiction was made discretionary for this type of conduct "because it depends on the circumstances whether non-compliance with the court order is serious enough to warrant the drastic sanction of denial of jurisdiction."[171]

Both *Hadley v. Hadley*[172] and *Cata v. McKnight*[173] are Louisiana examples of this type of parental misconduct. In both cases, by coming to Louisiana, the custodial parent violated outstanding orders of restraint issued by the courts of a sister state. In both cases, the result was the dangerous combination of an assertion of the highly discretionary significant connection jurisdiction and an invocation of the optional portion of the "clean hands" limitation.

Assuming the Louisiana courts had jurisdiction in *Hadley* and *Cata*,[174] declining to exercise it in both cases under the "clean hands" limitation would have been well within the trial courts' discretion. *Hadley* stands alone in a group of similar cases from other jurisdictions in both finding *and* exercising jurisdiction despite such parental misconduct.[175]

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169. *See also* Pabst v. McElfresh, 410 So. 2d 530 (Fla. Dist. Ct. App. 1982) (per curiam) (ordered the return of the child to the custodian; decision based upon *Brown*).

170. [UCCJA § 8, 9 U.L.A. 142 (1968)].

171. UCCJA § 8, commissioners' note, 9 U.L.A. 143 (1968).

172. 394 So. 2d 769 (La. App. 4th Cir.), *cert. denied*, 399 So. 2d 622 (La. 1981).

173. 401 So. 2d 1221 (La. App. 2d Cir.), *cert. granted*, 404 So. 2d 264 (La. 1981).

174. *See supra* text accompanying notes 130-42. Although yet to arise in Louisiana, an equally serious problem erupts when the wrongful conduct of a custodian or noncustodian such as childnapping results in the acquisition of jurisdiction by the forum state, for example, by succeeding in keeping the child for six months. The courts of several states are split on the question of whether to exercise jurisdiction in this situation. See *In re* Leonard, 122 Cal. App. 3d 443, 175 Cal. Rptr. 903 (1981); Brauch v. Shaw, 121 N.H. 562, 432 A.2d 1 (1981), for cases in which jurisdiction was exercised; Blosser v. Blosser, 2 Ark. App. 37, 616 S.W.2d 29 (1981); Kumar v. Superior Court, 32 Cal. 3d 689, 652 P.2d 1003, 186 Cal. Rptr. 772 (1982); *In re* Johnson, 634 P.2d 1034 (Colo. Ct. App. 1981); Flesner v. Houser, 104 Ill. App. 3d 904, 433 N.E.2d 720 (1982), for cases in which jurisdiction was declined.

175. *See* Rodriguez v. Saucedo, 3 Ark. App. 42, 621 S.W.2d 874 (1981); Woodhouse v. District Court, 196 Colo. 558, 587 P.2d 1199 (1978); Young v. District Ct., 194 Colo. 140, 570 P.2d 249 (1977); Zuccaro v. Zuccaro, 407 So. 2d 389 (Fla. Dist. Ct. App. 1981);

As an added deterrent to the "reprehensible conduct" proscribed by the "clean hands" jurisdictional limitation, subsection C of Revised Statutes 13:1707[176] authorizes the trial court to assess costs against the petitioner for such an abuse of process. In *Hust*, the custodian mother submitted evidence that she had incurred substantial costs in having to travel to Louisiana to defend the modification action and to regain the possession of the children. The appellate court affirmed her right to indemnification from the father. Under section 8 of the UCCJA, reimbursable expenses include "necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses."[177] The second circuit correctly ruled in *Hust* that the trial court may assess such costs even when it finds it lacks jurisdiction to determine the merits of the custody dispute: the assessment of costs is targeted most appropriately at actions in which jurisdiction is patently lacking. In *Huston v. Granstaff*,[178] the third circuit properly assessed all litigation costs occasioned by the non-custodian parent's conduct. In *Huston*, the mother received reimbursement not only for her challenge to the jurisdiction of the Louisiana trial court but also for the costs necessary to enforce her Texas decree.

