

Article 13(b) of the Hague Convention Treaty: Does It Create a Loophole for Parental Alienation Syndrome--an Insidious Abduction?

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And ye, fathers, provoke not your children to wrath n1

Medea, like Circe, was also said to be the daughter of Hecate. She was a princess and a powerful witch referred to as the "wise one." She was the niece of Circe and a priestess of Hecate. According to Pliny, her magic controlled the sun, moon and stars. Her most popular myth was one in which she aided Jason in obtaining the Golden Fleece so that he could win a kingdom in Greece that was rightfully his but had been taken over by his Uncle Pelias. The King of Colchis, Medea's father, possessed the Golden Fleece. When Jason and his band of Argonauts appeared, Medea fell in love with Jason and decided to help him in his quest. By preparing an ointment that made Jason and his men invulnerable for a day, and bewitching the serpent who guarded the Golden Fleece, Medea made it possible for Jason to accomplish his task. Medea, Jason and the Argonauts then fled to Greece. Jason and Medea were later married and had two children. Years later, Jason wished to marry Creusa, princess of Corinth; so vengeful Medea sent her a poisoned robe as a gift. When Creusa put on the robe she immediately burst into flames and burned to death. Then Medea killed the children she had by Jason, set fire to the palace, and fled to Athens where she married King Aegeus, the father of Theseus. Medea was made immortal by Hera and later became the wife of Achilles in Elysium, the afterworld of heroes. n2

n1 Ephesians 6:4 NT (Kings James).

n2 Euripides, Medea (431 B.C.), available at <http://classics.mit.edu/Euripides/medea.html>.

In ancient Greece and Rome, fathers automatically got custody, even if the fathers unilaterally divorced their wives. Children were the fathers' property, and a father could sell his child into slavery and even kill her. Whether a parent provokes his children to wrath or kills them as Medea did in the Greek tragedy and as fathers did in ancient Greece and Rome, the result is still the same: The children are destroyed.

As noted by Forensic Psychologist D. C. Rand,

Modern Medeas do not want to kill their children, but they do want revenge on their former wives or husbands--and they exact it by destroying the relationship between the other parent and the child. . . . The Medea syndrome has its beginnings in the failing marriage and separation, when parents sometimes lose sight of the fact that their children have separate needs [and] begin to think of the child as being an extension of the self. . . . A child may be used as an agent of revenge against the other parent . . . or the anger can lead to child-stealing. n3

n3 Deirdre Conway Rand, Ph.D., The Spectrum of Parental Alienation Syndrome (Part 1), 15 AMERICAN JOURNAL OF FORENSIC PSYCHOLOGY (1997), quoting JUDITH WALLERSTEIN & SANDRA BLAKESLEE, SECOND CHANCES (1989), at www.fact.on.ca/Info/pas/rand02.htm, at 4.

In today's disposable society in which even children are disposed of and replaced, the selfishness of parents' interest does not lie with the best interest of children. The trend is to abduct. The problem of abduction becomes generational; thus, this vicious cycle of abuse is perpetuated. In one case, a mother was abducted four times by her mother as a child. Now, the mother has abducted her baby. In another case, a father only abducted his now grown son. His daughter, now grown, is suffering post-traumatic stress and feels abandoned by her father because he seemed to have only wanted her brother.

I. Article 13(b)

If it were screenwriters drafting a script based on the history of Polanski's conviction and flight from punishment, incorporating the civil and criminal aspects of his actions, we would surely create a scenario where all the characters get their [just deserts] without regard to the protective safeguards of the Constitution. However, as jurists, we are bound by constitutional principles and must apply them evenhandedly, regardless of our personal opinions of any of the litigants. n4

n4 Doe v. Superior Court (Cal. App. 2 Dist 1 Div 1990) 222 Cal. App. 3d 1406, 1411, 212 Cal. Rptr. 2d 474, 477 (1990).

Article 13(b) of the Hague Convention Treaty on the Civil Aspects of International Child Abduction, adopted at the Hague on 25 October 1980 (Hague Convention Treaty), states in pertinent part,

But judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has obtained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this article, the judicial and administrative authority shall take into account the information relating to the social background of the child provided by the Central Authority or other confident authority of the child's habitual residence. [Emphasis added.]

Since the Hague Convention Treaty was promulgated on 25 October 1980, there has been conflict concerning the proper application of article 13(b). One school of thought is that because the Hague Convention Treaty has a specific section for exceptions to the general rule of return under article 12, the drafters of the Hague Convention Treaty expected that there would be occasions when under the exceptions, a child would not be returned. An alternate thought is that the drafters only included article 13(b) (and article 20) because without it the chances of having the Hague Convention Treaty accepted would have been diminished.

Case law since the inception of the Hague Convention Treaty reflects this dichotomy: (1) after piously stating that the Hague Convention Treaty does not go to the merits of the underlying custody action, some courts then proceed under the guise of article 13(b) to hold a best-interests hearing; (2) other courts have followed the expression of the Explanatory Report by E. Perez-Vera, Hague Conference on Private International Law, n5 in which great trust is given to the court of the child's habitual residence to do the right thing. While an article 13(b) finding can alert the court and show a need for protection of the children, it should not be used to create a loophole and defeat the purpose of the Hague Convention Treaty, which is to return the children to their habitual residence, where the bulk of all relevant evidence concerning their best interests can be found.

n5 Elisa Perez-Vera, *Conclusions des travaux de la Conference de La Haye de droit international prive* (Results of the work of the Hague Conference on private international law), vol. III (1980) [hereinafter Perez-Vera Report].

This basic fact is discussed in no. 34 of the Perez-Vera report:

To conclude our consideration of the problems with which this paragraph deals, it would seem necessary to underline the fact that the three types of exception to the rule concerning the return of the child must be applied only so far as they go and no further. This implies above all that they are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter. In fact, the Convention as a whole rests upon the unanimous rejection of this phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition. The practical application of this principle requires that the signatory States be convinced that they belong, despite their differences, to the same legal community within which the authorities of each State acknowledge that the authorities of one of them--those of the child's habitual residence--are in principle best placed to decide upon questions of custody and access. As a result, a systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to the collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration. n6

The key to the convention is evident in the following words:

The practical application of this principle requires that the signatory States be convinced that they belong, despite their differences, to the same legal community within which the authorities of each State acknowledge that the authorities of one of them--those of the child's habitual residence--are in principle best placed to decide upon questions of custody and access.

n6 Id.

II. Parental Alienation Syndrome n7

n7 RICHARD A. GARDNER, M.D., THE PARENTAL ALIENATION SYNDROME, 2D EDITION, at xxi-xxii (1998); see also www.rgardner.com.

