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## The Conflict between the Parental Kidnapping Prevention Act and the Extradition Act: Naming the Custodial Parent Both Legal Guardian and Fugitive Comment.

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**The Conflict Between the Parental Kidnaping Prevention Act and the Extradition Act: Naming the Custodial Parent Both Legal Guardian and Fugitive**

I. Introduction ..... 1047

II. The Parental Kidnaping Prevention Act: Its Purpose and Plan ..... 1053

    A. The P.K.P.A.: A Legislative Proposal to Prevent Parental Abduction ..... 1053

    B. Full Faith and Credit for Child Custody Determinations: The P.K.P.A. as an Extension of the Full Faith and Credit Clause ..... 1061

III. The Extradition Act: The Inception of the Extradition Act and Its Purpose ..... 1064

IV. *California v. Superior Court*: A Case of Competing Principles. 1068

    A. The Facts ..... 1068

    B. The Majority’s Decision ..... 1070

    C. The Dissent’s Reasoning ..... 1071

V. An Analysis of the Extradition Act in the Context of the Child Custody Battle: An Additional Weapon for Warfare ..... 1072

VI. Conclusion ..... 1081

I. INTRODUCTION

While waiting for a school bus in Slidell, Louisiana, on March 9, 1984, Jennifer and Jamie Smolin were picked up by their father, Richard Smolin, and taken to Richard’s residence in California.<sup>1</sup> Pursuant to proceedings instituted by Judith Pope, Smolin’s ex-wife and the children’s mother, Richard was charged with two counts of violating the Louisiana kidnaping statute.<sup>2</sup> Judith’s filing of criminal charges against her ex-husband was yet

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1. See *People v. Superior Court*, 716 P.2d 991, 992 (Cal. 1986), *rev’d*, \_\_\_ U.S. \_\_\_, 107 S. Ct. 2433, 96 L. Ed. 2d 332 (1987). Richard took the children from a bus stop located in St. Tammany Parish, Louisiana. See *id.* At this time the children had been moved to Louisiana from their home state of California by their mother and stepfather. See *id.* at 992-93.

2. See *id.* at 993. Richard and his father, who assisted Richard in getting the children, were charged with kidnaping Jennifer and Jamie. See *California v. Superior Court*, \_\_\_ U.S. \_\_\_, 107 S. Ct. 2433, 2436, 96 L. Ed. 2d 332, 338 (1987)(Smolin charged with kidnaping under Louisiana law). Judith asserted that the Smolins acted “without authority to remove [the] children from [her] custody.” *Id.* The Louisiana kidnaping statute entitled “interference with custody of a child” defines the offense with which the Smolins were charged as: intentional taking, enticing or decoying away and removing from the state, by any parent,

another episode in the estranged couple's raging six-year custody battle.<sup>3</sup> The Governor of Louisiana, in compliance with the Extradition Act of 1793,<sup>4</sup> requested that the Governor of California deliver Richard Smolin to Louisiana to stand trial on the kidnaping charges.<sup>5</sup> Prior to the alleged kidnaping, Richard had obtained sole custody of the Smolin children through modifications of an original California custody decree awarding sole custody to Judith.<sup>6</sup> Modification by the California courts was predicated upon

of his or her child, from the custody of any person to whom custody has been awarded by any court of competent jurisdiction of any state, without the consent of the legal custodian, with intent to defeat the jurisdiction of the said court over the custody of the child. LA. REV. STAT. ANN. § 14:45(A)(4) (West 1986).

3. See \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2435-36, 96 L. Ed. 2d at 337. Richard and Judith Smolin obtained a divorce in California in 1978. See *id.* Judith was awarded sole custody of the children subject to Richard's visitation rights. See *id.* at \_\_\_, 107 S. Ct. at 2436, 96 L. Ed. 2d at 338. Until Judith remarried in 1979, both she and Richard resided in San Bernardino County, California; Richard exercised his visitation rights without serious event and paid child support. The custody battle began in earnest when Judith moved to another state without notifying Richard. See *id.* at \_\_\_, 107 S. Ct. at 2435-36, 96 L. Ed. 2d at 337. While in Texas, one of the states to which she moved, Judith obtained a Texas court decree which granted full faith and credit to the original California custody order awarding her sole custody. See *id.* at \_\_\_, 107 S. Ct. at 2436, 96 L. Ed. 2d at 337. Richard, although served, did not appear in these Texas proceedings but sought and obtained a modification of the California decree in the Superior Court of California. See *id.*

4. 18 U.S.C. § 3182 (1982). The Extradition Act provides that when the executive authority of a state or territory demands an accused criminal from the executive authority of another state or territory to which the person has fled, the latter executive is to arrest the accused and notify the demand state charging the accused with having committed a crime. See *id.*

5. See \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2436, 96 L. Ed. 2d at 338. On June 24, 1984, the Governor of Louisiana gave the Governor of California formal notice that the Smolins were charged with kidnaping and their delivery for trial was demanded. See *id.*; see also *People v. Superior Court of California*, 716 P.2d 991, 993-94 (Cal. 1986), *rev'd*, \_\_\_ U.S. \_\_\_, 107 S. Ct. 2433, 96 L. Ed. 2d 332 (1987) (Governor of Louisiana issued warrant for Smolin's extradition). The demand for extradition was accompanied by an information, Judith's affidavit, and an "Application of Requisition" along with arrest warrants. See *id.* When the Smolin case reached the Supreme Court of California, the record indicated that both Judith and the assistant district attorney who filed the information had been aware of the modified California custody orders. The assistant district attorney admitted knowing, at the time he charged Richard with kidnaping, that the California custody decree granted Richard sole custody of the children. See *id.* at 993 n.1. He stated that Richard had nonetheless committed a crime because, in his opinion, the California judgment was obtained by fraudulent misrepresentations and was therefore void. He considered the valid custody order to be the one issued by Texas on February 13, 1981. See *id.*

6. See *Superior Court*, 716 P.2d 991, 992 (Cal. 1986), *rev'd*, \_\_\_ U.S. \_\_\_, 107 S. Ct. 2433, 96 L. Ed. 2d 332 (1987) (Richard awarded sole custody after court found Judith's refusal of contacts between Richard and children). Two modifications of the original California custody order transpired at Richard's instigation. See *id.* The first alteration, occurring in October 1980, changed the original award of sole custody to Judith to joint custody. Finally, on February 27, 1981, Richard received sole custody of the children. An attempt to serve Judith with

Judith's violation of the terms of the original custody order.<sup>7</sup> Although Richard had been awarded sole custody of Jennifer and Jamie by the California courts prior to the alleged kidnaping, the State of California issued a warrant for his extradition to Louisiana to face the charges against him.<sup>8</sup>

The above scenario illustrates an instance of parental kidnaping, a subject of continuing societal alarm.<sup>9</sup> The Parental Kidnaping Prevention Act<sup>10</sup> (hereinafter P.K.P.A.) is Congress' attempt to provide stability for the custody-embattled family by deterring parental abduction.<sup>11</sup> The P.K.P.A. proposes two preventive measures to quell custody disputes.<sup>12</sup> First, the

the actual modification order proved futile at first because she had moved from Texas, where Richard had last heard from her, without leaving a forwarding address. She was eventually located in Louisiana in February 1984 and served with the modification order one month before the alleged kidnaping. *See id.*

7. *See id.* at 992-93. Upon the dissolution of the Smolin marriage in 1978, Judith was awarded custody of the two children subject to visitation rights for Richard. *See id.* at 992. When Judith remarried, however, she moved three times, initially to Oregon, next to Texas and eventually to Louisiana. *See id.* at 992-93. The resultant modifications of the original custody decree were based on findings by the California courts that Judith had intentionally frustrated Richard's visitation rights by moving without notifying him and refusing him contact with his children to which he was legally entitled. After the alleged abduction, Judith returned to California in order to recover custody. However, after three days of hearings, a California court affirmed the earlier California decision to grant sole custody to Richard. *See id.* at 993.

8. *See Superior Court*, 716 P.2d at 995. Both Louisiana and California had adopted the Uniform Criminal Extradition Act. *See id.*; LA. CODE CRIM. PROC. ANN. arts. 261-280 (West Supp. 1988); CAL. PENAL CODE §§ 1547-1558 (Deering 1988). Section three of the uniform act dictates that if a demand for extradition alleges that the accused was in the demanding state at the time of the crime and later fled therefrom, such demand must be respected by the asylum state. *See* UNIFORM CRIMINAL EXTRADITION ACT, 11 U.L.A. 59, 92 (1974). An indictment, affidavit, or an information which substantially charges the accused with violating the laws of the demand state must be made before a magistrate and accompany the demand. *See id.*

9. *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96th Cong., 2d Sess. 1, 3 (1980) (statement of Sen. Cranston). Reflecting upon the findings of the Committee on Child and Human Development which conducted a field hearing on parental kidnaping, one of the Act's proponents revealed: "What was most dramatically portrayed and repeatedly emphasized at this hearing—and what touched me most personally—was the tremendous heartache and anguish caused by these incidents of childsnatching . . . . Thousands of parents and thousands of innocent children are subjected to emotionally and psychologically damaging ordeals." *Id.*

10. 28 U.S.C. § 1738A (1982).

11. Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, §§ 6-10, 94 Stat. 3566, 3569 (codified at 28 U.S.C. § 1738A (1982)). Congress listed among the six general purposes of the Act "to discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child." *Id.* § 7(c)(4), 94 Stat. at 3569.

12. *See* 28 U.S.C. § 1738A(a), (c) (1982).

P.K.P.A. delineates jurisdictional criteria for determining the decree state, alleviating uncertainty concerning which state is legally entitled to pronounce custody judgments by attributing to only one state the qualifications of the "decree state."<sup>13</sup> Secondly, the P.K.P.A. confers full faith and credit upon determinations rendered by the state which, under the Act, is the proper decree state.<sup>14</sup>

Incidents involving interstate rendition of custodial parents present the issue of whether the custodial parent, as determined by a properly rendered custody decree, must be extradited as a fugitive when accused of kidnaping children legally within his or her custody.<sup>15</sup> The United States Supreme Court granted certiorari in the Smolin case to determine whether a court is prevented by the extradition clause of the United States Constitution<sup>16</sup> and

13. *Id.* 28 U.S.C. § 1738A (c). Under the P.K.P.A., Congress has established the concept of "home state" for determining the proper jurisdiction for custody decree purposes. *See id.*; *see also* Jones v. Jones, 456 So. 2d 1109, 1111 (Ala. Civ. App. 1984)(questions of jurisdiction in interstate child custody cases must be determined by reference to P.K.P.A.). Under the P.K.P.A. it is possible for only one state to have jurisdiction. *See id.*; *see also, e.g.*, Rogers v. Platt, 641 F. Supp. 381, 385 (D.D.C. 1986)(possible for only one state to be child's "home state" or to have been "home state" of child within six months of decree); Wyman v. Larner, 624 F. Supp. 240, 244 (S.D. Ind. 1985)(court located in child's home state has jurisdiction to render custody decree). "Home state" is defined as the State in which, "immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as a parent, for at least six consecutive months . . ." 28 U.S.C. § 1738A(b)(4) (1982). *See generally* Donigan, *Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction*, 19 GONZ. L. REV. 1 (1983)(discussing states' jurisdictional bases for making child custody decrees under federal legislation).

14. *See* 28 U.S.C. § 1738A(a) (1982). The Act begins with a recitation of a full faith and credit provision pertinent to custody determinations. *See id.*; *see also, e.g.*, Heartfield v. Heartfield, 749 F.2d 1138, 1140 (5th Cir. 1985)(Act imposes duty on state courts to enforce custody determinations made by other state courts which accord with terms of § 1738A); Mitchell v. Mitchell, 437 So. 2d 122, 125 (Ala. 1982)(courts required by P.K.P.A. to extend full faith and credit to child custody determinations of sister states rendered consistently with federal act). The judgment of a sister state can be enforced by injunction, habeas corpus, a petition or motion, contempt, a civil action, or any other means available under a state's laws for the enforcement of custody decrees. *See Mitchell*, 437 So. 2d at 126; Wheeler v. Buick, 452 So. 2d 854, 856 (Ala. Civ. App. 1984)(Alabama courts required to enforce sister states' custody judgments rendered according to P.K.P.A.). The P.K.P.A. does not condition full faith and credit for custody decrees upon a judgment being immutable as does the Full Faith and Credit Clause of article IV; every state is required to afford full faith and credit to custody determinations which comply with the P.K.P.A. even though such determinations may later be modified. *See generally* Note, *The Parental Kidnaping Prevention Act: Application and Interpretation*, 23 J. FAM. L. 419, 419-22 (1983-84)(custody judgment need not be final to merit full faith and credit in each state).

15. *See* California v. Superior Court, \_\_\_ U.S. \_\_\_, \_\_\_, 107 S. Ct. 2433, 2437, 96 L. Ed. 2d 332, 339 (1987)(majority of California Supreme Court found custodial parent under P.K.P.A. incapable of kidnaping children within his custody).

16. U.S. CONST. art. IV, § 2, cl. 2.

the Extradition Act<sup>17</sup> from refusing extradition on the ground that the alleged parental kidnaper has custody.<sup>18</sup>

The extradition clause of the United States Constitution maintains that the integrity of each state's criminal justice system be upheld against alleged criminals who flee from one state to another attempting to escape legal process.<sup>19</sup> The Constitution provides for the extradition of persons "charged in any state with Treason, Felony or other Crime" from the state of refuge to "the State having jurisdiction of the crime."<sup>20</sup> The Extradition Act of 1793<sup>21</sup> was enacted by Congress to facilitate the interstate extradition of fugitives.<sup>22</sup> Extradition proceedings have traditionally been conducted in a

17. 18 U.S.C. § 3182 (1982).