Finally, it must be observed that Revised Statutes 13:1707(B)[179] makes the decision under the "clean hands" limitation subject to the overriding proviso "[u]nless required in the interest of the child." This language is a potential invitation to territoriality under the guise of child protection. In deciding whether to seize upon such enabling language of the UCCJA, a state court should recall that a liberal use would defeat a major purpose of the Act: the deterrence of "unilateral removals of children undertaken to obtain custody awards."[180]

Matthews v. Matthews, 238 Ga. 201, 232 S.E.2d 76 (1977); Clark v. Clark, 67 A.D.2d 388, 416 N.Y.S.2d 330 (App. Div.), *appeal denied*, 47 N.Y.2d 706, 417 N.Y.S.2d 1027 (1979); Ruff v. Ruff, 98 Misc. 2d 934, 415 N.Y.S.2d 179 (Fam. Ct. 1979); Inn v. Inn, 93 Misc. 2d 1110, 404 N.Y.S.2d 511 (Fam. Ct. 1978). In none of these cases was jurisdiction found to exist, and most appellate courts stated it would not be exercised in any case due to parental misconduct. In *Cata*, the Louisiana Second Circuit Court of Appeals approved a finding of jurisdiction but refused its exercise not because of petitioner's "unclean hands" but because Louisiana was an inconvenient forum. *See supra* text accompanying notes 138-42.

176. [UCCJA § 8(c), 9 U.L.A. 142 (1968)].

177. LA. R.S. 13:1707(C) (1983) [UCCJA § 8(c), 9 U.L.A. 142 (1968)].

178. 417 So. 2d 890 (La. App. 3d Cir. 1982). For a description of the taxed parent's conduct, see *supra* note 112.

179. [UCCJA § 8(b), 9 U.L.A. 142 (1968)].

180. LA. R.S. 13:1700(A)(5) (1983) [UCCJA § 1(a)(5), 9 U.L.A. 117 (1968)]; *see* LA. R.S. 13:1706(C)(5) (1983) [UCCJA § 7(c)(5), 9 U.L.A. 138 (1968)].

The Inconvenient Forum Limitation

Louisiana Revised Statutes 13:1706,[181] the statutory embodiment of the doctrine of *forum non conveniens*, is a potent element of the UCCJA and deserves separate consideration. It allows a forum with UCCJA jurisdiction to decline to exercise its power on the basis that it is an inconvenient forum and that another more appropriate forum exists. This decision is entirely discretionary; it depends upon the weighing of circumstances according to five suggested criteria. Even so, it is an essential step in the UCCJA process: a forum first determines whether it has authority; if and only if it has jurisdiction does a forum then consider whether it is the most appropriate court to hear the dispute.

This provision is broader than the doctrine of *forum non conveniens* which has taken root in the jurisprudence of many states. It places the question of the appropriateness of the forum sequentially between the determination of the existence of jurisdiction and the decision regarding its exercise.[182] Nonetheless, some courts have failed to make this crucial distinction. The result is that the courts bypass the initial jurisdictional inquiry, basing upon inconvenient forum grounds decisions which should be based on jurisdictional grounds.

A Louisiana case which demonstrates this error is *Cata v. McKnight*.[183] At the time the mother brought her action in the Louisiana courts to enforce her Oklahoma custody decree, the father and children had been living in this state about three months, with no apparent previous contacts here. Both the district court and the appellate court simply presumed, without examining the facts, that jurisdiction existed in this case. As has been previously discussed, Louisiana rather clearly lacked jurisdiction in the *Cata* case.[184] The conclusion in *Cata* that Louisiana should not intervene rested, however, on the court's interpretation of the inconvenient forum provision of the Act.

The application of the inconvenient forum test by the court in

181. [UCCJA § 7, 9 U.L.A. 137-38 (1968)].

182. R. CROUCH, *supra* note 25, at 19.

183. 401 So. 2d 1221 (La. App. 2d Cir.), *cert. granted*, 405 So. 2d 264 (La. 1981).