A. CONCEPT OF PARENTAL ALIENATION SYNDROME

The concept of Parental Alienation Syndrome (PAS) is not without controversy. The general view under certain foreign courts is that it does not exist. However, a recent case, *Kilgore v. Boyd*, n8 refutes that thinking by finding PAS to be scientifically reliable and states in pertinent part,

THE COURT: If I do have to apply a Frye test he has passed the Frye test . . . in my courtroom, which is the Circuit Court Courtroom in the Family Law division, based on the evidence and the argument before me. The evidence and the argument before me, the testimony and the CV of Dr. Gardner, together with an excerpt of his writings. There was also proffered an article from the Florida Bar Journal which . . . I placed some credibility in . . . I'm also impressed by the fact that Dr. Gardner is cited in the footnote in at least one of the cases, I believe it's *Schultz vs. Schultz*. n9

. . . Furthermore, Dr. Gardner's argument [on why PAS is] not in the DSM-IV [is that] it's not in there yet because the DSM-IV hasn't been updated since 1994. Both of the examples cited, that is the fact that AIDS was widely discussed and treated and diagnosed before it was included in the DSM-IV as was Tourette's syndrome, [are] persuasive.

. . . The study by Dr. Gardner has been around since 1985, which is *fifteen years*.

. . . So based on the totality . . . I find that even though I might not have to have the test meet the Frye criteria that it does meet the Frye criteria . . .
n10

Frye v. United States, n11 a long-established case, states in pertinent part,

While the courts will go a long way in admitting expert testimony, deduced from a well-recognized scientific principle or discovery, the thing from which the deduction [was] made must be sufficiently established to have gained general acceptance in the particular field in which it belongs . . .

Accordingly, because a U.S. court found PAS to be scientifically reliable, n12 PAS can no longer be ignored.

n8 *Kilgore v. Boyd*, Case No. 94-7573, Nov. 22, 2000.

n9 *Schutz v. Schutz*, 522 So. 2d 874 (Fla. App. 1988).

n10 *Boyd*, Case No. 94-7573, Nov. 22, 2000.

n11 *Frye v. United States*, 54 App. D.C. 46, 293 F. 1013, 1014 (1923).

n12 See *Frye*, 293 F. 1013.

PAS is a disorder that arises primarily in the context of child custody disputes. Its primary manifestation is a child's campaign of denigration against one parent, a campaign that has no justification. n13 It results from the combination of the programming (brainwashing) parent's indoctrinations and the child's own contributions

to the vilification of the target parent. When true parental abuse and/or neglect is present, the child's animosity may be justified, and the PAS explanation for the child's hostility is not applicable.

n13 GARDNER, supra note 7.

B. SYMPTOMS OF PARENTAL ALIENATION SYNDROME n14

n14 Id. at 76-109.

The eight cardinal symptoms of PAS are

- a campaign of denigration; n15
- weak, frivolous, and absurd rationalizations for the depreciation; n16
- lack of ambivalence; n17
- an independent-thinker phenomenon; n18
- reflexive support of the alienating parent in the parental conflict; n19
- of guilt over cruelty to and/or exploitation of the alienated parent; n20
- presence of borrowed scenarios; and n21
- the spread of animosity to the extended family and friends of the alienated parent. n22

n15 Id. at 77-86.

n16 Id. at 86-94.

n17 Id. at 94-96.

n18 Id. at 96-99.

n19 Id. at 99-100.

n20 Id. at 100-01.

n21 Id. at 101-07.

n22 Id. at 107-09.

1. *A Campaign of Denigration* n23

n23 Id. at 77-86.

Typically, a child is obsessed with hatred of a parent. This child will speak of the alienated parent with every vilification and profanity in her vocabulary without embarrassment or guilt. The denigration of the vilified parent often has the quality of a litany. After only minimal prompting by a lawyer, judge, probation officer, mental health professional, or other person involved in the litigation, the brain recording will be turned on, and a command performance is provided in which the targeted parent's defects are listed at length.

2. *Weak, Frivolous, and Absurd Rationalizations for the Depreciation* n24

n24 Id. at 86-94.

Typically, a PAS child provides irrational and often ludicrous justifications for his alienation from the targeted parent. The child may justify the alienation with memories of minor altercations experienced in the relationship with the estranged parent--even years after they took place. These are usually trivial experiences that most children quickly forget. When a PAS child is asked to give more compelling reasons for his rejection, he is unable to provide them.

Typically, the alienating parent will agree with the child that these professed reasons justify the ongoing animosity.

3. *Lack of Ambivalence* n25

n25 Id. at 94-96.

Another symptom of PAS is complete lack of ambivalence. All human relationships are ambivalent, and

parent-child relationships are no exception. But the concept of mixed feelings has no place in a PAS child's scheme of things. The victimized parent is all bad, and the indoctrinating parent is all good. Most children (normal ones as well as those with a wide variety of psychiatric problems), when asked to list both good and bad things about each parent, will generally be able to do so. When a PAS child is asked to provide the same list, he will typically recite a long list of criticisms of the targeted parent but will not be able to think of one positive or redeeming personality trait. In contrast, the child will provide only positive and endearing qualities for the alienating parent and claim to be unable to think of even one dislikable trait. The vilified parent may have been deeply dedicated to the child's upbringing, and a strong bond may have been created over many years. Yet, it seems to evaporate almost overnight at the time of the onset of PAS. In contrast, the alienating parent, toward whom the child was previously ambivalent, becomes idealized and can do no wrong.

4. *An Independent-Thinker Phenomenon* n26

n26 Id. at 96-99.

Many PAS children profoundly profess that their decision to reject targeted parents is their own. They deny any contribution from programming parents, who support this independence vociferously. In fact, alienators will typically proclaim that they want their children to visit and profess recognition of the importance of such involvement. Yet, the indoctrinators' acts indicate otherwise.

5. *Reflexive Support of the Alienating Parent in the Parental Conflict* n27

n27 Id. at 99-100.

In family conferences in which children are seen together with both the alienating and alienated parents, the children reflexively take the position of the indoctrinating parents--sometimes even before the victimized parents have had the opportunity to present their side of the argument. Even the alienating parents may not present the argument as forcefully as the supporting children. Thus, PAS children may even refuse to accept evidence that is obvious proof of the vilified parents' position.

6. *Absence of Guilt over Cruelty to and/or Exploitation of the Alienated Parent* n28

n28 Id. at 100-01.

A PAS child may exhibit guiltless disregard for the feelings of the victimized parent. There will be a complete absence of gratitude for gifts, support payments, and other manifestations of the vilified parent's continued involvement and affection.

7. *Presence of Borrowed Scenarios* n29

n29 Id. at 101-07.

The presence of borrowed scenarios should clue examiners into the high probability that they are dealing with PAS. Not only is there a rehearsed quality to PAS children's litanies, but also one often hears phraseology that is not commonly used by children of that age. Many expressions are identical to those used by the indoctrinating parents. Certain parental terms and phrases become scripted into the children's litanies of denigration. Frequently, the children attribute particular statements to programming parents, thereby letting the cat out of the bag and confirming that particular phrases have been programmed.

8. *The Spread of Animosity to the Extended Family and Friends of the Alienated Parent* n30

n30 Id. at 107-09.