18. *See California v. Superior Court*, \_\_\_, U.S. \_\_\_, 107 S. Ct. 568, 93 L. Ed. 2d 572 (1987)(petition for writ of certiorari granted to Supreme Court of California on December 1, 1986). The California Supreme Court indicated awareness of its duty to enforce the extradition provision of the Constitution in order to prevent criminal offenders from finding a permanent asylum in California. *See People v. Superior Court*, 716 P.2d 991, 999 (Cal. 1986), *rev'd*, \_\_\_, U.S. \_\_\_, 107 S. Ct. 2433, 96 L. Ed. 2d 332 (1987). The court, however, refused to ignore the fact that the imposition of extradition is a significant restraint of liberty which should be appropriately balanced against the constitutional interests of interstate comity and efficiency of justice. *See id.* at 1000; *Commonwealth v. Gedney*, 386 A.2d 942, 948 (Pa. 1978)(extradition proceeding is significant pretrial restraining of liberty and government's interest must be met constitutionally); *cf. Gerstein v. Pugh*, 420 U.S. 103, 114 (1975)(state's interest in effecting justice must comply with Constitution as condition for significant pretrial restraint on liberty).

19. *See U.S. CONST.* art. IV, § 2, cl. 2; *see also Crumley v. Sneed*, 620 F.2d 481, 482 (5th Cir. 1980)(Constitution imposes duty upon states to extradite fugitives). The framers of the Constitution sought an efficient criminal justice system by deemphasizing state boundaries and enforcing the concepts of comity and full faith and credit. *See id.* at 483. Therefore, the states are under a constitutional duty to extradite fugitives. *See id.* at 482; *Gage v. State*, 397 So. 2d 265, 268 (Ala. Crim. App. 1981). The extradition clause is for the protection and benefit of the constituent states and territories enabling them to obtain fugitives which have fled prosecution of their crimes. *Gullick v. Sampson*, 395 A.2d 187, 188 (N.H. 1978)(Constitution provides for extradition of prisoners to prevent states from becoming havens for criminals).

20. U.S. CONST. art. IV, § 2, cl. 2; *see also Robinson v. Vaclavik*, 477 F. Supp. 75, 76 (E.D. Mo. 1979)(Constitution imposes obligation on states to extradite fugitives upon proper demand); *People v. Siler*, 406 N.E.2d 891, 894 (Ill. App. Ct. 1981)(extradition not matter of mere comity but absolute right of demanding state and duty of asylum state); *Wise v. State*, 251 N.W.2d 373, 376 (Neb. 1977)(right of one state to seek fugitive from justice from another founded upon United States Constitution).

21. 18 U.S.C. § 3182 (1982).

22. *See Brewer v. Goff*, 138 F.2d 710, 711 (10th Cir. 1943)(Constitution's provision and procedural statute intended for use by closely associated states to effectuate administration of justice); *Thomas v. Levi*, 422 F. Supp. 1027, 1932 (E.D. Pa. 1976)(Extradition Act originally passed to implement Constitution and applies to extradition of fugitives among several states); *Papas v. Brown*, 410 N.E.2d 568, 571 (Ill. App. Ct. 1981)(extradition legislation designed for expeditious procedure for trying suspects in state where alleged offense occurred). The states themselves are permitted to legislate in an effort to facilitate extradition and are allowed to mandate rendition on terms less exacting than those of the Extradition Act. *See South Dakota v. Brown*, 576 P.2d 473, 477 (Cal. 1978)(Constitution leaves in hands of state executive "faith-

summary manner, the asylum state being permitted to make only a cursory inquiry as to whether the accused has been charged with a crime by the demanding state.<sup>23</sup> This traditional application of the Extradition Act within the context of the custody battle contradicts congressional purposes underlying the P.K.P.A., a legislative proposal which demands, for its success, that full faith and credit be given to custody decisions rendered in its accord.<sup>24</sup> An evaluation of the effect of traditional extradition proceedings in cases involving parental kidnaping is, therefore, necessary to determine whether such traditional application hinders rather than furthers the prevention of parental kidnaping.<sup>25</sup>

An examination of the concerns which provoked congressional formulation of the P.K.P.A. is beneficial in understanding the implications of a decision to impose the threat of extradition on the custodial parent. Therefore, this comment will first explore the congressional purposes underlying the P.K.P.A. and the significance of the P.K.P.A.'s full faith and credit provisions. Secondly, an overview of the Extradition Act will provide an understanding of the role of extradition in the criminal justice system. Additionally, an analysis of the Extradition Act as applied to parental kidnaping will expose the inconsistency between the Extradition Act and the P.K.P.A. in the context of the custody battle. Finally, a proposal will be made for modified application of the Extradition Act in child custody cases involving alleged parental kidnaping.

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ful execution of the extradition obligation"). Thus, uniform acts are not offensive to the Constitution which does not intend to limit the right of extradition. *See id.*; UNIFORM CRIMINAL EXTRADITION ACT, 11 U.L.A. 59 (1974)(model act proposed to establish uniform state extradition standards).

23. *See, e.g.*, *Appleyard v. Massachusetts*, 203 U.S. 223, 227 (1906)(simple inquiry by asylum state must be whether person charged by demanding state is in fact fugitive); *Roberts v. Reilly*, 116 U.S. 80, 95 (1885)(executive authority of asylum state has duty to arrest alleged fugitive when executive authority of demanding state requests such person as fugitive from justice); *Ex parte Reggel*, 114 U.S. 642, 651 (1885)(Congress did not impose on executive authority of asylum state duty to surrender accused unless it appears that he is fugitive from justice).

24. *See California v. Superior Court*, \_\_\_ U.S. \_\_\_, \_\_\_, 107 S. Ct. 2433, 2446, 96 L. Ed. 332, 350 (1987) (Stevens, J., dissenting). Rendering citizens as fugitives who have complied with the federal law on child custody produces inconvenience and injustice and provides estranged parents an inappropriate method for fighting the custody battle. *Id.*

25. *See id.* at \_\_\_, 107 S. Ct. at 2241, 96 L. Ed. 2d at 343 (majority opinion). Justice O'Connor, writing for the Court's majority, stated in regard to extraditing the Smolins that "[i]f the Smolins are correct [in their claim of legal custody], they are not only innocent of the charges made against them, but also victims of a possible abuse of the criminal process." *Id.*

## II. THE PARENTAL KIDNAPING PREVENTION ACT: ITS PURPOSE AND PLAN

### A. *The P.K.P.A.: A Legislative Proposal To Prevent Parental Abduction*

In December of 1980, Congress enacted legislation popularly known as the Parental Kidnaping Prevention Act.<sup>26</sup> The P.K.P.A. was prompted primarily by the increased incidence of interstate childsnatchings<sup>27</sup> and the consequential detriment to the well-being of both children and parents.<sup>28</sup> A joint hearing of the House and Senate held to discern prevalent issues regarding parental kidnaping revealed the occurrence of an estimated 25,000 to 100,000 such disappearances per year.<sup>29</sup> In disregard of custody decrees,

26. See Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, §§ 6-10, 94 Stat. 3566, 3568. Public Law 96-611 was enacted December 28, 1980, the date commonly construed as the Act's effective date. See Shutter, *Parental Kidnaping Prevention Act—Panacea or Toothless Tiger?*, 55 FLA. B.J. 479, 482 n.1 (1981). The statute was enacted as an amendment to title XVIII of the Social Security Act which was passed on December 13, 1980 by a lame duck Congress and signed by President Carter, a lame duck president, on December 28, 1980. See *id.* at 479.

27. "Childsnatching" is a term commonly used in the literature on parental child abduction. See, e.g., Note, *The Search For a Solution To Child Snatching*, 11 HOFSTRA L. REV. 1073, 1073 (1983). "Each year thousands of children disappear from their homes and families . . . . A large percentage of these missing children can be classified as victims of child snatching—they have been abducted from the parent entitled to legal custody by the parent not entitled to legal custody." *Id.*

28. See 28 U.S.C. § 1738A (1982). The official title of the Act exposes the Act's purpose: "Full faith and credit given to child custody determinations." The first provision of the Act commands that "[t]he appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determinations made consistently with the provisions of this section by a court of another State." *Id.* § 1738A(a); see also *Pierce v. Pierce*, 640 P.2d 899, 903 (Mont. 1982)(P.K.P.A. elevated jurisdictional standards to federal level giving full faith and credit to determinations made in accordance with federal law). Public concern regarding parental abduction was being reflected by the increased number of state anti-abduction laws. *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96 Cong., 2d Sess. 1, 10 (1980)(prepared statement of Sen. Wallop). Senator Wallop further commented: "The psychic, and sometimes physical harm to the children involved, and to their parents cannot be underestimated . . . . [C]hildsnatchings induce fear, guilt and anger in children and have long-lasting, emotionally damaging consequences for the child-victim." *Id.* at 10-11. See generally *Parental Kidnaping Prevention Act of 1980—An Idea Whose Time Has Come*, 2 CHILD. LEGAL RTS. J. 10, 12 (1981)(Act has potential to deter childsnatching, form of child abuse).

29. See *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96 Cong., 2d Sess. 1, 1 (Statement of Sen. Mathias). The estimate of annual kidnapings is based on reported cases only—child welfare experts believe that three times as many parental kidnaping incidents occur each year. See *id.*; see also Note, *The Parental Kidnaping Prevention Act—Analysis and Impact on Uniform*



noncustodial parents increasingly were found to be abducting their own children and retreating to another state.<sup>30</sup> In consummation of the kidnaping, the typical abducting parent would attempt modification of the original custody decree in the state of refuge, subsequently, establishing legal custody in himself or herself under the laws of the modifying state.<sup>31</sup> The ability to obtain such a modification exposed a serious deficiency within the Uniform Child Custody Jurisdiction Act<sup>32</sup> (U.C.C.J.A.), a previous model code intended to repress interstate kidnaping.<sup>33</sup>

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*Child Custody Jurisdiction*, 27 N.Y.L. SCH. L. REV. 553, 555 n.14 (1981)(childsnatching under Act includes restraint of child by one parent adverse to other parent's right of visitation or custody). Technically speaking, one who seizes his or her children in violation of a custody decree is not a kidnaper as defined by most states' statutes. See *Flood v. Braaten*, 727 F.2d 303, 304 n.1 (3d Cir.1984)(parents who violate custody decrees frequently referred to as "kidnapers"). When the terms "kidnaping" or "abduction" are used in the literature on parental abduction, they are meant in the non-technical sense that they have acquired in the child custody area. See *id.*

30. Parental Kidnaping Prevention Act of 1980, Pub. L. No. 96-611, § 7, 94 Stat. 3566, 3568. Section seven of Public Law 96-611 clearly states the subject of Congress' address:

The Congress finds that there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts of different States, the District of Columbia, the commonwealth of Puerto Rico, and the territories and possessions of the United States.

*Id.*; see also *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96 Cong., 2d Sess. 3 (statement of Sen. Cranston). A field hearing by the Subcommittee on Child and Human Development revealed that only ten percent of abducted children are ever found by the custodial parent, a cause of tremendous heartache and anguish. See *id.* "Thousands of parents and thousands of innocent children are subjected to emotionally and psychologically damaging ordeals . . . . [C]hildsnatching is, indeed, a subtle and serious form of child abuse." *Id.*

31. *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96 Cong., 2d Sess. 1, 207 (statement of Rep. Ertel).

Although thirty-nine states have adopted the Uniform Child Custody Jurisdiction Act, (U.C.C.J.A.), there is no guarantee that such a measure insures that the decisions of one state will be respected or adhered to by another. If a state grants custody to one parent, there is little to stop [the] other parent from abducting the child and gaining custody in a different state. The ineffectiveness of this system increases the likelihood that parental kidnaping will occur in the first place.

*Id.*; see also Note, *The Effect of the Parental Kidnaping Prevention Act of 1980 on Child Snatching*, 17 NEW ENG. L. REV. 499, 502 (1981-82). Child custody matters are within the purview of domestic relations, traditionally a field of law exclusively within the state province. See *id.* State laws alone have proved inadequate to the problem of parental kidnaping because state law is incapable of performing interstate regulation and custody decrees, under states' laws, are nonfinal and subject to modification. See *id.* at 502-03.

32. 9 U.L.A. 111 (1967).

33. See *id.* at 114 (commissioner's prefatory note) (Act designed to bring measure of interstate stability in custody awards). To eliminate the tendency of courts to arbitrarily modify

As the contemporary law on the subject when the P.K.P.A. was drafted, the U.C.C.J.A. proved to be a mechanism for prolonging interstate custody disputes and thus ineffectively deterred parental kidnaping.<sup>34</sup> The U.C.C.J.A. is devoid of a full faith and credit mechanism effective in establishing one state's custody judgments as final decrees in other states because the law itself allows arbitrary modification by one state of another state's custody judgments and does not provide that its acceptance is mandatory, leaving unadopting states as harbors of refuge to the parental kidnaper.<sup>35</sup>

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the custody decrees of sister states, the U.C.C.J.A. proposed uniform legislation for voluntary adoption by the States to establish orderly processes for custody determination. *See id.* at 114. Only 39 states had adopted the U.C.C.J.A. when the P.K.P.A. was introduced, thus leaving a significant number of states as safe havens for childsnatchers. *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resource*, 96 Cong., 2nd Sess. 5 (statement of Senator Mathias). The U.C.C.J.A. has now been adopted by all of the states, Texas and Massachusetts being the last states to adopt the Act. *See Walker and Freed, Family Law in the Fifty States: An Overview*, 18 FAM. L. J. 369, 428 (1985). For a complete discussion of the U.C.C.J.A. see generally Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207 (1969).

34. *See Parental Kidnaping Prevention Act of 1980—An Idea Whose Time Has Come*, 2 CHILD. LEGAL RTS. J. 10, 11 (1980-81). Under the U.C.C.J.A., when parents received unfavorable custody decisions, they were often able to obtain a more favorable ruling by state-shopping. *See id.* Despite the Act's intended purposes, the legal system inadvertently promoted kidnaping as a result of deficiencies in the law. *See id.* The stated purposes of the U.C.C.J.A. are to:

- (1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
- (2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;
- (3) assure that litigation concerning the custody of a child takes 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 close connection with another state;
- (4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;
- (5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;
- (6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;
- (7) facilitate the enforcement of custody decrees of other states;
- (8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and
- (9) make uniform the law of those states which enact it.