184. *See supra* text accompanying notes 136-42. According to the court of appeals, the "district court found the Oklahoma decree to be valid and refused applicant's protestations to the contrary and his attempt to have the court *exercise* jurisdiction under UCCJA law." 401 So. 2d at 1222 (emphasis added). The court went on to say that it was "clear" that Louisiana had jurisdiction over this action because the children and father were "now living" in the state. *Id.* Thus, the question of the existence of jurisdiction was nearly pretermitted.

Cata followed exactly the format set out in the Act. Subsection C of Revised Statutes 13:1706[185] delineates five factors, among others, to be used in making this determination.

(1) If another state is or recently was the child's home state.
(2) If another state has a closer connection with the child and his family or with the child and one or more of the contestants.
(3) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state.
(4) If the parties have agreed on another forum which is no less appropriate, and
(5) If the exercise of jurisdiction by a court of this State would contravene any of the purposes stated in Section 1700.

The *Cata* court's conclusion that Louisiana was an inconvenient forum followed straightforwardly from a correct application of these five tests. However, the *Cata* court should never have proceeded to an application of the inconvenient forum tests since it lacked jurisdiction in the first place.

There are good reasons why the convenience question should not substitute for a correct threshold determination of whether the court can properly take significant connection jurisdiction. The Act's limitations on jurisdiction were intended to interdict needless and expensive conflicts between states and the resulting doubling of litigation costs to the parties. The convenient forum provisions were designed to serve much the same ends. The convenience tests, however, are highly discretionary. If the court in *Cata*, for example, had decided that Louisiana was not an inconvenient place for the litigation, its decision could be contested only on the ground of abuse of discretion. Were it to become accepted that a local court can fabricate initial jurisdiction, parties hoping for "home-town justice" might well be tempted to commence the very tenuous actions in a forum which the Act was designed to deny them. Such parties might well simply trust their luck that they can persuade an appellate court to sustain a parochial trial judge's discretionary ruling that his court was the convenient forum as well.

Other states have had similar problems divining the proper interplay of jurisdiction and its exercise under the inconvenient forum limitation. In *In re Wonderly*,[186] the Ohio Supreme Court engaged in much the same type of analysis, finding that, although the children

185. [UCCJA § 7(c), 9 U.L.A. 137-38 (1968)].
186. 67 Ohio St. 2d 178, 423 N.E.2d 420 (1981).

had been absent from the state for nine years, the court could still assert significant connection jurisdiction. The lion's share of the opinion, however, addressed the question of whether the forum was convenient. The court ultimately determined the custody litigation should take place in Indiana, the state of the children's residence. Thus, the question of existence of jurisdiction was improperly analyzed in terms of forum appropriateness, a weapon which should be reserved for the question of whether existing jurisdiction should be exercised.[187]

The court's option to declare itself an inconvenient forum should be an added, independent deterrent to forum shopping and child snatching. However, the option is just that—optional—and therein lies the problem. A court which finds itself inconvenient need not necessarily defer to another state, and very few courts will go as far as did the Alaska Supreme Court, in *Rexford v. Rexford*,[188] in upholding the letter and spirit of the Act. In *Rexford*, a mother moved with her child to California, and after only eight days, petitioned that state's court for a custody decree. The California court promptly began a custody investigation, which was in progress when the father filed his action in Alaska. Clearly, as the extended home state, Alaska could have asserted jurisdiction over this controversy. However, the Supreme Court of Alaska found that the policies of the UCCJA were so strong that the court should follow the alternate route of cooperation and defer to California.[189]

The Louisiana cases discussed in this article were all decided under the aegis of the UCCJA and illustrate some of the unavoidable ambiguities produced by its design. In the near future, however, the assessment of the UCCJA's inherent effectiveness in minimizing interstate custody conflicts will be clouded due to the interaction and impact of the federal Parental Kidnapping Prevention Act of 1980.