The hatred of an alienated parent often extends to include that parent's complete extended family. Cousins, aunts, uncles, and grandparents--with whom the child previously may have had loving relationships--are now viewed as similarly obnoxious. Grandparents who previously had a loving and tender relationship with the child find themselves suddenly and inexplicably rejected. The child has no guilt over such rejection, nor does the alienator. Greeting cards are not reciprocated. Presents sent to the child are refused, remain unopened, or are even destroyed (generally in the presence of the programming parent). When the denigrated parent's relatives call on the telephone, the child will respond with angry vilification or quickly hang up on the caller. (These responses are more likely to occur if the alienating parent is within hearing distance of the conversation.) With regard to the denigration of the relatives, the child is even less capable of providing justification for the animosity. The rage of a PAS child is often so great that he becomes completely oblivious to the privations he is causing himself. Again, the indoctrinating parent is typically unconcerned with the untoward psychological effects on the child of this rejection of the network of relatives who previously provided important psychological gratification.

C. PARENTAL ALIENATION SYNDROME AS A FORM OF CHILD ABUSE n31

n31 Id. at xx.

It is important to understand that a parent who inculcates PAS in a child is indeed perpetrating a form of emotional abuse in that such programming may not only produce lifelong alienation from a loving parent but also lifelong psychiatric disturbance in the child. Parents who systematically program a child into a state of ongoing denigration and rejection of a loving and devoted parent are exhibiting complete disregard of the alienated parent's role and the child's upbringing. Such an alienating parent is disrupting the psychological bond between the alienated parent and the child, that could, in the vast majority of cases, prove of great value to the child. n32

n32 Id.

The term PAS refers only to situations in which the parental programming is combined with the child's own scenarios of disparagement of the vilified parent. n33 According to Dr. Gardner, children jump on the bandwagon of the parents with whom they have the stronger bond. These children are more threatened by non-custodial parents being delineated the custodians. However, the bond is pathological. n34 Because of a child's immaturity, she brings primitive thinking into the campaign with preposterous thinking by the child being somewhat supported by the custodial parent. n35

n33 Id. at xx.

n34 Richard A. Gardner, M.D., "The Parental Alienation Syndrome: Diagnosis and Treatment," Lecture at the American Academy of Forensic Examiners, New York, New York (Oct. 30, 1999), at www.rgardner.com/pages/cv.lects.

n35 Id.

Furthermore, a child's love of the programmer has less to do with love than the child's fear of the programmer. The child has already lost one parent and fears losing the love of the programmer. n36 Consequently, the behavior of either one or both alienators, who purport to love this object of the war, may be seriously damaging to their child. The alienator may therefore overtly or covertly attempt to enlist the child on her side in any potential custody litigation. Enlisting the child, or co-opting the child, becomes all the more

important since one of the factors to which the court gives great weight in a judicial determination of custody is the child's preference. n37 Unfortunately, a child's stated preference becomes an important weapon in the arsenal of the competing parent. n38

n36 Id.

n37 STANLEY S. CLAWAR & BYRNNE V. RIVLIN, *CHILDREN HELD HOSTAGE: DEALING WITH PROGRAMMED AND BRAINWASHED CHILDREN*, at vii (1991).

n38 Id. at viii.

1. *Severely Alienated Children* n39

n39 DOUGLAS DARNALL, PH.D., *DIVORCE CASUALTIES: PROTECTING YOUR CHILDREN FROM PARENTAL ALIENATION*, at 33 (1998).

Severely alienated children are the victims of the obsessed alienators' relentless campaign to destroy their relationships with targeted parents. These children may appear to others as normal, healthy children until the topic of their targeted parents comes up. Immediately, their demeanors change. Their friendly, pleasant expressions turn to anger and contempt. These are the children that Dr. Gardner describes in his definition of PAS. n40

n40 Id. at viii.

2. *What Does a Severely Alienated Child Look Like?* n41

n41 Id. at 13, 14.

A severely alienated child has a relentless hatred toward the targeted parent. He parrots the obsessed alienator. The child does not want to visit or spend any time with the targeted parent. Many of the child's beliefs are enmeshed with those of the alienator. The beliefs are delusional and frequently irrational.

A court does not intimidate a severely alienated child. Frequently, his reasons are not based on personal experiences with the targeted parent; rather, they reflect what he is told by the obsessed alienator. The child is not neutral in his feelings; he only feels hatred and is unable to see the good. He has no capacity to feel guilty about how he behaves toward the targeted parent or to forgive any past indiscretions.

He shares the obsessed alienator's cause. They work together to desecrate the hated parent. The child's obsessive hatred extends to the targeted parent's extended family without remorse.

3. *Three Types of Parental Alienation Syndrome* n42

n42 RICHARD A. GARDNER, M.D., *THERAPEUTIC INTERVENTIONS FOR CHILDREN WITH PARENTAL ALIENATION SYNDROME*, at 423, 425 (2000); see also www.rgardner.com.

PAS refers to the symptoms in a child. There are three types of PAS: mild, moderate, and severe. Alienators range from the mild to the moderate to the severe. There is no direct parallel between the efforts of the alienator and the success of the child's alienation. A severe alienator may only produce mild symptoms in the child because of the strong bonding that the targeted parent has established with the child. This is the best antidote to the development of PAS.

4. *The Obsessed Alienator*

An obsessed alienator is a parent with a cause: to align the child to his or her side and, together with the child, campaign to destroy the child's relationship with the targeted parent. For this campaign to work, the obsessed alienator enmeshes the child's personality and beliefs into her own. n43 This is a process that takes time but could also occur within a few days. n44

n43 DARNALL, *supra* note 39, at 13, 14.

n44 Interview with Richard A. Gardner, M.D. (Oct. 2000).

This is also a process that a child, especially a young one, is completely helpless to combat. It usually begins well before a divorce is final. The obsessed parent is angry or bitter or feels betrayed by the other parent. The initial reasons for the bitterness may be justified. The obsessed parent could have been verbally and physically abused, betrayed by an affair, or financially cheated. The problems occur when the feelings do not heal but instead become more intense due to the necessary continued relationship with the person she despises because of their common parenthood. Just having to see or talk to the other parent is a reminder of the past and triggers the hate. Though Clawar and Rivlin did not specifically discuss the obsessed alienator in their book, they found that five percent of the children in their study were programmed by similar parents to the point of no return, meaning that no interventions were found to be effective in deprogramming these children. These children were emotionally and physically lost to the targeted parents. These are the children that Dr. Gardner describes as victims of PAS.

There are no validated treatment protocols for either the obsessed alienator or the severely programmed child. Courts and mental health professionals are frequently powerless in helping either the obsessed or targeted parents or the children. The best hope for these children is early identification of the symptoms and prevention. Once the alienation becomes entrenched and the children become true believers in the obsessed parents' cause, the children are usually lost to the targeted parents for years to come. n45
n45 DARNALL, supra note 39, at 13, 14.