*Id.* UNIFORM CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 111, 116-17 (1967).

35. Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, § 7(a)(4), 94 Stat. 3566,

The U.C.C.J.A. is, therefore, inept at preventing random modification of custody decrees and fails to provide a means for eliminating the problem of custody decree recognition.<sup>36</sup> The inadequacy of the U.C.C.J.A. led Congress to acknowledge the need for effective interstate regulation governing recognition of custody determinations.<sup>37</sup>

The drafters of the P.K.P.A. sought to remedy the impotence of prior attempts to impose enforcement of one state's properly rendered custody determinations upon all other states.<sup>38</sup> Since previous law had left to the

3568. Congress found inconsistent and conflicting practices among the courts of the various jurisdictions in determining their jurisdiction to decide custody disputes. *See id.* This condition encouraged parties to resort to forum shopping seeking favorable custody decrees. Among the results of these activities Congress found "the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions." *Id.*

36. *See id.*

37. *See generally* Note, *The Parental Kidnaping Prevention Act: Application and Interpretation*, 23 J. FAM. L. 419, 426 (1984-85)(P.K.P.A. drafted in part to fill gaps of U.C.C.J.A.). The P.K.P.A. is designed to preempt conflicting provisions of both the U.C.C.J.A. and state law. *See, e.g.,* McBride v. Sokol, 469 So. 2d 645, 646 (Ala. Civ. App. 1985)(P.K.P.A. and U.C.C.J.A. govern interstate custody disputes and between two statutes P.K.P.A. shall prevail); Frederick v. Barbara, 454 N.Y.S.2d 202, 204 (Fam. Ct. 1982)(P.K.P.A. and U.C.C.J.A. contain fundamental differences and where they conflict P.K.P.A. deemed controlling); Marks v. Marks, 315 S.E.2d 158, 160 (S.C. Ct. App. 1984)(federal act governing custody disputes preempts any conflicting state law).

38. Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, § 7 (c), 94 Stat. 3566, 3569. The Act proposes to:

- (1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;
- (2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;
- (3) facilitate the enforcement of custody and visitation decrees of sister States;
- (4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;
- (5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and
- (6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.

*Id.*; *see also, e.g.,* Tufares v. Wright, 644 P.2d 522, 525 (N.M. 1982)(one of main purposes of P.K.P.A. to discourage forum shopping); Belosky v. Belosky, 640 P.2d 471, 474 (N.M. 1982)(purpose of PKPA to prevent forum shopping); Voninski v. Voninski, 661 S.W.2d 872, 875 (Tenn. Ct. App. 1982)(stated purpose of Act to create national standards for courts to determine their jurisdiction to decide custody disputes). The two Acts have been said to coexist; however, one author explains: "It may be somewhat of an overstatement to assert that the P.K.P.A. preempts the U.C.C.J.A., or it may be hypertechnical to say that it does *not* preempt. Where the two statutes conflict, preemption in fact does occur." Foster, *Child Custody Jurisdiction: UCCJA and PKPA*, 27 N.L.Y. SCH. L. REV. 297, 335 (1981)(emphasis in original). The U.C.C.J.A. emphasizes a state's initial and modification jurisdiction and was promulgated

discretion of each state whether to adopt its provisions, abductors could establish a safe haven within nonadopting states.<sup>39</sup> Responding to such inadequacy, Congress enacted the P.K.P.A., a federal law demanding the compliance of every state.<sup>40</sup> Child custody legislation prior to the appearance of the P.K.P.A. was characterized by ambiguity as to which state had authority in any particular custody dispute and as to the endurance of that jurisdiction once established; the right of any state to acquire authority over custody disputes could rarely be contested because the law itself could be construed to justify interference.<sup>41</sup> The most significant improvement made

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for state enactment, whereas the P.K.P.A. is a federal statute concerned, primarily, with enforcement and modification of custody decrees. *See id.* at 331. "In other words, the U.C.C.J.A. deals with traditional state concerns, and the P.K.P.A. with traditional federal concerns but instead of complementation there is confrontation and the P.K.P.A. is bound to win." *Id.* UNIFORM CHILD CUSTODY JURISDICTION ACT, 9 U.L.A. 111, 114 commissioner's prefatory note (1967). "The [U.C.C.J.A.] is not a reciprocal law." *Id.* Regardless of enactment by other states, the U.C.C.J.A. can fully operate in each individual state; however, its full benefits can be received only by a large number of states enacting the law and by courts developing an "interstate" approach to custody. *See id.*

39. *See, e.g.,* Neilson v. Neilson, 472 F.2d 133, 136 (5th Cir. 1985)(issuance of competing decrees by sister states cause of child custody legislation); Neger v. Neger, 459 A.2d 628, 633 (N.J. 1983)(absence of stability in custody awards led to legislation to discourage seize and run tactics of forum shopping parents); M.D. v. B.D., 485 A.2d 813, 815 (Pa. 1984)(lack of cooperation and nonenforcement of foreign custody decrees led to legislation to prevent jurisdictional conflicts and relitigation of custody awards). *See generally* Note, *The Parental Kidnaping Prevention Act: Analysis and Impact on Uniform Child Custody Jurisdiction Act*, 27 N.Y.L. SCH. L. REV. 553, 564 (1981)(only federal law will reduce incentive to snatch). Inherent obstacles in a decentralized style of federal government have prevented the U.C.C.J.A. from becoming a satisfactory answer to the child abduction problem. *Id.*

40. 28 U.S.C. § 1738(a) (1982). According to its own terms, the law is applicable to every state, the individual states being bound to comply with the provisions of the federal Act. *See id.* The P.K.P.A. is the first federal statute created to prevent childsnatching; it mandates enforcement of custody awards in an attempt to eliminate interstate controversy. *See* Note, *The Effect of the Parental Kidnaping Prevention Act of 1980 on Childsnatching*, 17 NEW ENG. L. REV. 499, 508-509 (1982).

41. *See* Note, *The Parental Kidnaping Prevention Act—Analysis and Impact on Uniform Child Custody Jurisdiction*, 27 N.Y.L. SCH. L. REV. 553, 565 (1981)(no way to insure proper application of Act). Even among states which adopted the Uniform Act, forum shopping prevailed due to intentional or negligent misconstruction of the Act by those states' courts. *See id.* Under the traditional doctrine known interchangeably as the doctrine of "changed circumstances" or "best interest of the child," if a change in circumstances affected the child's welfare, many state courts under the U.C.C.J.A. felt free to modify the custody decree. *See, e.g.,* Ford v. Ford, 371 U.S. 187, 194 (1962)(courts of South Carolina not precluded from deciding best interest of children and modifying decree accordingly); Batchelor v. Fulcher, 415 S.W.2d 828, 836 (Ky. 1967)(custody orders from one state must receive full faith and credit in other states subject to changed circumstances after entry of original order); Berlin v. Berlin, 235 N.E.2d 109, 112 (N.Y. 1967)(Maryland decree subject to modification by New York courts upon showing that change of custody serves child's best interest). "Even with the Uniform Child Custody Jurisdiction Act, there is little coordination between states. There is no

by the P.K.P.A. to the decree recognition problem was its clear assertion of a single jurisdictionally proper decree state and specific provisions ensuring the continuity of that jurisdiction.<sup>42</sup>

The P.K.P.A.'s primary means of upholding the sanctity of child custody determinations entails a two-step process involving, first, the clarification of the proper decree state<sup>43</sup> and, second, the establishment of the decree state

fundamental consensus as to the nature of the crime itself, and there is no effective mechanism for resolving the dispute." *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96 Cong., 2d Sess. 1, 209 (statement of Rep. Ertel). See generally Note, *The Parental Kidnaping Prevention Act: Application and Interpretation*, 23 J. FAM. L. 419, 421 (1984-85) (Uniform Act failed to deter states determined to exercise jurisdiction from improper exercise thereof). The flexible provisions of the U.C.C.J.A. were capable of being interpreted to permit an interested state to assert its right to govern a dispute. See *id.* For a complete discussion of the U.C.C.J.A. and an analysis of its shortcomings see generally Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CAL. L. REV. 978 (1977).

42. 28 U.S.C. § 1738A(c)(1)(2) (1982) (Act determines decree state as "home state" of child). The Act provides that:

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.

*Id.* § 1738A(d). One source comments: "The P.K.P.A. is a departure from the jurisdictional requirements of the U.C.C.J.A. and this departure is critical to the efficacy of the new Act because a state court may no longer modify existing decrees of other states pursuant to the various and flexible bases of jurisdiction provided by the U.C.C.J.A." Note, *The Parental Kidnaping Prevention Act: Application and Interpretation*, 23 J. FAM. L. 419, 426 (1984-85).

43. 28 U.S.C. § 1738A(c) (1982). The jurisdictional bases are enumerated within the Act as follows:

(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if

- (1) such court has jurisdiction under the law of such State; and
- (2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A) and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such 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;

as the final arbiter of the custody battle.<sup>44</sup> Any child custody determination made under the provisions of the P.K.P.A. must be according to its terms by the authorities of every state.<sup>45</sup> A custody determination is consistent with the P.K.P.A. only if the court rendering the decree had jurisdiction under that state's law.<sup>46</sup> Once this preliminary jurisdictional prerequisite is fulfilled, the power to make an initial decree depends upon several factors.<sup>47</sup> Foremost, the P.K.P.A. requires the rendering state to be the home state of the child when the original custody proceedings commence.<sup>48</sup> The P.K.P.A. defines "home state" as the state in which the child lived for a period of at least six consecutive months before child custody proceedings were initi-

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

*Id.* The home state is the preferred forum for granting custody decrees under the Act and is automatically deemed the decree state if the child has lived within the state within six months of legal action. *See* Donigan, *Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction*, 19 GONZ. L. REV. 1, 8-9 (1983-84).

44. 28 U.S.C. § 1738A(d) (1982). The legislative history reveals the purposes of section (d) of the P.K.P.A. to be the elimination of forum shopping and promotion of familial stability vital to the well-being of the child. *See* Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, § 7(c)(4), 94 Stat. 3566, 3568.

45. 28 U.S.C. § 1738A(a) (1982). One source referred to section (a), the primary full faith and credit provision of the Act, as "an extraordinary event. For the first time since 1804, 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.'" McGough & Hughes, *Charted Territory: The Louisiana Experience with the U.C.C.J.A.*, 44 LA. L. REV. 19, 61 (1983-84).

46. 28 U.S.C. § 1738A(c)(1) (1982).

47. *See Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96th Cong., 2d Sess. 1, 141 (1980) (statements of Wallace Mlyniec and Nay Hiestand). Congress has no power to proscribe the jurisdictional competence of the states' courts. *Id.* Under art. IV, section 1 of the United States Constitution, however, Congress is at liberty to prescribe the effect given to the states' custody determinations. *See id.* *See generally* Note, *The Parental Kidnaping Prevention Act—Analysis and Impact on Uniform Child Custody Jurisdiction*, 27 N.Y.L. SCH. L. REV. 553, 566 (1981) (Congress' power to enact P.K.P.A. extends only to commanding recognition and enforcement of decrees rendered according to jurisdictional standards which Congress set forth).

48. 28 U.S.C. § 1738A(2)(d) (1982); *see also, e.g.,* Wyman v. Larnar, 624 F. Supp. 240, 243 (S.D. Ind. 1985) (because Indiana is home state of infant, courts of Indiana have jurisdiction to determine parent entitled to custody); Terry v. Sweat, 394 So. 2d 634, 636 (Ala. Civ. App. 1986) (since Georgia was child's home state under P.K.P.A. Georgia courts had power to render decree relating to custody of child); Cooper v. Hamilton, 688 S.W.2d 821, 823 (Tenn. 1985) (home state of child is that state where child resides immediately before institution of custody proceedings).

ated.<sup>49</sup> However, if the child is absent from his or her home state due to removal by a contestant<sup>50</sup> or for "other reason," the home state remains entitled to render a custody decree which is worthy of full faith and credit under the P.K.P.A. only if one contestant resides in the state and the state has been the home state of the child within six months of the commencement of proceedings.<sup>51</sup> If this mandated six-month period has expired prior to any action brought concerning a child custody determination, one of the alternate bases of jurisdiction under the P.K.P.A., either the "significant connection" basis<sup>52</sup> or one of the subsidiary bases,<sup>53</sup> is to be mandatorily invoked to designate the decree state.<sup>54</sup>

Determinations of the decree state are continuing and inviolable against

49. See 28 U.S.C. § 1738A (b)(4) (1982)(defining "home state").

50. See *id.* § 1738A(a)(2). The Act defines "contestant" as "a person, including a parent, who claims a right to custody or visitation of a child." *Id.*

51. See *id.* § 1738A(2)(a); see also *McDougald v. Jenson*, 786 F.2d 1465, 1482 (11th Cir. 1986)(Florida court properly asserted jurisdiction over modification petition due to family's residence in Florida for year and a half before father filed for divorce, father's continuing residence in Florida and child's presence in Florida between divorce and filing for modification); Note, *The Parental Kidnaping Prevention Act—Analysis and Impact on Child Custody Jurisdiction*, 27 N.Y.L. SCH. L. REV. 553, 567 (1981). The six-month provision has great potential for discouraging pre-decree kidnaping because the parent seeking custody, or a modification thereof, need not locate the missing child prior to the instituting of custody proceedings. See *id.* Under the P.K.P.A. the victimized parent must simply file in the foreign jurisdiction with the clerk of a family court, a certified copy of the decree of the state. See *id.* "In contrast to prior law, [the] P.K.P.A. successfully combines a sufficient state nexus with the child and exclusivity of jurisdiction to enable courts to render enforceable determinations." *Id.*

52. See 28 U.S.C. § 1738A(c)(2)(B)(ii)(1982). One rationale for the six-month limitation is given as the following: "Six months was chosen by the [drafters] because it was believed that most children become integrated into a community after that time. The new community may be the one that can provide the most meaningful hearing." See Donigan, *Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction*, 19 GONZ. L. REV. 1, 9-10 (1983-84).