IV. THE PARENTAL KIDNAPPING PREVENTION ACT OF 1980

There is some evidence in Congressional history to indicate that

187. See also Szmyd v. Szmyd, 641 P.2d 14 (Alaska 1982); Larsen v. Larsen, 5 Kan. App. 2d 284, 615 P.2d 806 (1980); Warman v. Warman, 294 Pa. Super. 285, 439 A.2d 1203 (1982), for equally troublesome decisions on this point.

188. 631 P.2d 475 (Alaska 1980).

189. The court relied on sections regarding inconvenient forum and pending proceedings in other states, as well as the purposes of the Act. At the same time, the court noted that mere passage of time does not vest jurisdiction in the new state after a child-snatching and that cooperation with the new state's investigators does not waive the jurisdiction of the home state.

the Parental Kidnapping Prevention Act of 1980 (PKPA)[190] was promulgated only to spur universal adoption of the UCCJA and that ultimately the federal act might be repealed, leaving the UCCJA exclusively to control once more the resolution of issues under the Full Faith and Credit Clause. As Senator Wallop, the prime mover behind the PKPA observed during its debate:

> This provision does not mandate a state to adopt the Uniform Child Custody Jurisdiction Act. It should serve, however, as a significant inducement to the 11 states and the District of Columbia which have yet to adopt the Uniform Act, since by doing so their custody and visitation decrees would then be entitled to be recognized, enforced and not modified by sister states. The most important immediate result of this provision will be the eradication of the so-called "havenstate" in which an abductor parent can still find refuge. Even those states will be required to enforce the decrees of sister states that have adopted the Uniform Act. . . . Of course, once all the states and the District of Columbia have enacted the law, we should then reassess the scope and usefulness of the federal law.[191]

This federal legislation was enacted in the face of increasing incidences of childnapping and forum shopping by parents, combined with an apparent lack of preventive power on the part of the UCCJA.

The PKPA is really an extraordinary legislative event. For the first time since 1804,[192] Congress used its delegated power to "prescribe the manner" in which "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."[193]

In defining the criteria required to support a judgment entitled to full faith and credit, the PKPA incorporates *verbatim* the four jurisdictional bases established by Section 3 of the UCCJA,[194] although the federal statute requires certain additional considerations. However,

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190. 28 U.S.C. § 1738A (Supp. V 1981).

191. *Addendum to Joint Hearing, supra* note 23, at 139-40.

192. Act of Mar. 27, 1804, ch. 56, 2 Stat. 298 (codified as amended in 28 U.S.C. §§ 1738-1739 (1976)). For an account of how little is known about the genesis of the full faith and credit clause, see Jackson, *Full Faith and Credit—The Lawyer's Clause of the Constitution,* 45 COLUM. L. REV. 1 (1945).

193. U.S. CONST. art. IV, § 1.

194. *Compare* 28 U.S.C. 1738A(c)(2) (Supp. V 1981) *with* UCCJA § 3(a), 9 U.L.A. 122 (1968) [LA. R.S. 13:1702(A) (1983)].

as will be later discussed in some detail, by making three important curative changes in the UCCJA design, the PKPA reconfigures the decision-making process which governs jurisdictional questions now and in the foreseeable future.

As a general proposition, unlike the UCCJA, the federal statute is not a grant of jurisdiction under particular circumstances. However, in the sense that a custody decree rendered outside its framework is not entitled to recognition and enforcement by sister states, the PKPA may be said to federalize the UCCJA. The result of this combination is that a court must determine the existence of its jurisdiction under the UCCJA,[195] and then look to the federal act to determine whether the exercise of that jurisdiction will entitle the resulting decree to recognition.[196]

The major impact of the PKPA falls upon three problem areas: cases involving a question of another state's pending proceedings, jurisdiction in initial custody actions, and continuing jurisdiction. In these areas particularly, the PKPA has attempted to cure the defects found in the UCCJA, principally by removing a great deal of discretion afforded trial courts.