D. INTERVENTION

In his latest book, Dr. Gardner describes successful interventions for the mild and moderate types of PAS. n46

According to Dr. Gardner,

The diagnosis of the PAS is determined by the symptomatology in the child, not the degree to which the alienator has tried to induce the disorder. There are many situations in which the attempts to program the child into the campaign of denigration have not been successful, even though the alienator has been relentless in the attempts to alienate the child. The most common reason for the lack of success in such situations is the strong, healthy bonding that the victimized parent has had with the child. This bonding has served as an antidote to the PAS poison. n47

. . . Inducing a PAS in a child is a form of emotional abuse. As is true for physical and sexual abuse, PAS symptomatology may be lifelong. The attenuation and even destruction of what was previously a good parent-child bonding may be permanent. They may not be able to resume a relationship after a hiatus of a few years. The attempts at rapprochement may be similar to that which occurs at an alumni meeting. A few minutes are spent reminiscing about the good old days, and then there may be little else to say to one another, because the individuals have gone down separate paths in life. The healthy bond between a parent and child needs constant refueling and ongoing common experiences if it is to survive. And this is no different from other human relationships. n48

. . . In a sense, the effects of parental death may be less detrimental to a child than the induction of PAS by one parent against the other. After a parent dies, there are usually loving memories about that parent embedded in the child's brain circuitry. The recollections are most often of loving and tender

moments, with selective forgetting of unhappy and painful experiences. In contrast, when the bonding is broken in a PAS, there are two great differences: (1) The parent is very much alive and potentially available, but the child is made to believe that this parent is so noxious and dangerous that rejection is the only reasonable course, and (2) embedded in the child's brain circuitry are thoughts of hate, a deprecation instead of love and affection. These pathological thoughts become ever more deeply embedded in the child's psychic structure, and such entrenchment cannot but be psychologically detrimental. Parents serve as our models for the other people with whom [children] relate in life. Having as a model a person whom one views as despicable cannot but affect one's relationship with others in the course of life, e.g., relationships with teachers, adult relatives, neighbors, boyfriends, girlfriends, employers, and, finally, relationships with spouses. In short, loving and affectionate feeling toward a parent, whether dead or alive, are important elements in psychological health. In contrast, having ongoing feelings of hatred toward a parent, whether or not one has been abused, cannot but compromise one's interpersonal relationships with others, as well as one's interpersonal relationships with others, as well as one's own psychological well-being. n49

. . . Programming refers, to the implantation of information that may be directly at variance with what the PAS child has previously believed about and experienced with the alienated parent. n50

In the PAS, the alienating parent programs into the child's brain circuitry ideas and attitudes that are directly at variance with the child's previous experiences. In mild cases the child is taught to disrespect, disagree with, and even act out antagonistically against the targeted parent. As the disorder progresses from mild to moderate to severe, this antagonism becomes converted and expanded into a campaign of denigration. PAS children respond to the programming in such a way that it appears that they have become completely amnesic for any and all positive and loving experiences they may have had previously with the targeted parent. n51

. . . PAS children have been programmed, and they need to be deprogrammed. They have been taught to hate, so they must be reeducated in such a way that the suppressed loving feelings can once again emerge. Attempts must be made to replace the unhealthy material in the child's brain circuitry with healthy material. n52

[The] child's pathological PAS material [is] superimposed on and suppressive of healthy thoughts and feelings about the victimized parent that are still very much in the child's brain circuitry. It is like a black cloud that covers the brain circuitry but has not obliterated the healthy, loving thoughts and feelings that are still there. The more prolonged the period of indoctrination, the more deeply embedded the pathological material becomes, and the more difficult it will be to remove it. The goal of the deprogramming process is to remove this superimposed PAS material in order to allow the expression, once again, of healthier material that lies beneath it. The treatment is analogous to the detoxification process in which poisons are removed from the body so that healthy functioning can resume. It is a process by which the automatic routinized thinking of the child is removed, allowing thereby the expression of

the child's own earlier judgments and critical thinking. n53

The process of deprogramming is not accomplished by doing nothing and hoping that the child will ultimately understand what has been going on, and then seek rapprochement with the parent who has been victimized by the alienating parent. This is extremely rare. Therapists who advise parent victims of PAS indoctrinations to do nothing at this point, and hope for that wonderful day of reconciliation, are doing their patients a disservice. It is extremely unlikely that this great day of rapprochement will ever be reached. Even worse, during the ensuing years the pathological PAS material becomes ever more deeply entrenched in the child's brain circuitry. It is only via an active deprogramming process and the PAS child's experiences with the victimized parent--everyday living experiences that can demonstrate repeatedly and compellingly that the PAS campaign of denigration is a fabrication and a delusion--that there can be any hope of reconciliation. Those who deal with PAS children must do everything possible to facilitate this experiential process and provide healthier material in the child's brain circuitry as well, material that will replace the pathological PAS indoctrinations. n54

n46 GARDNER, THERAPEUTIC INTERVENTIONS, supra note 42, at xx-xxi.

n47 Id. at xx.

n48 Id. at xx-xxi.

n49 Id. at xxi-xxii.

n50 Id. at xxiv-xxv.

n51 Id. at xxv.

n52 Id.

n53 Id. at xxvi.

n54 Id.

E. GERMAN BLOOD LAW

The Nationality Act (Staatsangehörigkeitsgesetz, StAG), n55 the version published on 22 July 1913, describes German nationality as follows:

As before the principle still applies: a child becomes a German at birth if at least one parent is a German national (principle of descent) . . . n56

The German citizenship statute continues to be based on a law on imperial and state citizenship that dates from 1913, and an ethnic conception of identity is maintained throughout the German legal system--notably in article 116 (1) of the basic law, the post-war German constitution. Indeed, the ethnic core of the 1913 citizenship law is reproduced in the basic law via a so-called Nationalstaatsprinzip (the Nation-State Principle), which makes very clear that there is a material core (that is, blood ties) connecting a citizen and her nation. n57

n55 Nationality Act from Staatsangehörigkeitsrecht, booklet published by the Official Federal Government Representative for Matters relating to Foreigners, Federal Ministry of the Interior, Press and Information Office of the Federal Government, Aug. 1999, available at www.iuscomp.org/gla/statutes/StAG.htm.

n56 Id.

n57 Jeffrey T. Checkel, (Regional) Norms and (Domestic) Social Mobilization: Citizenship Politics in Post-Maastricht, Post-Cold War Germany, in ARENA WORKING PAPERS (Norway: University of Oslo Press, 1999), available at www.arena.uio.no/publications/wp99_3.htm.

A person may be born a German citizen by either *jus sanguinis*, (that is, through descent from her parents) or *jus soli* (that is, through place of birth). As a general rule, a child born to a German citizen parent--either mother or father--automatically acquires German citizenship at birth through *jus sanguinis* regardless of the place of birth. While Germany recognizes the concept of dual nationality, for most purposes it considers a dual national in Germany a German citizen only. n58 As a rule, foreign nationality must be surrendered. n59

n58 See, e.g., American Citizen Services, U.S. and German Citizenship and Dual Nationality, available at www.us-botschaft.de/services/dualnationality.htm.

n59 Nationality Act from Staatsangehörigkeitsrecht, *supra* note 55.