53. See 28 U.S.C. §§ 1738A(c)(2)(C), (D) (1982). For a thorough explanation of the jurisdictional bases under the P.K.P.A. see Donigan, *Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction*, 19 GONZ. L. REV. 1, 12 (1982). The P.K.P.A. establishes a preference for the home state jurisdictional basis but provides for ulterior jurisdictional bases when no state in a custody case qualifies as a home state. See *id.* Under section (c)(2)(C), a state may assume jurisdiction if the child is either physically present in the state and has been abandoned or, in an emergency, the child must be protected from abuse or the threat of mistreatment. See *id.* at 13-14. The last basis for jurisdiction under the Act is section (c) (2) (D), the "no other forum" basis which serves to establish jurisdiction when no other basis under the Act is appropriate or when another state has declined to exercise jurisdiction. See *id.* at 14.

54. See generally Coombs, *Interstate Child Custody: Jurisdiction, Recognition, and Enforcement*, 66 MINN. L. REV. 711, 745 (1982)(discusses differences in jurisdictional criteria under U.C.C.J.A. and P.K.P.A.).

modification except in limited circumstances.<sup>55</sup> A state other than the decree state can modify a properly rendered custody decree only if the original court refuses to exercise its modification jurisdiction, or otherwise has no jurisdiction, and the state seeking to modify has jurisdiction to make custody determinations.<sup>56</sup> In the absence of this exception, once the original decree state has met the jurisdictional requirements of the Act and has adjudged a custody matter, the decision is not subject to another state's scrutiny but is to be afforded full faith and credit.<sup>57</sup>

B. *Full Faith and Credit for Child Custody Determinations: The P.K.P.A. as an Extension of the Full Faith and Credit Clause*

"Full faith and credit" refers to a constitutional doctrine providing that the courts of one state, in the interest of preserving comity, must grant to the judgments of other states' courts the same respect to which their own judgments are entitled.<sup>58</sup> Only final judgments merit full interstate recognition under this doctrine.<sup>59</sup> Since custody determinations have historically been subject to modification, they have not qualified as final judgments for purposes of the full faith and credit clause.<sup>60</sup> The integrity of the custody decree

55. 28 U.S.C. § 1738A(d)(1) (1982). The concept of continuing jurisdiction allows that "[t]he 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 43 (c) (1) of this section continues to be met and such State remains the residence of the child or of any contestant." *Id.*

56. *See id.*; *see also* Donigan, *Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction*, 19 GONZ. L. REV. 1, 14 (1983-84). Both the U.C.C.J.A. and the P.K.P.A. are clear "in two respects: (1) Unless the decree state declines, it now has exclusive jurisdiction to modify, and (2) this exclusive jurisdiction continues only so long as one of the contestants or the child remains in the first state." *Id.*

57. *See id.* at 25. Under the concept of continuing jurisdiction, in addition to initial custody determinations of the decree state, any modifications of that decree are *also* entitled to full faith and credit, provided that at least one contestant remains in the decree state. *Id.*

58. *See* *Christmas v. Russell*, 72 U.S. 290, 302 (1866)(authenticated judgment from one jurisdiction conclusive and not open to inquiry upon merits by another); *Morphet v. Morphet*, 502 P.2d 255, 260 (Or. 1972)(full faith and credit means one state must afford to judgments of another same credit to which its own judgments are entitled).

59. *See* *American Indus. Leasing Co. v. Law*, 458 F. Supp. 764, 768 (D. Md. 1978)(final judgment by court of competent jurisdiction prevents further action upon such determination by another state); *Frank v. Frank*, 81 A.2d 172, 174 (N.J. 1951)(where enforcement of decree within discretion of courts to enforce or annul decree not protected by full faith and credit clause); *Coane v. Girard Trust Co.*, 35 A.2d 449, 451 (Md.App. 1944)(judgment rendered by court of competent jurisdiction protected by full faith and credit clause of Constitution).

60. *See* *Ford v. Ford*, 371 U.S. 187, 192 (1962)(Virginia custody decree not res judicata under Virginia law therefore not entitled to full faith and credit in South Carolina); *Halvey v. Halvey*, 330 U.S. 610, 614 (1947)(New York could lawfully modify Florida custody decree because Florida court had right under Florida law to change decree). The court stated in *Halvey* that:



is often entirely dependent upon the recognition and deference given it by other states' courts.<sup>61</sup> Until the advent of the P.K.P.A. in 1980, the threat of modification jeopardized the central purpose of every custody decree, familial stability, by relegating custody determinations to mere temporary orders.<sup>62</sup>

The P.K.P.A. proposes to attribute finality to child custody determinations of the home state as defined by the Act.<sup>63</sup> Thus, upon compliance with the terms of the P.K.P.A., the determinations of the original decree-granting state are final for purposes of full faith and credit.<sup>64</sup> The P.K.P.A.'s full

Custody judgments are inherently ephemeral decisions about continuing relationships which are subject to constantly changing conditions. In order to handle custody litigation expeditiously, a broad flexible view of jurisdiction has developed. The same factors which support a liberal view of custody jurisdiction militate against automatically giving custody decrees conclusive extraterritorial effect.

*Id.*

61. See Note, *The Parental Kidnaping Prevention Act: Application and Interpretation*, 23 J. FAM. L. 419, 419 (1984-85). Child custody decrees are unique because their purpose and effect are often dependent upon deference of sister states. *Id.* "Absent this deference, consistency in enforcement, as well as the integrity of the decree itself, is jeopardized." *Id.*

62. See *Parental Kidnaping Prevention Act of 1980—An Idea Whose Time Has Come*, 2 CHILD. LEGAL RTS. J. 10, 10-11 (1980-81) (discussing benefits of new child custody legislation over old). As long as ambiguity remained as to whether custody decrees were protected by the full faith and credit clause, states were not restrained in modifying the decrees of sister states. *Id.* Under the assumption that modification was not strictly prohibited, courts of the various jurisdictions often acted unilaterally and even in competition with one another to the detriment of the child. "Case after case has demonstrated that when a state court can act independent of other state's courts with regard to custody decrees, it often creates chaos, conflict and pain." *Id.*

63. See 28 U.S.C. § 1738A(f) (1982)(sets forth restrictive conditions under which modification can occur); see also Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, § 7, 94 Stat. 3566, 3569. The general purposes of the Act include the "avoid[ance] of jurisdictional competition and conflict between State courts in matters of child custody." *Id.* § 7(c)(5). Public Law 96-611 provides for furtherance of the purposes of the Act by encouraging states to give priority to custody proceedings and to

award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination

in any cases in which one contestant has illegally abducted the subject of such custody orders. *Id.* at 3570 (added as amendment to table of sections of chapter 115 of title 28 U.S.C.).

64. See Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, § 7(c)(3), 94 Stat. 3566, 3570. Under the Act, the custody and visitation decrees of each state are to be enforced among the several states, a measure which deprives custody combatants of the opportunity to obtain modification at will. See *id.*; see also, e.g., Peterson v. Peterson, 464 A.2d 202, 204 (Me. 1983)(purpose of P.K.P.A. to prevent jurisdictional conflict and competition over child custody and to deter parents from abducting children to obtain custody awards); Belosky v. Belosky, 640 P.2d 471, 473-74 (N.M. 1982)(prevention of interstate abductions to obtain custody and prevention of forum shopping purposes of P.K.P.A.); State *ex rel.* Valles v. Brown,

faith and credit protection operates to effectively discourage custodial parents from attempting to win custody disputes by kidnaping children and taking them across state lines in hopes of obtaining decree modification in a foreign state.<sup>65</sup>

Two additional features of the P.K.P.A. provide further disincentive to would-be parental abductors.<sup>66</sup> The drafters of the P.K.P.A. included among the enforcement mechanisms of the Act the use of the Fugitive Felon Act,<sup>67</sup> a previously existing federal law, to threaten federal criminal sanctions against prospective parental kidnapers.<sup>68</sup> Additionally, the P.K.P.A. provides the use of the Parent Locator Service to assist aggrieved parents in locating both the abductor and the missing children.<sup>69</sup> Both of these measures provide a means for locating parents who have abducted their children and fled to another state.<sup>70</sup>

Under the Fugitive Felon Act, when felony arrest warrants have been is-

639 P.2d 1181, 1183 (N.M. 1981)(deterrence, if not prevention, of kidnaping underlying policy of P.K.P.A.); *see also* Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, § 7(b), 94 Stat. 3566, 3569. Congress declared the Act necessary to first, establish national standards whereby the courts of the several jurisdictions may *determine* whether they have jurisdiction to decide a custody dispute and, secondly, mandate the effect to be given by each jurisdiction to the judgments by the courts of other jurisdictions. *See id.* In the legislative history of the P.K.P.A., Senator Johnston stated his support for "a much needed bill to close the loopholes in laws that presently permit parents to kidnap their children." *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96 Cong., 2d Sess. at 189 (statement of Sen. Johnston).

65. *See generally* Note, *The Parental Kidnapping Prevention Act—Analysis and Impact on Uniform Child Custody Jurisdiction*, 27 N.Y.L. SCH. L. REV. 553, 566 n.84 (1981)(discussing ramifications of 28 U.S.C. § 1738 (c), (d), (g)). State Courts must comply with and adhere to the express provisions of the Act in order to reduce the incentive to forum shop. *Id.* Because parents are discouraged from gaining court approval of their actions the number of child abductions should correspondingly decrease. *Id.*

66. *See* Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, §§ 9-10, 94 Stat. 3566, 3571-73.

67. 18 U.S.C. § 1073 (1982); *see also* Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, § 10, 94 Stat. 3566, 3573 (Fugitive Felon Act available to enforce provisions of P.K.P.A.).

68. *See* Note, *The Search For a Solution To Child Snatching*, 11 HOFSTRA L. REV. 1073, 1106-07 (1985). "Childsnatching" must be classified as a felony under a state's law before use of the Fugitive Felon Act can be invoked. *See id.*

69. 42 U.S.C. § 653 (1982)(authorizes establishment of Parent Locator Service); *see also* Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, § 9, 94 Stat. 3566, 3569 (sets forth scheme under which Parent Locator Service is to operate).

70. *See* Note, *The Parental Kidnapping Prevention Act: Application and Interpretation*, 23 J. FAM. L. 419, 432 (1984-85). The author notes that both services have proved less than successful in practice. *See id.* For instance, the custodial parent is not entitled to the information gained through the Parent Locator Service for reasons of preventing the custodial parent from resorting to self-help measures once the information is known. *See id.* at 433. Under the

sued against interstate kidnapers by state agents upon proof of flight to avoid prosecution, the F.B.I. is authorized to investigate the interstate kidnappings.<sup>71</sup> The Parent Locator Service, on the other hand, is administered at the state level with each state operating a service primarily to enforce child support obligations.<sup>72</sup> States now have the option, however, to enter into an agreement with the Federal Parent Locator Services of the United States Department of Health and Human Services.<sup>73</sup> The federal service avails requesting state agencies of address information collected from federal agencies which utilize social security identification numbers.<sup>74</sup> Addresses obtained from this service are used to track the alleged parental kidnaper.<sup>75</sup> The combined effects of the Parent Locator Service and the Fugitive Felon Act were intended by Congress to help discourage noncustodial parental kidnaping by increasing the likelihood that criminal penalties will be imposed upon interstate violators.<sup>76</sup> Thus, the noncustodial parent who attempts abduction and flight to another state now risks extradition and criminal penalties pursuant to federal law.

### III. THE EXTRADITION ACT: THE INCEPTION OF THE EXTRADITION ACT AND ITS PURPOSE

The extradition clause of the United States Constitution commands that a

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Fugitive Felon Act, due to the overwhelming number of kidnappings, the Department of Justice has imposed stringent standards, difficult and frustrating to meet. *See id.*

71. 18 U.S.C. § 1073 (1982); *see Note, The Parental Kidnapping Prevention Act — Analysis and Impact on Uniform Child Custody Jurisdiction*, 27 N.Y.L. SCH. L. REV. 553, 584 (1981). Although the F.B.I. has authority to investigate interstate parental kidnaping where agents of the state have issued arrest warrants, Department of Justice policy prohibits investigations unless one proves a child to be in danger of serious, imminent physical injury. *Id.* Department policies result in a disappointing fifteen or fewer parental abduction cases annually. *Id.*

72. *See id.* at 587. "Every state statutorily provides a parent locator service for purposes of locating parents who evade child support obligations." *Id.*

73. *See Parental Kidnapping Prevention Act of 1980*, Pub. L. 96-611, § 9, 94 Stat. 3566, 3569.

74. *See Note, The Effect of the Parental Kidnapping Prevention Act on Childsnatching*, 17 NEW ENG. L. REV. 499, 514-515 (1981-82). Federal agencies providing information include the Veterans Administration, the Department of Transportation (including the Coast Guard), the National Personnel Records Center at the General Service Administration, the Social Security Administration, and the Internal Revenue Service. *See id.*

75. *See id.* (Federal Parent Locator Service creates extreme difficulty for abducting parent and abducted child to evade authorities).