Required Deference to Pending Proceedings

It should be remembered that in drafting the UCCJA the commissioners sought, among other goals, to avoid the spectre of simultaneous custody proceedings in more than one state. Consequently, section 6(a) of the UCCJA provides:

> A court of this State shall not exercise its jurisdiction under this Act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state *exercising jurisdiction substantially in conformity with this Act,* unless the proceeding is stayed by the court of the other state . . . .[197]

The phrase "substantially in conformity with this Act" lacks precise definition and has provided courts with a means of justifying refusal to defer to existing proceedings in other states for any number of reasons. It is unclear under what circumstances this restriction precludes action by a court. Perhaps the intent of the drafters was to constrain a court only when the then pending foreign action does

195. In the cases of Texas and Massachusetts, the state law is applied since neither has adopted the UCCJA. *Supra* note 4 and accompanying text.

196. Coombs, *supra* note 25.

197. 9 U.L.A. 134 (1968) (emphasis added) [LA. R.S. 13:1705(A) (1983)].

not conform to one of the four fundamental jurisdictional requisites enumerated in section 3;[198] on the other hand, a pending foreign action which violates any of the mandatory provisions (such as the requirement of notice)[199] or discretionary provisions (such as a determination of the convenience of the forum)[200] of the UCCJA could be considered sufficient to serve the same purpose, *i.e.*, avoidance of deference to sister state courts. In short, the UCCJA seems to provide a court with the discretion to choose the very basis on which it will evaluate the performance of other courts.[201]

The federal act closes this loophole by adopting the most restrictive of the above interpretations,[202] and it mandates deference to any court which has taken valid initial jurisdiction or which has retained jurisdiction under the continuing jurisdiction provision of the PKPA.[203] By making application of this section depend entirely upon federal rather than state law, the Parental Kidnapping Prevention Act of 1980 effectively removes the major sources of discretion found in the UCCJA.[204] Rather than finding that a court of another state is exercising jurisdiction substantially in accordance with the myriad provisions of the UCCJA, the forum must now find that there is no proceeding in any other state which comports with the federal statute.

Required Deference to Home State Jurisdiction

As has been demonstrated earlier,[205] one of the major weaknesses of the UCCJA stems from its scheme of concurrent jurisdiction. While the courts of one state may assert jurisdiction on a home state basis,

198. 9 U.L.A. 122 (1968) [LA. R.S. 13:1702 (1983)].

199. UCCJA §§ 4, 6(a), 8(b), 13-14, 9 U.L.A. 129, 134, 142, 151, 153-54 (1968) [LA. R.S. 13:1703, :1705(A), :1707(B), :1712-:1713 (1983)], respectively.

200. UCCJA §§ 7, 8(a), 9 U.L.A. 137-38, 142 (1968) [LA. R.S. 13:1706, :1707(A) (1983)], respectively.

201. *See, e.g.*, Allison v. Superior Court, 99 Cal. App. 3d 993, 160 Cal. Rptr. 309 (1979); Lopez v. District Ct., 199 Colo. 207, 606 P.2d 853 (1980) (only nonconformity with the jurisdictional bases in section 3 will suffice to excuse deference); Brokus v. Brokus, 420 N.E.2d 1242 (Ind. Ct. App. 1981); Williams v. Zacher, 35 Or. App. 129, 581 P.2d 91 (1978) (nonconformity with any mandatory provision will suffice). State courts have in fact adopted each of these alternative constructions of this phrase.

202. 28 U.S.C. § 1738A(g) (Supp. V 1981).

203. The mention of these three major changes made by the PKPA is not meant to imply that there are not others; however, they are predominantly semantic in nature, and will have more minor impact. For a fuller dicussion, see Coombs, *supra* note 25.

204. Even though the PKPA greatly restricts discretion, no law can eliminate all possibilities of abuse. For an elaborate example of a loophole potentially left open by the PKPA, see *id.* at 786-88.