III. Case Analysis

A. *LADY CATHERINE MEYER CASE* n60

n60 See Craig R. Whitney, In Child Custody, Germany Is Tough on the French, *N.Y. TIMES INTL ED.*, Aug. 2, 1999, at A3.

Perhaps one of the most extreme, poignant, and damaging cases that exemplify how article 13(b) of the Hague Convention Treaty creates a loophole for PAS, through which, in severe cases, children are lost to the alienated parents, n61 is the case of Lady Catherine Meyer. She has written two books about her ordeal: *Two Children Behind a Wall* n62 and *They Are My Children, Too*. n63

n61 DARNALL, *supra* note 39, at 13, 14.

n62 CATHERINE LAYLLE, *TWO CHILDREN BEHIND A WALL* (1997).

n63 CATHERINE MEYER, *THEY ARE MY CHILDREN, TOO* (1999). In Sept. 1998, Lady Meyer went on to help organize, with the National Center for Missing and Exploited Children (NCMEC), the first International Forum on International Child Abduction. A few months later, again with NCMEC, Lady Meyer co-founded the International Centre for Missing and Exploited Children (ICMEC). Lady Meyer has been invited to give evidence to committees of the U.S. Senate and House of Representatives. Lady Meyer also testified before the Belgian Senate. In Mar. 2000, Lady Meyer and a group of American parents created PACT (Parents of Abducted Children Together). Their successful representation led President Clinton to raise the issue with Chancellor Schroeder of Germany on June 2, 2000.

In 1994, at the time that her two sons, Alexander (then nine years old) and Constantin (then seven years old) were abducted by her husband, Dr. Hans-Peter Volkmann, Lady Meyer was Catherine Laylle. During Catherine Laylle's unrelenting determination to get her two sons back, she met the (then) British ambassador to Germany, Sir Christopher Meyer. As a result of the abduction of her two sons, Catherine Laylle was physically, emotionally, and financially depleted. Through Sir Meyer's efforts to help Catherine Laylle, the two became very close. When Sir Meyer was offered the post of British ambassador to the United States, Catherine Laylle joined him in Washington as his wife and became Lady Catherine Meyer.

This case history began in 1984, when Lady Meyer (who is of French-Russian descent) married a German medical doctor, Volkmann, in London. Their first son, Alexander, was born in London a year later. Their second son, Constantin, was born in Germany in 1987. The marriage broke up in 1992, and the couple were legally separated. The children lived in London with Lady Meyer and visited their father during their school holidays. n64

n64 *Id.* at 69-85.

On 6 July 1994, the children left for their summer holidays with their father. Without warning, four days before they were due to return to London, Dr. Volkmann announced that he was not sending them back to

England. He then disappeared with the boys. n65 Lady Meyer received a twenty-one-page letter from Dr. Volkmann, which stated in pertinent part,

Dear Catherine: . . . I know it is my duty to speak and let you know the following . . . Since you left two years ago and since you took the boys with you to England . . . the boys have repeatedly, and especially Alexander, expressed that they would rather live and go to school in Germany . . . that Germany was their home and that it was German that they wanted to speak, rather than English. You know as well as me that especially Alexander has, over the last months, become increasingly depressed, and you have yourself told me . . . that you had to accept the fact that he felt at home in Germany, rather than in England . . .

Since they returned in July, Alexander's (and Constantin's!) views about where they want to be have not changed. They both vehemently express their strong wish to live and go to school in Germany.

. . . In order to make sure that something will be arranged which I'll clearly see is in the best interest of the children, I have last week contacted the Youth Authority here, who will now interview the boys about what they want and where they want to be . . . n66

After three weeks of not talking with her sons, the following transpired during a telephone conversation:

"Hello, Alexander? How are you, my darling?"

"Hello," His voice was cold, toneless. I was frightened.

"I'm German, and I want to go to a German school!"

Constantin came on the line. A tiny, peevish voice that I could hardly recognize:

"Mummy?" I felt he was about to cry.

"Yes, Tini." I was nearly crying, too, but I went on in a gentle voice:

"How are you?"

He was silent. *"Mummy loves you . . ."*

"I know (pause) but I have to go to a German school, I have to . . ."

He didn't finish his sentence. His voice was small, and he sounded scared. n67

The next time that Lady Meyer was able to speak with her children on the telephone, on or about September 23, 1994, the conversation went as follows:

"Hello."

"Hello, Alexander. It's mummy."

Silence.

"Alexander, I was in Verden two days ago. I wanted to see you, but I didn't know where you were."

"I won't tell you!" His voice was aggressive, shut off, and distant. He had obviously been told that he was being hidden from me--the enemy! Alexander was repeating, coldly, a series of ready-made sentences conveyed to him by adults.

"Alexander, aren't you going to school? School started six weeks ago."

"That's not true! You're lying!"

"Of course I'm not lying. Why should I lie? I've never lied to you."

"Yes, you lie. And the judge lied, too. He's an idiot!" n68

n65 Id. at 103-10.

n66 Id. at 110-11.

n67 Id. at 120-21.

n68 Id. at 152-53.

After applying to the English courts, the High Court of England and Wales ruled that the "retention of the children was illegal" and ordered their "immediate return" to Britain under the terms of the Hague Convention Treaty. On 20 September 1994, the German appellate court upheld the English decision and ordered the immediate return of the children. n69

n69 Id. at 140-41.

Dr. Volkmann requested half an hour to say goodbye to the boys. Lady Meyer's lawyers naively agreed. Taking advantage of this and in defiance of the court order, Dr. Volkmann bundled the boys into a car and vanished. The local police and the court bailiffs were unwilling to help. n70

n70 Id. at 141.

The following day, Dr. Volkmann lodged an ex-parte (that is, the judges did not inform Lady Meyer) appeal in the higher court of Lower Saxony in the nearby town of Celle. The judges made a provisional ruling in Dr. Volkmann's favor. The children had to remain in Germany until the appeal was heard. n71

n71 Id. at 149.

On 20 October 1994, the Celle court reversed the earlier English and German decisions on the grounds that it was the "children's wishes" to remain in Germany and that they had been suffering in a "foreign environment . . . especially since German is not spoken at home or at school." The judges used the exception in the Hague Convention Treaty, article 13(b), in pertinent part:

Although the court may be obliged to assume the unlawful retention of the children within the terms of Article 3 of the Hague Convention, their return is, nevertheless, to be rejected pursuant to Article 13, Section 2, of the Hague Convention, since the children have decisively opposed such return. They had already expressed their desire to remain with the father in their hearing before the Family Court, although the circumstance would not have been included in the grounds for the contested ruling; where indirect reference made therein to their wish, this only occurred in the course of arguments concerning the expert

opinion obtained by the father and only in connection with the application of Art. 13 Section 1 lit. b of the Hague Convention, which was rejected by the Family Court.

As the Petitioner will presumably not seek to deny, during their hearing before the present court the children again expressly and decisively objected to their return.