76. *Parental Kidnapping Prevention Act of 1979*, S. 105: *Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96 Cong., 2d Sess. at 375 (Statement of Sen. Wallop). Senator Wallop remarked that federal assistance is necessary because of the virtual impossibility of enforcing state criminal laws beyond state boundaries. *See id.*

fugitive from justice be delivered to the authorities of the state requesting his extradition so that criminal charges may be answered within the demanding state.<sup>77</sup> Because the extradition clause fails to specifically provide a procedure to effectuate interstate extradition, Congress drafted the Extradition Act of 1793.<sup>78</sup>

The Constitution of the United States provides for interstate extradition in article IV, section 2.<sup>79</sup> The Constitution, although mandating the boundaries of extradition, neglects to denote procedures essential for the enforcement of interstate rendition such as the manner in which the crime shall be charged, the evidence necessary to maintain that the accused has fled from justice, and the procedure for arrest and delivery of the accused.<sup>80</sup> The Extradition Act defines the manner in which extradition is to be conducted and, in this respect, fills the voids of the constitutional provision.<sup>81</sup>

The Act provides that "whenever the executive authority of any State or Territory demands any person as a fugitive from justice of the executive authority of any State, District or Territory to which such person has fled," the fugitive is to be arrested and delivered to an agent of the demanding state.<sup>82</sup>

77. See U.S. CONST. art. IV, § 2, cl. 2.

78. See *Pierce v. Creecy*, 210 U.S. 387, 395 (1908)(right to interstate extradition rests upon Constitution combined with extradition legislation); *Kentucky v. Dennison*, 65 U.S. 66, 104 (1860)(duty manifestly devolved upon Congress to provide by law necessary regulation to carry out extradition); *Prigg v. Pennsylvania*, 41 U.S. 539, 616 (1856)(Congress may prescribe mode and extent to which extradition shall be applied under what circumstances and how provision is to operate).

79. See U.S. CONST. art. IV, § 2, cl. 2.

80. See, e.g., *Phillips v. State*, 185 So. 2d 157, 158 (Miss. 1966)(extradition proceedings provide one and only method for returning one accused of crime in sister state unless principal voluntarily returns); *Sheriff v. Randon*, 515 P.2d 1267, 1270 (Nev. 1973)(extradition procedures contemplate prompt return of fugitive from justice upon request from demand state); *Commonwealth v. Aytch*, 310 A.2d 681, 682 (Pa. 1973)(extradition ordered only when clear that subject of extradition was charged with crime, present in demand state when crime committed, is fugitive and requisition papers in order).

81. See *Derengowski v. United States*, 404 F.2d 778, 780 (8th Cir. 1968)(extradition statute aids Constitution in governing interstate extradition); *Smith v. Idaho*, 373 F.2d 149, 154 (9th Cir. 1967)(federal extradition statute enacted for purpose of supplementing constitution in controlling interstate rendition); *Wellington v. State*, 413 F. Supp. 151, 153 (D.S.D. 1976) ("skeletal directive" of Constitution "fleshed out" by statute and case law). To cure the problem of conflicting state extradition legislation, the Conference of Commissioners on Uniform State Laws prepared the Uniform Criminal Extradition Act as a law for the states to adopt in order to promote uniformity. See UNIFORM CRIMINAL EXTRADITION ACT, commissioner's prefatory note, 11 U.L.A. 51, 53 (1967).

82. 18 U.S.C. § 3182 (1982). The Extradition Act currently provides:

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having

The Act further requires that an indictment or an affidavit, made before a magistrate of the demand state, accompany the extradition request.<sup>83</sup> These sworn statements serve to document the charges against the accused, for an asylum state is compelled by the Act to inquire whether "treason, felony or other crime" has been charged before it imposes extradition.<sup>84</sup> However, since the primary purpose of the Act is to facilitate the orderly and expeditious handling of fleeing criminals, inquiry by an asylum state has traditionally been restricted to a cursory examination of the extradition documents to determine whether they recite a crime under the law of the demand state.<sup>85</sup> As a general rule, probing the merits of a charge is permitted only in rare

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committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

*Id.* The extradition clause and the Extradition Act empower the executive authorities in both the asylum state and the demand state to order extradition. *See* U.S. CONST. art. IV, cl. 2; Uniform Criminal Extradition Act, 11 U.L.A. 59 (1974); *see also* *Watson v. Enslow*, 517 P.2d 1346, 1348 (Colo. 1974)(governor of one state may surrender on demand any person charged with violation of laws of demand state on request of executive authority of that state); *Hill v. Houck*, 195 N.W.2d 692, 695 (Iowa 1972)(asylum state governor has duty to arrest and deliver to demanding state any person charged with crime in demanding state); *Phillips v. State*, 185 So. 2d 157, 158 (Miss. 1966)(governor is only official authorized to exercise sovereignty of state in extradition proceedings).

83. *See* *Kirkland v. Preston*, 385 F.2d 670, 673 (D.C. Cir. 1967)(Extradition Act makes rendition dependent upon affidavit or indictment charging person demanded with committing crime); *Smith v. Idaho*, 373 F.2d 149, 155 (9th Cir. 1967)(asylum state must receive authenticated indictment from governor of demanding state); *State v. Dugger*, 497 P.2d, 413, 415 (Ariz. Ct. App. 1972)(essential that crime be charged by affidavit, complaint, or indictment before rendition ensues). Section three of the Uniform Criminal Extradition Act dictates that if a demand for extradition alleges that the accused, at the time of the crime, was in the demanding state and later fled therefrom, such demand must be recognized by the asylum state when documented by indictment, affidavit, or information which substantially charges the accused with violating laws of demand states. *See* UNIFORM CRIMINAL EXTRADITION ACT, 9 U.L.A. 51, 92 (1967).

84. 18 U.S.C. § 3182 (1982). *See, e.g.,* *Fox v. People*, 420 P.2d 412, 414 (Colo. 1966)(warrant issued by governor is prima facie evidence that petitioner is fugitive charged with crime); *Glavin v. Warden*, 311 A.2d 86, 89 (Conn. 1972)(any proof which satisfies asylum state governor of accusations fulfills requirements of law); *Commonwealth v. Davis*, 228 A.2d 745, 744 (Pa. 1967)(courts of asylum state will order extradition only when subject of extradition is charged with crime and requisition papers in order).

85. *See, e.g.,* *McCullough v. Darr*, 548 P.2d 1245, 1248 (Kan. 1976)(governor's warrant in extradition proceedings presumed valid so long as charge legally constitutes crime); *In re Lucas*, 343 A.2d 845, 850 (N.J. 1975)(in considering extradition governor need only find that accused is named in requisition papers and is fugitive from justice); *Commonwealth v. Aytch*, 310 A.2d 681, 682 (Pa. 1973)(guilt or innocence not determined at extradition hearing).

instances.<sup>86</sup> The courts of an asylum state are restricted to discerning only whether the requisites of the Extradition Act have been met.<sup>87</sup> The rationale for this narrow scope of inquiry arises from the concept of comity among states.<sup>88</sup> The extradition clause places limits upon the sovereign powers of each of the states in the interest of fostering national unity.<sup>89</sup> Accordingly, the legal determinations of each state as to fugitives are to be afforded full faith and credit by asylum states in extradition proceedings in deference to the authority of the demand state.<sup>90</sup> Summary extradition proceedings also promote efficiency and prevent a trial-like inquiry by asylum states into the laws of other states' unfamiliar criminal processes.<sup>91</sup> In order to simplify extradition proceedings, the United States Supreme Court, in *Michigan v. Doran*,<sup>92</sup> restricted the deliberations permitted by the Extradition Act to four issues: "(a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for

86. *See, e.g.*, *Pippin v. Leach*, 534 P.2d 1193, 1195 (Colo. 1975)(extradition will not follow from affidavit replete with bald allegations and conclusions unsupported by facts). The affidavit must have sufficient information to support the issuance of a warrant of arrest in the demanding state. *See id.*; *Commonwealth v. Hendrick*, 243 A.2d 438, 439 (Pa. 1968)(courts of asylum state may not inquire into merits of charge involved or refuse extradition on merits of case).

87. *See, e.g.*, *Michigan v. Doran*, 439 U.S. 282, 289 (1978)(governor's grant of extradition prima facie evidence of constitutional and statutory compliance); *United States v. Flood*, 374 F.2d 554, 556 (2d Cir. 1967)(not within authority of asylum state on habeas corpus to judge persuasiveness, quality or weight of evidence supporting extradition warrant and accompanying papers); *Moncrief v. Anders*, 342 F.2d 902, 904 (D.C. Cir. 1964)(demanding state's indictment raises presumption of fugitivity).

88. *See Doran*, 439 U.S. at 287 (extradition clause articulated concepts of full faith and credit and comity). The purpose of the extradition clause was to preclude of any state from balkanizing the administration of public justice by becoming a sanctuary for fugitives from other states. *Id.*; *see also Denton v. Cronin*, 529 P.2d 644, 644 (Colo. 1974)(comity between states, in the context of extradition, requires testing legal merit of charges in demand state).

89. *Doran*, 439 U.S. at 288 (extradition clause like commerce clause served national objectives of newly developing country attempting to foster national unity). "In the administration of justice, no less than in trade and commerce, national unity was thought to be served by deemphasizing state lines for certain purposes, without impinging on essential state authority." *Id.*

90. *See Brown v. Sharkey*, 263 A.2d 104, 108 (R.I. 1970)(fundamental of our federal system that neither courts of asylum state nor federal courts seek to determine demand state's law); *see also State v. Eaton*, 433 P.2d 347, 349 (Kan. 1967)(Constitution requires extradition from one state to another to aid enforcement of law).

91. *See Biddinger v. Commissioner of Police*, 245 U.S. 128, 135 (1917)(prosecutorial authorities in demanding state, not authoritative in asylum state, have duty to enforce demanding state's criminal law); *Drew v. Thaw*, 235 U.S. 432, 440 (1914)(left to prosecutorial authorities in demanding state to enforce their own state's criminal law).

92. 439 U.S. 282 (1978).

extradition; and (d) whether the petitioner is a fugitive."<sup>93</sup> In the interest of public justice, no further examination is permissible, yet no less inquiry is tolerable in the interest of human liberty.<sup>94</sup>

#### IV. CALIFORNIA V. SUPERIOR COURT: A CASE OF COMPETING PRINCIPLES

The United States Supreme Court case of *California v. Superior Court*,<sup>95</sup> the illustrative case with which this comment began, elucidates the competing principles of the Parental Kidnaping Prevention Act and the Extradition Act.<sup>96</sup> Recognizing the division of the Court over whether provisions of the P.K.P.A. should be permitted to override the traditional application of the Extradition Act serves to illuminate the incompatibility of the conflicting acts.<sup>97</sup>

##### A. *The Facts*

Anticipating the forthcoming extradition warrants authorizing his extradition to Louisiana, Richard Smolin filed a petition with the Superior Court of California for a writ of habeas corpus asserting that he was not guilty of kidnaping because he had a right to custody of his children.<sup>98</sup> Richard had obtained sole custody of his children three-and-one-half years prior to these proceedings through modification by the California courts of the original

93. *Id.* at 289.

94. *See Pierce v. Creecy*, 210 U.S. 387, 401 (1907). Article IV, section 2 of the Constitution demands that an accused in extradition proceedings be charged by a state with a crime and be found to have fled from justice. *Id.*

"If either of these conditions are absent the Constitution affords no warrant for a restraint of the liberty of any person." *Id.* However, "[i]f more were required it would impose upon courts . . . the duty of a critical examination of the laws of States with whose jurisprudence and criminal procedure they can have only a general acquaintance. Such a duty would be an intolerable burden . . . irritable to the just pride of the States and fruitful of miscarriages of justice."

*Id.* at 405.

95. \_\_\_ U.S. \_\_\_, 107 S. Ct. 2433, 96 L. Ed. 2d 332 (1987).

96. *See id.* at \_\_\_, 107 S. Ct. at 2441, 96 L. Ed. 2d at 344 (Stevens, J., dissenting). The dissent expressed alarm that the majority, in respect of the criminal laws of a state, would require the rendition of a custodial parent as a fugitive, in derogation of Congress' express intent to impose nationwide legislation in the area of childnaping. *See id.*

97. *See id.* (permitting extradition of custodial parent produces unnecessary inconvenience and injustice).

98. *See People v. Superior Court*, 716 P.2d 991, 993-94 (Cal. 1986), *rev'd*, \_\_\_ U.S. \_\_\_, 107 S. Ct. 2433, 96 L. Ed. 2d 332 (1987)(petition for writ of habeas corpus filed by defendant alleging imminent danger of arrest because Louisiana governor had issued warrants of extradition). The petition stated the facts regarding the California custody decrees and included additional supporting documents. *See id.*

California custody decree.<sup>99</sup> Richard contended that under the Parental Kidnaping Prevention Act the California orders were conclusive as to his custody rights.<sup>100</sup> The Superior Court took judicial notice of the Smolins' California family law file and rendered a finding in favor of Richard.<sup>101</sup> The court concluded that the State of Louisiana was obligated by the P.K.P.A. to afford to the California custody orders full faith and credit and that Louisiana had demonstrated no right to extradition because it had failed to substantially charge Richard with a crime.<sup>102</sup> Although the State of California challenged this conclusion as the result of an inappropriate application of the

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99. *See id.* at 993. On February 27, 1981, sole custody was awarded to Richard based upon finding of a California court that Judith intentionally frustrated Richard's visitation privileges by her unannounced moving with the children and her complete denial of contacts between Richard and the children. On Richard's motion, a California Court first modified the original California custody decree in October, 1980, awarding Richard joint custody, and then again in February, 1981, when the award of sole custody was made. Pursuant to both modification proceedings, Judith was served with an order to show cause and a copy of the modification order. *See id.* Judith did not appear in any of the California proceedings, ignoring the later revised custody order apparently on advice of counsel that the courts of California had no jurisdiction over the matter. *See California v. Superior Court*, \_\_\_ U.S. \_\_\_, \_\_\_, 107 S. Ct. 2433, 2436, 96 L. Ed. 2d 332, 337-38 (1987).