205. *See supra* text accompanying notes 54-60.

the courts of another state may at the same time assert jurisdiction on a significant connection basis. The results are competing jurisdiction and potentially conflicting decrees. To rectify this problem, the PKPA mandates deference by the significant connection court to the home state court by requiring that full faith and credit be given judgments of significant connection courts only if it appears that no other state would have jurisdiction under the home state jurisdictional base.[206]

The basic federal rule—that the winner of a valid race to the courthouse determines where the case will be heard—is thus subject to an important qualification. If the winner of the race is relying on significant connection jurisdiction, he may still lose to a later-filing contestant who chooses to litigate in the child's home state. The message is clear: if a state wants to ensure that its custody decrees will be honored by sister states, its claim to jurisdiction must be founded on either the home state or emergency basis; significant connection claims will be honored only if there is no state qualifying as the home state.

The *Eicke* case is an excellent example of the anomaly produced by the UCCJA which the federal act attempts to remedy by mandating deference to the home state. In *Eicke*, the mother and children had resided in Louisiana only two months at the time the mother filed her petition for custody. Without justification for using the emergency jurisdictional basis, the court's only option lay in asserting significant connection jurisdiction; Texas was still the home state. If the federal act had been in force at the time the *Eicke* case arose,[207] Louisiana would have been required to defer to Texas for at least the remainder of the six month period during which Texas yet retained home state jurisdiction over the custody dispute. Consequently, the resulting initial Louisiana decree was premature and would not have been entitled to full faith and credit under the PKPA.

The "Continuing Jurisdiction" Limitation on Modifiability

The combined mechanisms of the UCCJA and the PKPA affect not only the determination of which forum has initial decree jurisdiction but also the determination of which forum has jurisdiction to modify a prior custody judgment. The analytical litany traditionally used by the United States Supreme Court is that only final judgments are entitled to enforcement under the full faith and credit clause;

206. 28 U.S.C. § 1738A(c)(2)(B)(i) (Supp. V 1981).
207. *See supra* note 102.

whatever the state of rendition may do to alter its decrees, a sister state may do as well when presented with a foreign judgment.[208] Since child custody decrees are universally modifiable by the state of rendition upon a showing of changed conditions,[209] most states have held that a custody judgment does not command enforcement, but, instead, may be modified by any sister state. In fact, Justice Frankfurter has stated that, in his view, the Supreme Court should expressly exempt all child custody decrees from the command of the full faith and credit clause.[210]

The third significant change made by the PKPA concerns the issue of an initial decree court's continuing custody jurisdiction over subsequent litigation involving the same child. Under the UCCJA, state A, a potential forum for modification, is precluded from acting if, at the time the petition is filed, the courts of state B retain jurisdiction under the highly discretionary standards set forth in section 3 of the UCCJA.[211] Although the PKPA incorporates and thus federalizes this section of the UCCJA,[212] it also adds a new dimension by providing that state B has continuing jurisdiction as follows:

> (d) the jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.[213]

Subsection (c)(1) provides that "such court has jurisdiction under the law of such State."

Due to the structure of the federal act, the interrelationship between the continuing jurisdiction of an initial decree court and the modification power of a subsequent forum has been the subject of some confusion.[214] This in turn has led to substantial debate as to the

208. Ford v. Ford, 371 U.S. 187 (1962); Kovacs v. Brewer, 356 U.S. 604 (1958); New York *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1947).

209. H. CLARK, CASES AND PROBLEMS ON DOMESTIC RELATIONS 1101 (3d ed. 1980).

210. *See* Kovacs v. Brewer, 356 U.S. 604, 613 (1958) (Frankfurter, J., dissenting); May v. Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring).

211. UCCJA § 14(a), 9 U.L.A. 153-54 (1968) [LA. R.S. 13:1713(A) (1983)].

212. Subsection 1738A(a) states that a court of a state shall not modify except as provided in subsection (f); subsection (f) is a virtual duplicate of section 14(a) of the UCCJA, 9 U.L.A. 153-54 (1968) [LA. R.S. 13:1713(A) (1983)].

213. 28 U.S.C. § 1738A(d) (Supp. V 1981).

214. Section 1738A contains a number of subsections. Subsections (c)(1), (c)(2)(A)-(E) and (d) are directed at the initial decree court, in terms of its original and continuing jurisdiction, while subsection (f) directs its mandates toward the modification court. These subsections, however, are not mutually exclusive, and there is currently some

intended construction of the relevant sections of the PKPA.[215] In order for the PKPA to be viewed as internally consistent, however, it seems there can be but one interpretation of the new law.