Following the hearing of the children, the court is also persuaded that they have attained an age and maturity in view of which it appears appropriate to take their opinion into account (Article 13, Section 2, of the Hague Convention).

Where it is stated in the contested ruling that the children are only 7 and 9 years old and that there can thus be no question of any consideration of the wishes of the children, the Court cannot share this view.

. . . There is no fixed age limit prior to attainment of which consideration of the children's wishes is precluded, a view which is apparently also adopted in previous court rulings . . . This view ensues in the first instance from the fact that no such age limit is specified in the Hague Convention. This omission must have been a conscious decision, as use is made of another juncture--in Art. 4 of the Hague Convention--of the possibility of setting an age limit.

Moreover, the additional requirement for a sufficient level of "maturity" serves to make the concept of "age" a relative and individual consideration in view of the known variation in the human process of maturing.

It is after all self-evident that many examinations of whether the wishes expressed by a child are to be regarded as serious and in any decision to take account of such wishes, the court is required to consider the subject of such wishes. While, for instance, a 9-year-old child who has completed junior high school will not as a rule possess the requisite maturity to decide whether then to proceed to general or more specifically oriented further education, on the other hand a 7-year-old child faced with the decision to join either the judo or football club will generally know which decision to make . . .

The court thus concludes in the present case that in respect to the decision to be made pursuant to Article 13, Section 2, of the Hague Convention, the court is only required to consider the age and maturity of the children in question, Alexander and Constantin. The level of their maturity is not to be determined in abstract terms, nor according to the criterion of the children's welfare in the event of a subsequent custody arrangement, but solely in terms of its specific relation to the required decision as to return of the children. From the point of view of the present court, there can be no question that the children have attained an age and maturity sufficient for them to understand this procedure.

Alexander has already made his refusal quite clear prior to commencement of the proceedings, in that he pushed his mother away. While the presence of the person summoned to or otherwise involved in the proceedings was being confirmed and the sequence of proceedings briefly discussed, he sat crying for several minutes on

the rear row of seats. On entering the consultation room, he was still crying quietly. On receiving only guarded and evasive replies to his spontaneous question as to whether he must now return to his mother, he buried his head in his arms on the table and remained sobbing in this position, refusing to respond to approaches. Only after lengthy and patient efforts to comfort him was it possible to enter into conversation with the boy, in particular by explaining the proceedings in detail, together with the assurance that the decision as to his return to be taken today would only concern a somewhat temporary arrangement, whereas the decision on where he and his brother would finally live would only be taken following subsequent proceedings to establish custody. Although this information served to pacify him somewhat, he then immediately asked for how long he might be obliged to go back to his mother. He was unwilling to accept the contention that if only for reasons of his schooling, it would be better for him to remain with his mother, at least until the question of custody had been resolved, since he has a completely negative attitude to the circumstances of his previous life in London and decisively rejects any continuation of these circumstances, even for only a brief period.

Alexander justifies his decision to prefer to remain with his father less, or only secondarily, on grounds of the personal characteristics of one or the other parent, but primarily with the statement that he is German.

In response to the simple inquiry as to whether the English are "different," he was unable to explain precisely what he meant by this: he merely felt that they somehow have a different character, but was again unable to explain the expression. However, his meaning became clear from his description of individual circumstances which obviously depressed him.

He again confirmed that he has no friends at school; apart from his brother, he is the only German there and is teased and called a "Nazi." In response to the question as to how this came about, he stated that he himself had told his classmates that his father is a soldier. When asked whether his father is not in fact a doctor, he explained that his father works for the Bundeswehr [German Army]. It finally transpired that, unknown to the Senate, in addition to his work as an established doctor, the respondent apparently also works on contract for the Bundeswehr.

In response to a further question, Alexander explained that he communicates with his classmates in English. When asked to repeat to the Court in English what he told his school friends about his father's profession, he stated [in English], "My father is a doctor and a soldier as well."

When asked as to his daily routine, Alexander stated he generally gets up around 7.00 o'clock or 7.30 am, by which time his mother has usually left. Breakfast is prepared by the nanny, who then takes him and Constantin to school by Underground, returning to collect them again in the afternoon. The mother arrives home around 6.00 pm, but does not usually stay long, generally leaving the home again in the evening to visit friends or, as she herself has said, to go to the casino. Both children speak French to the mother and English to the nanny, Natascha.

When asked about his good performance at school, Alexander explained that he has

to work hard at his lessons and that school is very strenuous. However, this does not appear to be of primary importance to him and he has again stressed in this context that he has no friends; in addition, he stated that he has been mistreated by various teachers, giving concrete descriptions of a number of such occurrences.

Alexander was also asked as to the circumstances of the family's life following the parents' separation. He recalls having lived in Hamburg. He did not apparently feel restricted in terms of the available facilities to play there, despite the fact that Schluterstrasse, which the Court knows to be close to Rothenbaumchaussee, is a busy city street. He did not agree with the comparison between the French School in Hamburg and the school in London, particularly since the former is also attended by many German children, whereas there were no German children at the latter.

In addition to the incidentally mentioned accusation that the mother always bought only the most expensive clothes for herself, while buying clothes from cheap shops for the children, Alexander also complained that the mother was never there. She only had time for the children at weekends--and even then only occasionally--which would then be spent in polite walks through Hyde Park. The children were apparently rather unaccustomed to unrestricted romping and playing, board games together, day-trips and other pastimes.

By contrast, Alexander became visibly animated when talking about the school in Lutlum which he now attends. He particularly emphasized that in the short period since school commenced he has made friends with several children and spoke excitedly of his father's detached house in the woods, where he now lives, as well as the games he plays with his newfound friends.

In view of the detailed and intensive discussion with Alexander, the Court is persuaded that the boy is undergoing considerable suffering and is convinced that his mother "simply took" his brother and him away with her. He thus feels even more abandoned in what he regards as an alien environment. Alexander obviously thinks in German and is obliged to "translate" in order to communicate [in English], which despite his linguistic skills, results in misunderstandings, as shown by the example quoted above. From the child's point of view, his entire social environment is based on a foreign language, since German is not spoken either at school or at home since the dismissal of the first nanny, Sandra, who was taken over with them from Hamburg. In view of the other social and cultural differences, in particular the apparently demanding school tuition and the lack of compensation in terms of normal children's play, Alexander's refusal to return to his mother is perfectly understandable. As far as this Court can ascertain from the information it has been able to elicit, this refusal is based neither on a sudden impulse or temporary mood as often occurs with children, nor on any "emotional influence" brought to bear by the respondent, nor on any continuing holiday mood, now that the holidays have been over for almost two months. On the contrary, Alexander has given careful consideration to his decision and has attempted with all the powers at his disposal to persuade the Court of the seriousness of his decision. The members of this Court are also not lacking in appropriate personal experience, in that they are all fathers and grandfathers with children of his very age. At all

events, in view of the subject of the decision to be taken at this time, which relates solely to the return of the children, failure to take account of Alexander's refusal would be tantamount to violation.