100. *See Superior Court*, 716 P.2d at 994; *see also* 28 U.S.C. § 1738A (1982). The first provision of the Act, section 1738A(a), states that custody determinations made by a state in accord with the provisions of the Act are not to be modified but are to be enforced by the appropriate authorities of every state. *See id.*

101. *See Superior Court*, 716 P.2d at 1000 (California Superior Court orally granted writ of habeas corpus to block extradition taking judicial notice of previous custody orders). The Superior Court found that under the terms of the Parental Kidnaping Prevention Act, Louisiana was compelled to recognize the California custody orders; therefore, withholding of judicial notice from the California courts would be unjustified. *See id.* The trial court issued to Governor Deukmejian, the governor of Louisiana, to the District Attorney of St. Tammany Parish, and to the Sheriff of San Bernardino County orders to show cause which directed them to deliver the extradition warrants to the court to examine the facts and law regarding the threatened imprisonment. *See id.* at 994. Warrants of rendition accompanied the return stating that extradition was mandatory because all of the extradition documents were regular on their face, and charged a crime under the law of Louisiana. Furthermore, Louisiana asserted that the trial court did not have authority to look further than the face of the documents to consider the sufficiency of Judith's affidavit or consider the California custody orders. Notwithstanding Louisiana's response, the trial court read into the record statements of the trial judge made during the modification proceedings which were critical of Judith's conduct, such as her prevention of Richard's relationship with the children. *See id.*

102. *See Superior Court*, 716 P.2d at 996. The court explained that a charge of crime is deemed legally insubstantial if, for instance, the demand state's highest court or the United States Supreme Court has declared the statute under which the demand was made unconstitutional, the stated charge is not within the statutory definition of a crime of the demanding state, or the acts charged are not criminal acts under the law of the demanding state. *See id.* Regarding the Louisiana charge, the courts reasoned that under the Louisiana statute, if a parent is entitled to custody he cannot be charged with kidnaping. *See id.* at 995. At the time of the kidnaping, a California decree demonstrated Richard's entitlement to custody. The



Extradition Act, the California Supreme Court affirmed the trial court's holding and refused the requested extradition.<sup>103</sup>

#### B. *The Majority's Decision*

The United States Supreme Court reversed the decision of the California Supreme Court's denial of Richard's extradition.<sup>104</sup> Under the federal law of extradition, the Louisiana courts, not the California courts, had the duty to adjudicate in the Smolin case.<sup>105</sup> The Court agreed with the California courts regarding the effect of the Parental Kidnaping Prevention Act's full faith and credit provision upon the custody orders of the decree state; however, the majority proclaimed the Louisiana courts the proper forum for such considerations.<sup>106</sup> An extradition proceeding, said the Court, was an improper time and place for Richard to challenge the validity of Judith's affidavit or for him to argue the P.K.P.A. as a guarantor of his custody.<sup>107</sup> The Court reiterated familiar extradition philosophy in remarking that courts of an asylum state may ascertain only whether the requirements of the Extradition Act have been met.<sup>108</sup>

Applying extradition analysis to the case before it, the Court found Loui-

binding effect of the decree was established under the P.K.P.A., a federal law, therefore, the California courts were authorized to take judicial notice of the California decree. *Id.*

103. *See id.* at 994. The state claimed that the trial court erred in taking judicial notice of the California family law file. The state asserted that the courts of an asylum state, in determining whether a crime has been charged, may look only to the face of the extradition documents and to the demanding state's laws. *See id.* The California Supreme Court cited the California evidence code in support of the trial court's taking judicial notice of the custody decrees. *See id.* at 997; *see also* CAL. EVID. CODE § 452 (Deering 1980)(court must grant judicial notice of records of any state court upon notice to court and adverse party). In rebuttal, the state contended that the evidence code provision does not apply in extradition proceedings. *See Superior Court*, 716 P.2d at 997. The state argued that only relevant evidence may be judicially noticed. The California orders being irrelevant to the one issue before the court, characterized by the state as whether the Louisiana extradition documents supported the extradition demand according to Louisiana law, they should not be recognized. *See id.*

104. *See California v. Superior Court*, \_\_\_ U.S. \_\_\_, \_\_\_, 107 S. Ct. 2433, 2440-41, 96 L. Ed. 2d 332, 343 (1987)(Smolin properly charged with crime under Louisiana law therefore judgment of California Supreme Court reversed).

105. *See id.* at \_\_\_, 107 S. Ct. at 2441, 96 L. Ed. 2d at 343 (under Extradition Act Louisiana, demand state, must do justice in Smolin case).

106. *See id.* (nothing in record suggests Smolin's guilt for under P.K.P.A. he is legal guardian). The Court recognized the P.K.P.A. as the uniform federal law governing custody determinations and affirmed that Louisiana was obliged to adhere to the federal rule in considering the Smolin case on the merits. *See id.*; *see also* 28 U.S.C. § 1738A(a) (1982)(setting forth principle of full faith and credit for custody determinations made in accordance with Act).

107. *See Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2440, 96 L. Ed. 2d. at 343.

108. *See id.* at \_\_\_, 107 S. Ct. at 2438, 96 L. Ed. 2d at 340 (language, history and construction of Extradition Act emphasize Congress' intent that extradition proceedings be summary in nature); *see also* *Drew v. Thaw*, 235 U.S. 432, 440 (1914)(when requisition documents allege

siana's warrants of extradition in conformity with the Extradition Act.<sup>109</sup> The extradition documents were uncontestedly in order, properly naming Richard as the party charged.<sup>110</sup> In addition, Louisiana had correctly certified an information charging Richard with violation of a statute of that state.<sup>111</sup> Furthermore, Judith's supporting affidavit, notwithstanding the issue of its fraudulence, clearly established each element of the Louisiana statute defining the crime of kidnaping.<sup>112</sup> Whether Richard had custody under the P.K.P.A. was not at issue, according to the Court, for he had been properly charged with kidnaping under Louisiana law.<sup>113</sup> The Court concluded that while Richard may have been his children's legal guardian under one federal law, under another he was a criminal fugitive.<sup>114</sup>

### C. *The Dissent's Reasoning*

Justice Stevens, with whom Justice Brennan joined in a dissenting opinion, supported the California Supreme Court's conclusion that Louisiana had not substantially charged Richard with a crime.<sup>115</sup> The dissent argued

crime and there is reasonable basis for such accusation, asylum state is constitutionally required to surrender fugitive).

109. *See Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2439, 96 L. Ed. 2d at 342. The Court utilized the *Michigan v. Doran* four-prong analysis to determine Richard's extradition. *See id.* It inquired whether the extradition documents were regular on their face, whether the petitioner was named in the requisition, whether the petitioner was a fugitive, and whether he had been charged with a crime. *See id.*; *see also Michigan v. Doran*, 439 U.S. 282, 289 (1978).

110. *Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2439, 96 L. Ed. 2d at 341. Richard did not dispute that the requisition papers were in order and that he was the person named in the documents, but that he had not been properly charged with a crime under Louisiana's kidnaping statute. *See id.*

111. *Id.*

112. *Id.* at \_\_\_, 107 S. Ct. at 2439, 96 L. Ed. 2d at 341-42. When Richard finally located Judith in Louisiana, she and her new husband had begun adoption proceedings deemed by the California courts as "verging on the fraudulent." *Id.* at \_\_\_, 107 S. Ct. at 2436, 96 L. Ed. 2d at 338. She relied on these proceedings and the previous Texas court order to establish her sole custody in alleging that Richard kidnaped the children. *See id.*

113. *See id.* at \_\_\_, 107 S. Ct. at 2439, 96 L. Ed. 2d at 341. The Court maintained that Richard's custody was not relevant to the issue of his extradition under *Michigan v. Doran*. *See id.* at \_\_\_, 107 S. Ct. at 2439, 96 L. Ed. 2d at 341-342 (citing *Michigan v. Doran*, 439 U.S. 282, 289 (1978)).

114. *See id.* at \_\_\_, 107 S. Ct. at 2441, 96 L. Ed. 2d at 343. The Court stated its perplexity regarding "why it is that the States of California and Louisiana are so eager to force the Smolins halfway across the continent to face criminal charges that, at least to a majority of the California Supreme Court, appear meritless." *Id.* Yet, the Court said that it was compelled by the Extradition Act to enforce Richard's extradition. *See id.*

115. *See id.* at \_\_\_, 107 S. Ct. at 2441, 96 L. Ed. 2d at 344 (Stevens, J., dissenting)(California Supreme Court's conclusion that Smolin not substantially charged with crime correct). The dissent agreed with the California Supreme Court that there was not a reasonable possibility that the kidnaping charges were valid. *See id.* Additionally, since the

for recognition of the authority of the Parental Kidnaping Prevention Act to establish, with finality, the custodial parent.<sup>116</sup> Thus, in recognition of the California custody orders which granted Richard custody under federal law, Justice Stevens maintained that Louisiana had evidenced no reasonable possibility of the crime with which Richard had been charged.<sup>117</sup> Justices Stevens and Brennan confirmed the propriety of the California courts' judicial notice of the California custody decrees in resolving that because Richard had legal custody of his children, the conviction on charges of kidnaping was legally impossible under Louisiana law.<sup>118</sup> In the dissent's view, the enactment of the P.K.P.A. prevented the custodial parent from being simultaneously deemed legal guardian and fugitive.<sup>119</sup>

#### V. AN ANALYSIS OF THE EXTRADITION ACT IN THE CONTEXT OF THE CHILD CUSTODY BATTLE: AN ADDITIONAL WEAPON FOR WARFARE

The routine application of the Extradition Act in child custody cases

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P.K.P.A. clarified Richard's custody of his children, there was no reasonable possibility that his trip from Louisiana to California in possession of his children made him a fugitive. *Id.*

116. *See id.* at \_\_\_, 107 S. Ct. at 2445, 96 L. Ed. 2d at 349 (extradition of Richard Smolin frustrates Congress' intent to deter interstate abductions and discourage interstate child custody controversies). Justice Stevens asserted that the extradition clause should be construed consistently with the Parental Kidnaping Prevention Act because both are expressions of the full faith and credit command of the Constitution. State courts best adhere to the concepts of comity and full faith and credit by complying with the Act in giving full faith and credit to the custody judgments of other state. *Id.* at \_\_\_, 107 S. Ct. at 2446, 96 L. Ed. 2d at 349; *see also* Flood v. Braaten, 727 F.2d 303, 304 (3d Cir. 1984)(Congress enacted Parental Kidnaping Prevention Act to correct flaws in legal system that encourage parental abduction). Unlike the full faith and credit clause of the Constitution which leaves to state courts discretion concerning when to recognize a decree, the Parental Kidnaping Prevention Act provides detailed rules to determine the one state entitled to modify a custody decree. *See id.*

117. *Superior Court*, \_\_ U.S. at \_\_\_, 107 S. Ct. at 2442-43, 96 L. Ed. 2d at 345 (Stevens, J., dissenting)(no reasonable possibility Smolins violated Louisiana statute cited in extradition papers). Justice Stevens outlined three reasons indicative of the Smolins' innocence of the crime charged. First, under the federal Parental Kidnaping Prevention Act, California was the sole court of competent jurisdiction. Smolin could not be convicted of kidnaping children whose sole custody had been entrusted to him three years before the incident in Louisiana. Secondly, Smolin did not possess the requisite intent to defeat a court of competent jurisdiction, as demanded by Louisiana law, for he believed he had been awarded custody by a California court which retained jurisdiction. Finally, he could not be convicted under the Louisiana kidnaping statute requiring intent to defeat the jurisdiction of that state's courts because he did not believe that jurisdiction over the custody decision rested in a Louisiana court. *See id.*

118. *See id.*

119. *See id.* at \_\_\_, 107 S. Ct. at 2445, 96 L. Ed. 2d at 348 (branding custodial parent as fugitive encourages nonadherence to uniform federal rule regulating custody determinations). A parent who acts consistently with the federal law governing interstate custody disputes should not be deemed in violation of the judicial process of the demanding state. *Id.*

defeats the legislative intent embodied within the Parental Kidnaping Prevention Act to establish with finality the legal guardian in such cases in order to prevent child abduction and reduce lengthy custody disputes.<sup>120</sup> The extradition of one vested with federally established legal custody creates a redundancy within the scheme of child custody determination, once in the decree state and again in the demand state.<sup>121</sup> Additionally, the purpose of the Extradition Act is not served by extraditing a legal custodian.<sup>122</sup> The Extradition Act proposes to prevent fugitives from fleeing the criminal justice system of one state to find a haven within the safety of another.<sup>123</sup> Ex-

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120. See Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, § 7(c)(3), 94 Stat. 3566, 3568-9 (to facilitate enforcement of custody decrees of sister states among general purposes of Act); see also *Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2445, 96 L. Ed. 2d at 348 (Stevens, J., dissenting)(notion must be rejected that parent who holds custody under P.K.P.A. must be extradited as charged kidnaper). Justices Stevens and Brennan confirmed the propriety of courts taking judicial notice of custody decrees in accord with the P.K.P.A. See *id.* at \_\_\_, 107 S. Ct. at 2445, 96 L. Ed. 2d at 349.

121. See 28 U.S.C. § 1738A (1982). Section (f) relates the following:

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if

- (1) it has jurisdiction to make such a child custody determination; and
- (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

*Id.* Because a court is not free to modify a properly rendered decree at random, the courts of demanding states in extradition proceedings are permitted to discern only whether the decree in question complies with the P.K.P.A., a task which the asylum state could more conveniently perform, consequently sparing the accused prolonged restraint of liberty in cases where legal custody is found. See *Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2440-41, 96 L. Ed. 2d at 343; see also *People v. Superior Court*, 716 P.2d 991, 1000 (Cal. 1986)(court found efficiency of extradition process "enhanced rather than hampered" by resolution of custody by California courts), *rev'd*, \_\_\_ U.S. \_\_\_, 107 S. Ct. 2433, 96 L. Ed. 2d 332 (1987). See generally Coombs, *Interstate Child Custody: Jurisdiction, Recognition, and Enforcement*, 66 MINN. L. REV. 711, 853 (1982). The author remarks:

Rather than resolving the disputed policy question concerning the duration of jurisdiction, Congress in the Wallop Act [P.K.P.A.] allocated control over the question to the state that had already determined custody of the child. There is no reason to suppose that any other state would be better qualified than the rendering state to decide when jurisdiction should shift from itself to another state.