The requirements for modification under the UCCJA contemplate the forum court's assessment of its own jurisdiction, as well as that of the initial decree court, at the time the petition for modification is filed.[216] This same assessment is required by the PKPA.[217] However, the PKPA requires a further assessment of the possibility of the prior forum's continuing jurisdiction; if the law of the prior forum gives it jurisdiction over the dispute and any contestant for the child's custody remains in that state, modification by any other state is prohibited.

This analysis is supported by the express exclusion of the mandatory deference rule from the issue of continuing jurisdiction.[218] This exemption means that a forum which has made a prior child custody determination will take precedence over potential modification forums even where the prior forum has become only a significant connection state. An example of the impact of this provision is *Moore v. Moore*.[219] The initial decree state in this case was New Mexico; the modifying forum was Louisiana. At the time the petition for modification was filed, the custodian and child had resided in the latter state for approximately eight months.

Under the UCCJA analysis, Louisiana was required to find only that it had jurisdiction, and that New Mexico did not, *at the time the modification action was filed*. Because Louisiana was the home state

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consternation as to how they fit together to affect the ultimate jurisdictional power of both the initial and the modifying forums.

215. According to several commentators, the mandatory deference by "significant connection courts" to "home state courts" has emasculated the UCCJA's alternative bases for jurisdiction. The combination of this and the new continuing jurisdiction proviso thus confers exclusive and continuing jurisdiction on the home state, apparently never to be eroded. *See* Foster & Freed, *Child Custody Decrees—Jurisdiction*, N.Y.L.J., Apr. 24, 1981, at 1, col. 1; *see also* R. CROUCH, *supra* note 25, at 91. This approach has been criticized by another commentator, who asserts that the new provision does not extend the jurisdiction of the rendering court, but rather limits it, by preventing abuse of the concept of indefinitely continuing jurisdiction. *See* Coombs, *supra* note 25.

216. The phraseology of the UCCJA mandates that the modifying forum inquire whether the prior court "does not now have jurisdiction." UCCJA § 14, 9 U.L.A. 154 (1968) [LA. R.S. 13:1713 (1983)].

217. 28 U.S.C. § 1738A(f) (Supp. V 1981).

218. Subsection 1738A(d) requires only that subsection (c)(1) of the act be met; the rule of deference, *see supra* text accompanying notes 205-07, is contained in subsection (c)(2).

219. 379 So. 2d 1153 (La. App. 2d Cir. 1980).

of the child at that time and because the only connection remaining with New Mexico was the residence of the noncustodian, modification arguably was not prohibited.[220] The PKPA would change this analysis by stating that as long as New Mexico law[221] would allow it to assert at least significant connection jurisdiction, and the noncustodian remained there, all other courts must direct petitions for modification to New Mexico.

The federal act thus substantially narrows the window of modifiability, meeting the UCCJA's aspirations for limiting changes in custody decrees. Congress not only has provided for greater stability of decrees and an enhanced likelihood of enforcement, but also has included potent mechanisms for directing all litigation involving the same child to a single forum.

CONCLUSION

There is much past experience from interstate custody conflicts to warrant skepticism about the feasibility of the UCCJA design. For nearly a half century we have known that courts with almost any colorable connection with a family unit are unlikely to refuse either initial or modification jurisdiction in a child custody case.[222] A concern in any litigation with interstate elements is that the forum state may be animated by parochialism, a desire to accept jurisdiction in order to protect its own domiciliaries against the projected disadvantages of resolution by a foreign state court.[223] Even more so, a forum may be predisposed toward accepting jurisdiction in custody cases out of a commitment to any vulnerable child for whom its protection is claimed as *parens patriae*.[224] Consequently, any system of rules

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220. *See supra* text accompanying notes 123-27.

221. New Mexico has enacted the UCCJA; in the case of Texas and Massachusetts, presumably the applicable state law would be used as a determinant. *See supra* note 195.