The same applies analogously to his brother. Although in view of his age Constantin is unable to express himself as precisely as Alexander, he also expressly and decisively refuses to return to his mother. As has become apparent from discussions involving numerous questions and comparisons with parts of the content of the file, it is obvious that he also conveys his own opinion, rather than one externally imposed upon him. Constantin also bases his decision on the same circumstances as his brother: he felt out of place at the school and he had no friends, and the other children were always teasing him. He was only able to speak English, even with the nanny. And in particular, the mother was never there.

By contrast, he emphasizes the new school and speaks of the friends he has rapidly made there.

Constantin's opinion is also not based on a childish whim, but on careful consideration allowing for his age. While Alexander cries, the severe psychological strain in Constantin's case is revealed by a manifest physical restlessness which is no longer appropriate for his age. For Constantin, his brother is the most important support person, or at least was so in London, as the only person with whom he could speak German. He is extremely attached to him and reports convincingly that they do occasionally quarrel, but always quickly make up again. Even in their new surroundings the children spend their leisure time together and Constantin's wish not to be returned to his mother is thus also to be seen and considered in the light of the close relationship with his brother. n72

n72 From the German, trans., Lord Chancellor's Department, London, UK; see also MEYER, supra note 63, at 166-67.

It should be noted that while the Celle court used the article 13(b) exception to justify its decision, the court also directly contravened article 13(b) insofar as article 13(b) states in pertinent part,

. . . In considering the circumstances referred to in this article, the judicial and administrative authority shall take into account the information relating to the social background of the child provided by the Central Authority or other confident authority of the child's habitual residence. [Emphasis added.]

In this case, the United Kingdom, not Germany, was the habitual residence of Lady Meyer's two sons. Nonetheless, the Celle court based their decision on information provided by a German psychologist, appointed by the father, and an interview with three German Judges, not from information or background provided by a competent authority from the United Kingdom.

Although Lady Meyer's sons were tri-national and trilingual, to the Celle judges they were not French, not English, and not European; they were solely German, and this overrode everything else. "Lady Meyer, their mother, a foreigner (of French-Russian descent), was of no consequence. Not speaking German amounted to the infliction of psychological harm." n73

n73 MEYER, supra note 63, at 166-67.

The judges felt it was better for the children to be raised as Germans and considered that Lady Meyer's boys should play only with German children. Pupils at the French Lycee represented sixty different nationalities, and in both Alexander's and Constantin's classes, there were half-German boys like them.

A German lawyer read and commented on the decision: "This is a historical piece," he exclaimed. "It could have been dated fifty-five years ago! It has one aim--the glorification of one nationality. As far as the boys are concerned, it is inconceivable that in the space of such a short interview their psychological state could be established--especially when judges are not qualified child psychologists." n74

n74 Id. at 168.

At the time of the hearing, Lady Meyer had not seen or spoken to her children in over four months and they had been under the sole influence and control of their father. n75

n75 Id. at 157.

The Celle court decision not to return the children to England also meant that all further legal proceedings on custody and access took place in the abductor's home territory. The consequence of this was that despite numerous applications to the German court since 1994, Lady Meyer had never been able to see her children alone. n76

n76 Id. at 177-85.

Between November and mid December 1995, five applications were rejected on the basis that Lady Meyer might re-abduct the boys and that they no longer wished to see Lady Meyer. On 23 December 1995, a hearing was held in Verden:

Access was again denied on the grounds that the children did not "wish" to see Lady Meyer and that she could reabduct them if they spent Christmas together. In January 1996, following Lady Meyer's desperate attempt to see her boys in Germany and on the false allegation that Lady Meyer had intended to re-abduct them, Dr. Volkmann asked the Verden court to transfer the place of residence of the children to Germany. Despite a police report confirming that the allegation was untrue, in Lady Meyer's absence and without allowing Lady Meyer to file her defense, the court transferred the residence of the children to Germany. n77

n77 Id. at 202-03.

PAS was mentioned extensively in Lady Meyer's German court application concerning her December 1998 hearing. In fact, Wera Fischer's work, "The Parental Alienation Syndrome und die Interessenvertretung des Kindes," was quoted:

PAS arises when a parent, wittingly or unwittingly exploits the child's conflict of loyalties so as to influence the child in such a way that it rejects the other parent . . . although previously there were normal relation[s] between the child and the rejected parent, the child refuses contact with this parent. . . .

It is argued that contacts with the rejected father or mother are bad for the child. It creates insecurity . . . the demand is made that current contacts be either reduced or ruled out until the child is psychologically stable enough to stand up to the contacts. What is overlooked is that it is precisely the lack of contact which harms the child and makes it insecure. n78

Nevertheless, the judge was not willing to discuss the issue. n79

n78 Wera Fischer, Das Parental Alienation Syndrome (PAS) und die Interessensvertretung des Kindes, in INTERVENTIONSMODELL FÜR JUGENDHILFE UND RICHTUNG NACHRICHTEN DIENST-DES DEUTSCHEN VERIENS, Heft 10 (S. 306-310) und 11

(S. 343-348) (1998).

n79 Interview with Lady Catherine Meyer (June 5, 1999).

According to Lady Meyer, in February 1999, at one of the visits that she was able to obtain, Constantin said at the beginning of the visit that he did not want to see Lady Meyer and her new husband. Both Alexander, then age fourteen, and Constantin, then age twelve, were close to aggressive toward Lady Meyer and

her husband, parroting, in unison, a litany of Lady Meyer's faults--all false and all mirroring Dr. Volkmann's words. n80

n80 Id.

The following are comments the children made during a February 1999 visit when Lady Meyer first confronted them directly after they had said to her that they did not want to see her. When the children were questioned as to why they did not want to see her, they responded like two robots:

- Because Lady Meyer allegedly wrote a book full of lies, Lady Meyer asked them whether they had read the book. They answered, "No, but Papa told us."
- Lady Meyer was accused of forcing the press to write lies. In response, Lady Meyer explained that she could not control the press.
- Allegedly, Lady Meyer had tried to abduct them in January 1995. Lady Meyer showed them a police report stating the opposite and explained that if she had wanted to abduct them, she would not have shown up in front of the school, before all the parents, and called their names out loud.
- Lady Meyer was accused of trying "to buy" them. What did they mean? "Because Lady Meyer brought them some presents in December" (Christmas presents).
- Lady Meyer allegedly took them to London against their will. They said that they thought that they were going on a holiday. Lady Meyer explained that it could be hardly a holiday: Didn't they remember that they went to school there during two years and went to Germany to see their father during their holidays. It seemed that they had been so brainwashed that they were beginning to confuse reality with what had been said to them.

The children's attitude toward Lady Meyer was a classic case of PAS. In the aforementioned decision, the German court states,

While, for instance, a 9-year-old child who has completed junior high school does not as a rule possess the requisite maturity to decide whether then to proceed to general or more specifically oriented further education, on the other hand a 7-year-old child faced with the decision to join either the judo or football club will generally know which decision to make. n81

n81 Id.