*Id.*

122. See *Ex parte Reggel*, 114 U.S. 642, 652-53 (1885)(Extradition Act proposes surrender of persons only upon sufficient proof of fugitive status); *Walton v. State*, 566 P.2d 765, 767 (Idaho 1977)(interstate extradition conditioned upon person demanded being "substantially charged with a crime" and being fugitive). "While the courts of the asylum states are obligated to prevent the State from becoming a haven for fugitives from other states, the authority of the state to protect its citizens from illegal arrest or wrongful rendition must never be forgotten."

*Id.*

123. See, e.g., *People v. Babb*, 115 N.E.2d 241, 243 (Ill. 1953)(Congress established expeditious procedure in Extradition Act for returning fugitive to demanding state); *People v. Cheek*, 420 N.E.2d 238, 240 (Ill. App. Ct. 1981)(purpose of extradition is return of fugitive to

tradition of legal guardians works an injustice by serving to punish those who have abided by the federal law governing child custody and as a result discourages lawful compliance.<sup>124</sup>

A clear analysis and balancing of the policy goals encompassed within each of these acts reveals that preventing the abduction of the estimated thousands of children per year must take priority over the groundless extradition of a custodial parent in the purported interest of preserving the criminal justice system.<sup>125</sup> A modified application of the Extradition Act in instances of alleged parental abduction is necessary in order to harmonize the disparity of the Extradition Act and the P.K.P.A. in the context of the custody battle.<sup>126</sup> An inquiry before extradition as to compliance with the P.K.P.A. promotes the ideals of the P.K.P.A. by affording to properly rendered custody decrees the respect which Congress intended.<sup>127</sup> An inquiry of this nature also promotes the perpetuation of extradition fundamentals by insuring that noncompliance with federal child custody legislation results in extradition of the noncustodial violator, the genuine fugitive in the child custody battle.<sup>128</sup> In its attempt to balance the policy considerations of the

location of alleged offense); *State v. Zylstra*, 263 N.W.2d 529, 532 (Iowa 1978)(extradition intended as procedure to bring accused before appropriate tribunal).

124. *See Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2445, 96 L. Ed. 2d at 348. "By allowing the custodial parent under federal law to be branded as a fugitive, the Court implicitly approves nonadherence to the uniform federal rule governing custody determinations." *Id.*

125. *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96th Cong., 2d Sess. 1, 67-68 (1980) (statement of Andrew Yankwitt). Finding childsnatching a form of child abuse, Yankwitt, a leading authority on parental kidnaping, noted that, contrary to being motivated by love for the child, the abducting parent is often acting out of revenge against the other parent. He insisted that child-snatching is a violation of the child's right, not just a domestic matter, and that offenders should be punished by mandate of the federal government. He referred to one instance where an abductor left a child with an uncle who beat him daily for five years. *See id.*

126. *See People v. Superior Court*, 716 P.2d 991, 999-1000 (Cal. 1986), *rev'd*, \_\_\_ U.S. \_\_\_, 107 S. Ct. 2433, 96 L. Ed. 2d 332 (1987). The California Supreme Court recognized the duty of a sanctuary state to respect and facilitate the purposes of the Extradition Act. *See id.* at 999. However, the court found that determining the custody of one accused of kidnaping prior to extradition violated neither comity nor "efficiency in bringing fugitives to justice," the two main concerns underlying the Extradition Act. *Id.* at 1000. The court held that an asylum state, by determining compliance with the P.K.P.A., best facilitates the purposes of the extradition process by preventing frivolous extradition. *See id.*

127. *See* 28 U.S.C. § 1738A (1982). The Act requires that all states accord to prior custody decrees full faith and credit. *See id.*

128. *See generally* Comment, *The Hague Convention on the Civil Aspects of International Child Abduction: The Need for Ratification*, 10 N.C.J. INT'L L. & COMM. REG. 463 (1985)(United States legislation has attempted to prevent interstate and international child abduction). United States legislation has sought to curtail interstate and international child abduction by noncustodians by adherence to the concept of extradition. *See id.* at 482. Section 9 of the P.K.P.A. provides the use of the Federal Parent Locator Service to locate abducting

P.K.P.A. against those underlying the Extradition Act, the Court has promoted neither, consequently failing in the process to give effect to congressional intent.<sup>129</sup>

Extradition of the legal custodian in a custody battle defeats Congress' intent to deter interstate controversy over child custody and to discourage interstate abduction undertaken to receive custody and visitation awards.<sup>130</sup> The custody battle is invigorated, contrary to congressional intent, by the availability of extradition as one additional implement with which to prolong the fight for custody.<sup>131</sup> Extradition in the child custody arena threatens the continuity of jurisdiction expressly belonging to the decree state under the P.K.P.A. by subjecting determinations of the decree state to the inquisition of an often parochial demand state.<sup>132</sup>

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parents. *Id.* at 471. The United States also became a signatory to the Hague Convention, an international proposal to abrogate childsnatching, on December, 23, 1981. *See id.* Although the Hague Convention does not propose criminal sanctions to prevent parental abduction, it advocates the involvement of law enforcement authorities in returning children to the custodial parent. *Id.* at 475-76.

129. *See California v. Superior Court*, \_\_\_ U.S. \_\_\_, \_\_\_, 107 S. Ct. 2443, 2446, 96 L. Ed. 2d 332, 350 (1987)(Stevens, J., dissenting)(court adopts overly restrictive view of asylum state's role in extradition proceedings by foreclosing summary inquiry of whether crime is legally impossible).

130. *See Parental Kidnaping Prevention Act of 1980*, Pub. L. 96-611, § 7(a)(3), 94 Stat. 3566, 3568-69. Extradition, by placing in question the validity of properly rendered custody decrees, signals a return to the circumstances which prompted the Act. Section 7(a)(3) of the Act indicates that the instability of the custody decree, due to liberal judicial modification, resulted in "resort to the seizure, restraint, concealment, and interstate transportation of children" across state borders in order to obtain ready modification of custody orders. *Id.* 94 Stat. at 3567-68.

131. *See Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2446, 96 L. Ed. 2d at 350 (Stevens, J., dissenting). Justice Stevens expressed concern that the Court's decision to impose extradition upon the legal guardian would provide "estranged parents with an inappropriate weapon to use against each other as they wage custody disputes throughout this land." *Id.*

132. *See 28 U.S.C. § 1738A(d)* (1982)(as long as jurisdictional requirements of Act are met decree court's jurisdiction continues if child or any contestant remains in decree state); *see also, e.g., Tufares v. Wright*, 644 P.2d 522, 525 (N.M. 1982)(where Utah court had neither lost nor declined jurisdiction New Mexico court had no jurisdiction to modify under P.K.P.A.). The *Tufares* court stated that the P.K.P.A. was primarily concerned with discouraging forum shopping and that New Mexico had no authority to modify decrees at will because of the "grave effects such actions often have on the lives of young children." *Id.* *But see Leslie F. v. Constance F.*, 441 N.Y.S.2d 911, 914 (Fam. Ct. 1981)(court concluded California decree entitled to recognition but that New York had jurisdiction to modify). The family court in *Leslie F.* found that New York, not California, was empowered to determine which state presently possessed authority to modify a California decree. It held that New York should recognize California's decree, but could *also* modify it because California had implicitly rejected the exercise of jurisdiction. *See id.*; *see also Donigan, Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction*, 19 GONZ. L. REV. 1, 27 (1983-84)(second court is to evaluate jurisdiction of decree court under first state's law or P.K.P.A. rather than second state's law). Referring to the decision in *Leslie F.*, Donigan remarks that "[t]his type of

Permitting interrogation of properly rendered custody decrees risks discretionary modification through the demand state's carefully crafted loopholes.<sup>133</sup> Arbitrary modification was common practice under past child custody law, a basic routine which the drafters of the P.K.P.A. sought to prohibit in the interest of fostering stability for the children of custody-embattled disputants.<sup>134</sup> Both the P.K.P.A. and the Extradition Act demand full faith and credit for their continued success; thus, the fundamental incongruity between the two is exposed. To wholly favor one is, in effect, to abolish the other.<sup>135</sup> Confining the inquiry of the asylum state within the narrow boundaries of traditional extradition analysis in instances of alleged parental kidnaping emasculates the full faith and credit provision of the P.K.P.A. by refusing recognition of properly rendered custody determinations restoring the perpetual instability of custody arrangements which reigned prior to the enactment of the P.K.P.A.<sup>136</sup> Strict summary imposition of extradition ignores the status of custody judgments as subjects of full faith and credit, depriving the P.K.P.A. of the characteristic credibility which distinguishes it from past interstate custody legislation and causing a regression from effec-

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analysis of the other state's law frustrates the P.K.P.A.'s choice that the decree state be allocated the control over the determination of the appropriate forum for any modification." *Id.* at 28.

133. *See, e.g., E.E.B. v. D.A.*, 446 A.2d 871, 880 (N.J. 1982)(in exercising discretion under P.K.P.A. court should not be restricted to literal wording of statute but should consider purpose of defining best interest of child). In the purported best of the child, the court in *E.E.B.* deemed the decree court in Ohio to have declined jurisdiction because it failed to conduct a best interest hearing; New Jersey was, thus, entitled to modify the decree. *See id.*; *see also* Donigan, *Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction*, 19 GONZ. L. REV. 1, 29 (1983-84). "A possibly troubling stress on the P.K.P.A.'s limits on modification is the freedom a few courts have asserted in determining that the decree state has declined jurisdiction even though the prior court never communicated such declination." *Id.*

134. *Parental Kidnaping Prevention Act of 1979, S. 105: Joint Hearing Before the Subcommittee on Criminal Justice of the Committee on Child and Human Development of the Committee on Labor and Human Resources*, 96 Cong., 2d Sess. at 207 (Statements of Rep. Ertel)(under U.C.C.J.A. no guarantee of adherence or respect for custody determinations of sister states).

135. *See California v. Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2446, 96 L. Ed. 2d at 349 (Stevens, J., dissenting). Justice Stevens commented that "[t]he courts of every State best adhere to this principle, [full faith and credit] when considering an extradition request for alleged parental kidnaping by giving full faith and credit to custody judgments rendered by other states as commanded by the [Parental Kidnaping Prevention] Act." *Id.*

136. *See Parental Kidnaping Prevention Act of 1980*, Pub. L. 96-611, § 7(a)(2)(3), 94 Stat. 3566, 3568. Creating stability in child custody legislation was one of the main goals pursued by the drafters of the P.K.P.A. *See id.* § 7(c)(4). Rampant disrespect of custody orders was expressly mentioned as one of the congressional findings leading to the enactment of the P.K.P.A. *See id.* § 7(a)(1)-(4).

tive child custody legislation instead of a progression toward it.<sup>137</sup> Permitting the noncustodial contestant in the custody battle to command extradition of the established legal guardian is also abusive of criminal process, lending nothing to the furtherance of criminal justice.<sup>138</sup>

Deeming the custodial parent a "fugitive from justice" does not serve, and may indeed contradict, the purpose of the Extradition Act.<sup>139</sup> The obvious purpose of an act for the effectuation of extradition is to prevent any state from becoming a "safe haven" for the fugitives from the criminal justice systems of sister states.<sup>140</sup> The custodial parent, rather than fleeing the justice system of a state, has sought "safe haven" within it.<sup>141</sup> The federally established legal guardian has sought compliance with the P.K.P.A., perhaps as an alternative to self-help in the form of abduction, to acquire custody.<sup>142</sup> However, if a custodial parent is to undergo extradition and be

137. One commentator summed up the contribution of the P.K.P.A. as follows:

The Parental Kidnaping Prevention Act does not actually "prevent" kidnaping, but it does make it more difficult for an abducting parent to challenge successfully an adverse custody determination. Where the decree state had, and continues to have, jurisdiction, the Act mandates full faith and credit . . . . The strength of the Act is its deterrent effect upon parents who are inclined to snatch their children.

Note, *The Parental Kidnaping Prevention Act: Application and Interpretation*, 23 J. FAM. L. 419, 429 (1984-85).

138. *See Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2441, 96 L. Ed. 2d at 343. The Court's majority stated its regret in having to enforce Smolin's extradition because if indeed he was innocent of the charges against him, he was a possible victim of abuse of criminal process. *See id.*

139. *See id.* at \_\_\_ n.9, 107 S. Ct. at 2445 n.9, 96 L. Ed. 2d at 349 n.9 (Stevens, J., dissenting). "Congress' assertions of the federal interest in regulating parental abduction require habeas courts to exercise particular vigilance that a custodial parent not be extradited as a fugitive from justice." *Id.* Justice Stevens found it anomalous that the Act intended to deter coerced transportation of children for private interests should not *also* be construed to prevent coercion of a custodial parent for purely private interests, i.e., those of the noncustodial parent in attempting to prolong the custody battle. *See id.* at \_\_\_, 107 S. Ct. at 2445, 96 L. Ed. 2d at 349 (Stevens, J., dissenting).

140. *See Michigan v. Doran*, 439 U.S. 282, 287 (1978). The purpose of the Extradition Act is to enable states to bring offenders as swiftly as possible to trial. *See id.*; *Munsey v. Clough*, 196 U.S. 364, 373 (1904)(sufficient for extradition if indictment charges offense which justifies rendition to another state under that demanding state's laws).