222. *See* Ehrenzweig, *supra* note 1; Stansbury, *supra* note 94; Stumberg, *supra* note 1. According to Stansbury, among other connecting factors seized upon by forums to justify jurisdiction were that it was the child's domicile, that it was the child's place of actual residence, that it had the physical presence of the child within its boundaries, that it had divorce proceedings pending before it and that it had personal jurisdiction over the defending parent.

223. *See* Ratner, *supra* note 3, at 391 n.130.

224. *Parens patriae* originated as a duty and became a power of the English crown and its courts to "take care of such his subjects, as are legally unable, on account of mental incapacity . . . to take proper care of themselves and their property." J. CHITTY, A TREATISE ON THE LAW OF THE PREROGATIVES OF THE CROWN 155 (1820); *see generally* Custer, *The Origins of the Doctrine of Parens Patriae*, 27 EMORY L.J. 195 (1978). A similar function was recognized in the Code Napoleon and the Louisiana Civil Code. For a discussion of that development, see Griffith v. Roy, 163 La. 712, 269 So.

which, like the UCCJA, permits a forum substantial leeway is likely to be used by states to justify a finding of jurisdiction to the very margins of the ambit of discretion. In view of its design, it would be naive to expect that the UCCJA would be a panacea for the substantial reduction, much less the elimination, of interstate jurisdictional conflict. Paraphrasing the simile used by Dr. Johnson to describe women preachers, the UCCJA is like a dog walking on its hind legs; the miracle is not that it does it well, but that it does it at all.[225]

Yet there is growing evidence that the UCCJA is achieving that remarkable feat. The incidences of assumption of jurisdiction by forums having only minimal contacts with families and the number of conflicting state decrees seem to be diminishing.[226] Additionally, in other adopting states, as judges become more familiar with the Act's purposes and interlocking mechanisms, parochialism and unprincipled *parens patriae* rulings occur less frequently.[227]

History may well record that the chief contribution of the UCCJA was that it forced a forum to reflect upon potentially competing claims of authority over a custody dispute and to justify its superior interest before offering a field of combat. If, as a result of that conscious analytical process, competing forums learn to communicate and to exercise forum restraint, then the purposes underlying the Act will be achieved as well.

2d 217 (1972). By whatever label, the state's power to protect children is properly invoked by allegations that a child has been orphaned, deserted, abused or neglected by his parent. However, when stripped from its doctrinal moorings of state intervention by necessity, such power can be and has been often abused. For further discussion of the abuse of *parens patriae* in jurisdictional determinations, see Hazard, *supra* note 1, at 394 n.56, 395 n.58.

225. *Boswell, Life of Samuel Johnson, LL.D.*, in 44 GREAT BOOKS OF THE WESTERN WORLD 132 (1952).

226. *See, e.g.*, Gibson v. Gibson, 429 So. 2d 877 (La. App. 3d Cir. 1983), discussed *supra* text accompanying notes 153-55; cases cited in Bodenheimer, *supra* note 25.

227. *See generally* Rodriguez v. Saucedo, 3 Ark. App. 42, 621 S.W.2d 874 (1981); Sanders v. Sanders, 1 Ark. App. 216, 615 S.W.2d 375 (1981); Hafer v. Superior Court, 126 Cal. App. 3d 856, 179 Cal. Rptr. 132 (1981); Smith v. Superior Court, 68 Cal. App. 3d 457, 137 Cal. Rptr. 348 (1977); *In re* Edilson, 637 P.2d 362 (Colo. 1981); Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974); Brown v. Tan, 395 So. 2d 1249 (Fla. Dist. Ct. App. 1981); Mondy v. Mondy, 395 So. 2d 193 (Fla. Dist. Ct. App. 1981); Moser v. Davis, 364 So. 2d 521 (Fla. Dist. Ct. App. 1978); Grubs v. Ross, 291 Or. 263, 630 P.2d 353 (1981) (overruling Settle v. Settle, 276 Or. 759, 556 P.2d 962 (1976)).