141. *See* 28 U.S.C. § 1738A(a) (1982). The primary full faith and credit provision of the Act guarantees protection for custody decrees properly rendered under the Act. *See id.*; *see also State ex rel. Valles v. Brown*, 639 P.2d 1181, 1184 (N.M. 1981)(P.K.P.A.'s underlying policy to prevent childsnatching by upholding properly rendered custody decrees). Every state is required to facilitate the prevention of childsnatching and its attendant emotional stress and expense to all parties involved by affording full faith and credit to properly rendered custody decrees. *See id.*

142. *See* 28 U.S.C. § 1738A(a) (1982). The entire purpose of the Act is to reduce the incentive for kidnaping through one primary means: compliance with the provisions of the Act which guarantee stability to custodians who abide by those precepts. *See id.*



tried on charges of kidnaping supported solely by the allegations of an interested accuser, the incentive for lawful compliance is lost.<sup>143</sup> The Court in *California v. Superior Court* promoted nonadherence to the P.K.P.A. by branding a federally established custodial parent a fugitive from justice.<sup>144</sup> Criminal justice is additionally abused for there is inherent contradiction in the legal system when the law names the custodial parent both legal guardian and fugitive.<sup>145</sup> It is when the role of extradition is to seek the genuine fugitive in custody cases, the noncustodial parental abductor, that justice is truly served.<sup>146</sup>

The apparent discord between the P.K.P.A. and the Extradition Act in child custody cases reveals the need for affirmative preventive measures to assure nonextradition of the federally established custodial parent.<sup>147</sup> The Extradition Act and the P.K.P.A. should be harmonized in order that both acts may fulfill the purposes that Congress intended.<sup>148</sup> The Court exhibited an unconvincing rationale in its reluctance to reconcile the acts and to prefer extradition, for neither the Constitution, the Extradition Act, nor precedent prohibits congruity of the two.<sup>149</sup>

The United States Constitution and the Extradition Act are both to be liberally construed to effectuate and expedite the administration of justice, enabling the several states to bring persons accused of crimes promptly to

143. *California v. Superior Court*, \_\_\_ U.S. \_\_\_, \_\_\_ n.8, 107 S. Ct. 2433, 2445 n.8, 96 L. Ed. 2d 332, 349 n.8 (1987)(Stevens, J., dissenting).

144. *Id.* at \_\_\_, 107 S. Ct. at 2441, 96 L. Ed. 2d at 344. Once the P.K.P.A. makes clear the custody of one charged with kidnaping, the extradition on the basis of such charge is legally impossible because he has not been substantially charged with the crime of kidnaping and is not a fugitive. *Id.*

145. *Id.* at \_\_\_, 107 S. Ct. at 2445, 96 L. Ed. 2d at 349.

146. See Parental Kidnaping Prevention Act of 1980, Pub. L. 96-611, §§ 9-10, 94 Stat. 3566, 3571-73. Congress makes the Parent Locator Service as well as the Fugitive Felon Act available to aggrieved parents as additional enforcement mechanisms. See *id.* See generally Donigan, *Child Custody Jurisdiction: New Legislation Reflects Public Policy Against Parental Abduction*, 19 GONZ. L. REV. 1, 64-66 (1983-84)(comments on anticipated effect of provisions).

147. See *Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2445, 96 L. Ed. 2d at 349 (Stevens, J., dissenting)(federally established custodial parent not fugitive within meaning of Extradition Act). Justice Stevens related three policy reasons for refusing extradition of the legal custodian. First, he stated that when the fleeing parent is the noncustodian, extradition is proper. See *id.* However, the Court approves nonadherence to federal law when it extradites a legal custodian despite his compliance with the law. Secondly, extradition is at cross-purposes with Congress' intent to curtail custody disputes and prevent parental abduction. Finally, the two Acts should be harmonized because they can be mutually reinforcing if properly interpreted. *Id.*

148. *Id.* at \_\_\_, 107 S. Ct. at 2445, 96 L. Ed. 2d at 349.

149. *Id.* at \_\_\_, 107 S. Ct. at 2441, 96 L. Ed. 2d at 344 (Stevens, J., dissenting)(no constitutional or statutory reason prevents refusal of extradition of one who can prove he is charged with legally impossible crime).

trial in the state where the crime was perpetrated.<sup>150</sup> Yet, neither the extradition clause nor the Extradition Act suggests that a state is required to deliver to those requesting his extradition one accused of a crime which is legally impossible under the law of the demanding state.<sup>151</sup> Common law precedent refutes such blind surrender of an accused by requiring an asylum state to discern whether the person sought has been "substantially charged with a crime" and so has become a "fugitive from justice" upon fleeing the state where the crime was committed.<sup>152</sup> Summary examination of custody orders before extradition alienates neither the extradition clause nor other extradition law but bears directly upon the *Michigan v. Doran* issues of whether the accused has been charged with a crime by the demanding state and whether by fleeing therefrom he has become a "fugitive from justice."<sup>153</sup>

Extradition analysis need not be so narrow as to preclude inquiry into whether a custody decree, valid under federal law, prevents the accused from being substantially charged with the crime of kidnaping and erroneously branded a fugitive.<sup>154</sup> A summary inquiry of this nature would not offend

150. See *Biddinger v. Commissioner of Police*, 245 U.S. 128, 130 (1917)(federal Constitution and extradition statute not construed narrowly and technically but liberally to accomplish their important purpose); *Brewer v. Goff*, 138 F.2d 710, 711 (10th Cir. 1943)(courts have given Constitution and extradition statute liberal construction to facilitate administration of justice in several states); *Gailey v. Laurie*, 373 A.2d 482, 485 (R.I. 1977)(asylum state must faithfully enforce constitutional mandate of interstate extradition).

151. Compare U.S. CONST. art. IV, § 2, cl. 2 (authorizes extradition of persons *charged with crime*) with 18 U.S.C. § 3182 (1982)(executive authority must produce indictment charging person demanded with *commission of crime*). Courts of sanctuary states have traditionally been permitted to make judgments regarding whether a "crime" has actually been committed. See *Ex parte Reggel*, 114 U.S. 642, 652-53 (1885)(accused must be determined "fugitive from the justice of the demanding state" before rendition). The Court in *Reggel* found that:

Any other interpretation would lead to the conclusion that the mere requisition by the executive of the demanding State, accompanied by the copy of an indictment, or an affidavit before a magistrate, certified by him to be authentic, charging the accused with crime committed within her limits, imposes upon the executive of the State or Territory where the accused is found, the duty of surrendering him, although he may be satisfied, from incontestable proof, that the accused had, in fact, never been in the demanding State, and therefore, could not be said to have fled from its justice.

*Id.*

152. See, e.g., *Roberts v. Reilly*, 116 U.S. 80, 96 (1885)(indictment must sufficiently charge crime "under and against" laws of state); *Burke v. State*, 265 A.2d 489, 492 (Me. 1970)(substantial charge of crime against demanding state's laws open to judicial inquiry by courts of asylum states as question of law). But see *Fisco v. Clark* 414 P.2d 331, 333 (Or. 1966). "It is well established that in an extradition proceeding, the complaint need not meet the technical requirements of criminal pleading under the laws of the demanding state, but is sufficient if it substantially charges the person demanded with a crime." *Id.*

153. See *Michigan v. Doran*, 439 U.S. 282, 296-97 n.7 (1978)(Blackmun, J., concurring in result). Justice Blackmun stated that a "routine and basic inquiry" as to whether an indictment charges a crime does not lead "to frustration of the extradition process." *Id.*

154. See *California v. Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. 2433, 2441, 96 L. Ed.

but would advance the purposes of extradition by allowing for extradition of persons whose custody is in violation of the P.K.P.A. and would additionally preserve credibility of the P.K.P.A. by upholding the sanctity of the properly rendered custody decree in the interest of custodial stability.<sup>155</sup>

Upon receipt of habeas corpus petitions which challenge parental kidnapping charges on the basis of legal custody, courts of asylum states should be permitted to discern whether the extradition request is, in this respect, fundamentally flawed.<sup>156</sup> "To obtain habeas relief there must be objections which reach deeper into the indictment than those which would be good against it in the court where it is pending."<sup>157</sup> Therefore, habeas relief should be available against extradition in custody cases only when custody orders, satisfactory to the P.K.P.A., prove the demanding state essentially erroneous in charging the crime of kidnapping.<sup>158</sup> The recognition of prop-

332, 344 (Stevens, J., dissenting). "[O]ur precedents make clear that if a critical allegation of fact in the indictment is impossible in law' the asylum State must refuse the extradition demand because the person has not been substantially charged with a crime." *Id.* (quoting *Roberts v. Reilly*, 116 U.S. 80, 96 (1885)).

155. *See id.* at \_\_\_, 107 S. Ct. at 2442, 96 L. Ed. 2d at 345. An examination of federal law in child custody cases should not be precluded because such an inquiry determines whether a crime has been "substantially charged." *Id.* Conviction on charges of kidnapping is an impossibility if custody has been awarded to the accused by a court of competent jurisdiction under the P.K.P.A. *See id.*; *see also* *Flood v. Braaten*, 727 F.2d 303, 308 (3d Cir. 1984)(enforcing child custody decrees under full faith and credit principles presents unique problems).

Congress [by enacting the P.K.P.A.] sought a major, federally mandated change in the old state law approach to custody jurisdiction. Congress did not simply enact the U.C.C.J.A. into federal law [but] instituted a new concept of custody jurisdiction. Had it wanted to leave these stricter provisions to the unpoliced discretion of the states it is doubtful whether it would have acted at all.

*Id.* at 311-12.

156. *See* *People v. Superior Court*, 716 P.2d 991, 1000 (1986)(according to P.K.P.A. effect of child custody order must be decided under law of decree state), *rev'd*, \_\_ U.S. \_\_, 107 S. Ct. 2433, 96 L. Ed. 2d 332 (1987). The interests of the Extradition Act are not endangered by an asylum state's determining legal custody because there is no risk of the asylum state's entanglement in unfamiliar laws of another state since the P.K.P.A. is a uniform federal law not subject to varying state interpretations. *See id.*; *see also* *Superior Court*, \_\_ U.S. at \_\_, 107 S. Ct. at 2443, 96 L. Ed. at 346 (Stevens, J., dissenting). Justice Stevens condoned "[a] sensible application of the requirement that a fugitive must be substantially charged' with a crime, informed by" the necessity of "avoiding a trial-like inquiry into the law of sister States" in order to prevent "the injustice of extradition to face a legally impossible charge." *Id.*

157. *Superior Court*, \_\_ U.S. at \_\_, 107 S. Ct. at 2443, 96 L. Ed. 2d at 347 (Stevens, J., dissenting)(quoting *Pierce v. Creecy*, 210 U.S. 387, 401 (1908)).

158. *See id.* at \_\_ n.9, 107 S. Ct. at 2445 n.9., 96 L. Ed. 2d at 349 n.9. The dissent noted the apparent need for extradition of persons who violate the P.K.P.A. *See id.* Justice Stevens pointed to the P.K.P.A.'s use of the Fugitive Felon Act "which makes it a federal crime for a person to move or travel 'in interstate or foreign commerce with intent . . . to avoid prosecution . . . under the laws of the place from which he flees, for a crime which is a felony under the laws of the place from which the fugitive flees.'" *Id.*; *see also* 28 U.S.C. § 1073 (1982).

erly rendered custody decrees under these restraints presents no affront to extradition law but promotes its underlying purpose of assuring extradition of those substantially charged with the crime of kidnaping.<sup>159</sup> Custody combatants, aware that the courts in extradition proceedings would recognize properly rendered decrees, would be reluctant to use extradition as a device for prolonging a custody dispute and, thus, be equipped with one less weapon with which to fight the custody battle.

## VI. CONCLUSION

"The maturity of a legal system," it has been said, "may be judged in part by the means provided as alternatives to self-help."<sup>160</sup> "Our law of child custody" has been described as "barbaric"; "[t]o the possessor belongs the spoils."<sup>161</sup> The Parental Kidnaping Prevention Act of 1980 was a legislative response to what the drafters termed a "national epidemic" referring to the estimated hundreds of thousands of child abductions occurring annually. The P.K.P.A. sets forth two separate measures aimed at preventing the childsnatching phenomenon. First, the P.K.P.A. delineated jurisdictional criteria for determining the decree state, eliminating ambiguity as to which state is legally entitled to pronounce custody judgments. Second, the P.K.P.A. conferred full faith and credit upon determinations rendered by the proper decree state. The extension of full faith and credit to custody decrees has been described as an "extraordinary event," as it is the first such exercise of congressional power to "prescribe the manner in which full faith and credit shall be given" since 1804. While the P.K.P.A. does not eliminate parental kidnaping, its attempt to prevent jurisdictional conflict and prohibit competition over child custody by means of full faith and credit effectively deters parents from abducting children to obtain custody awards in other states.

Extradition within the sphere of child custody has contributed to this deterrent effect by serving to return abductors to the state in which the kidnaping occurred in order to stand trial on the charges. However, the summary nature of extradition proceedings has proven inimical to the purposes of the P.K.P.A. in a recent case involving the requested extradition of a custodial parent on charges of kidnaping. In *California v. Superior Court*, the United States Supreme Court commanded the extradition of a custodial father, reasoning that under traditional extradition analysis he had been properly charged with kidnaping by the state requesting rendition. Thus arose the

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159. *Superior Court*, \_\_\_ U.S. at \_\_\_, 107 S. Ct. at 2445-46, 96 L. Ed. at 348-49.

160. See Foster & Freed, *Childsnatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HAST. L. REV. 1011, 1011 (1977)(discussing legal aspects of childsnatching crisis).

161. *Id.*

anomaly of naming the custodial parent simultaneously legal guardian and criminal fugitive.

The conflict of the P.K.P.A. and the Extradition Act results in derogation of the purposes of both. Foremost, because summary extradition rejects recognition by the asylum state of decrees meeting P.K.P.A. criteria, the full faith and credit provision of the P.K.P.A. is effectively abrogated by subjecting custody decrees to discretionary modification by the demand state. Additionally, extradition of the custodial parent hinders rather than furthers criminal justice by removing the incentive to comply with the P.K.P.A., a federal law. Finally, the Court's summary imposition of extradition upon the custodial parent represents a failure to harmonize the Extradition Act and the P.K.P.A., preferring the former over the latter to the detriment of both.

Neither the United States Constitution, statutory law, nor common law precedent prohibits an extradition analysis which accomodates the P.K.P.A. Therefore, a summary inquiry into whether a valid custody decree under federal law prevents the accused from being a fugitive from justice is constitutionally permissible. Unless the Court is compelled to reconsider its preference for traditional extradition analysis over the purposes of the P.K.P.A., American child custody law will have begun a regressive trek toward the barbaristic philosophy of "to the possessor belongs the spoils," the legally immature remedy of self-help.

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