The German court is saying is that a child's decision as to which country the child will live in is equivalent to a seven-year-old child deciding between football and a judo club and is of less importance than the child's choice of an academic track.

In focusing on maintaining blood ties and connecting the child to Germany in what amounted to German

blood law, the Celle court defied the children's place of habitual residence; created a loophole in the Hague Convention Treaty by misapplying article 13(b); and ignored PAS, notwithstanding the court's acknowledgment that PAS was asserted.

B. TIEMANN-LANCELLIN CASE ⁿ⁸²

ⁿ⁸² From the German, trans., Lord Chancellor's Department, London, UK; see also MEYER, *supra* note 63, at 309-11.

This is a widely publicized case involving France and Germany. One evening Cosette Lancellin, age thirty-four, was returning home from her brother's house. She was driving on a country lane, it was dark, and her two children, Matthias, age seven, and Caroline, age three, were sitting in the back of the car. Suddenly, three cars appeared and blocked the road. Cosette had to stop. Five men jumped out and opened the front doors of her car. It all happened very quickly. The children started screaming hysterically. One of the men started pulling Cosette out of the driver's seat, and a second man, who had gotten into the passenger seat, started pushing her from the other side. Cosette fell in the ditch, and the men drove off with the children. ⁿ⁸³

ⁿ⁸³ MEYER, *supra* note 63, at 309-10.

Cosette's husband, Armin Tiemann, age fifty-six, had told her that he would be calling the children at her brother's house. Thus, he knew exactly how long she would be staying there and when she would be leaving. Her husband then called the hired men to tell them to be ready for the ambush. ⁿ⁸⁴ Armin Tiemann stayed in Germany while he gave instructions and waited for the children to be delivered back to him. ⁿ⁸⁵
ⁿ⁸⁴ Id. at 310.
ⁿ⁸⁵ Id.

The French police were alerted but not until after Cosette had walked a few miles to get to a telephone. The French police reacted quickly, but it was too late. They found the getaway cars abandoned at the Franco-German border. The men must have had another car waiting for them there. The ambushers actually went into French territory to abduct the children and subsequently drove them straight home. ⁿ⁸⁶
ⁿ⁸⁶ Id.

The father's actions were not condemned by the German courts, the hired men were not prosecuted, and the French police could do nothing. ⁿ⁸⁷ What was even more extraordinary was that Cosette's husband lived in a small town just a few miles from Hans-Peter Volkmann, Lady Meyer's ex-husband. Armin Tiemann was also involved in local politics. He was the director of municipality of Kirchdorfer (his town). His lawyer was Dr. Kram, the very same Munich lawyer who at one time had handled Lady Meyer's case. Cosette's lawyer was Herr Struif's colleague, and the responsible youth authority was the Verden Jugendamt. There was something deeply disturbing about these connections. ⁿ⁸⁸
ⁿ⁸⁷ Id. at 311.
ⁿ⁸⁸ Id.

In France the case struck waves. "German courts always decide for the German parents," deplored the Ministry of Justice in Paris. French newspapers commented, yet German courts ignored the international feedback declaration/agreement of The Hague. The organization SOS Enlevement d'enfants par l'Allegagne (SOS child kinderentfuehrung by Germany) registered one hundred cases in which German parents did not consider attendance rights or refused feedbacks since 1996. ⁿ⁸⁹
ⁿ⁸⁹ Case listings, available at www.soschildabduction.com/.

C. BLONDIN V. DUBOIS CASES

In *Blondin v. Dubois I*, n90 as a minor but not insignificant point, while acknowledging that a seven-year-old really does not meet the age of maturity criteria of article 13(b), the court gave significant weight to the child's desires.

n90 *Blondin v. Dubois*, 19 F. Supp. 2d 123 (S.D.N.Y. 1998) [hereinafter *Blondin I*].

In *Blondin v. Dubois II*, n91 the court of appeals, in reversing and remanding *Blondin I*, made its ruling and stated the following inter alia,

Were a court to give an overly broad construction to its authority to grant exceptions under the Convention, it would frustrate a paramount purpose of that international agreement--namely, to "preserve the status quo and to deter parents from crossing international boundaries in search of a more sympathetic court." Friedrich I; n92 accord *Shalit v. Coppe*; n93 *Nunez-Escudero*; n94 *Rydder v. Rydder*. n95 And as the Hague Convention's Reporter has explained, "a systematic invocation of [these] exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to the collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration. n96

n91 *Blondin v. Dubois*, 189 F.3d 240 (2d Cir. 1999) [hereinafter *Blondin II*].

n92 *Friedrich I*, 983 F.2d at 1396 (6th Cir. 1993).

n93 *Shalit v. Coppe*, 182 F.3d 1124, 1999 WL 519334, at * 2 (9th Cir. July 23, 1999).

n94 *Nunez-Escudero v. Tice-Menley*, 58 F.3d 374, 376 (8th Cir. 1995).

n95 *Rydder v. Rydder*, 49 F.3d 369, 372 (8th Cir. 1995).

n96 Perez-Vera Report, supra note 5, at 426, para. 34; *fn 5.

Note that the court of appeals specifically instructed the trial court not to give article 13(b) a broad construction. Rather, the court of appeals then laid out instructions to the trial court to narrowly interpret article 13(b). However, when the court of appeals remanded the case back to the trial court, the trial court opined that it believed that article 13(b) should not be as narrowly interpreted as the Court of Appeals for the Second Circuit suggested.

In *Blondin v. Dubois III*, n97 the trial court, on remand, held that one of the basic reasons that the children should not have been returned to France was that Marie-Eline's views were that she did not wish to return to France. The trial court seemed to place significant weight on the fact that a child of eight years (who had been in the constant care of her mother for two-and-one-half years) could make such a major decision. Despite the child's age of eight years, the trial court decided that "Marie-Eline has attained an age and degree of maturity at which it is appropriate to take account of her views." n98

n97 *Blondin v. Dubois*, 78 F. Supp. 2d 283 (S.D.N.Y. 2000) [hereinafter *Blondin III*].

n98 Id.

The trial court acknowledged that there was opportunity for the child to be influenced by her mother, but although she may have been coached by her mother, little weight was assigned to the factor. A child of the age of Marie-Eline should not have had to make this sort of life choice, *infra Tahan*, particularly when there had been substantial opportunity by the parent who possessed the young child for two and one-half years to influence that choice.

Even though the court acknowledged that a seven-year-old did not meet the age of maturity criteria of article 13(b), the court ignored this criteria and gave significant weight to Marie-Eline's desires.

On remand, Marie-Eline was only one year older, and at the age of eight, she was found to have attained an age and degree of maturity that was appropriate to take account of her views, even though the court acknowledged the mother's opportunity to influence her and that she may have been coached by her mother.

The *Blondin* cases are examples of how a court can misapply article 13(b) and create a loophole for PAS. Blondin III has been confirmed on appeal. n99
n99 *Blondin v. Dubois*, 283 F.3d 153 (2d Cir. 2001).

D. *TAHAN V. DUQUETTE*

By contrast, in *Tahan v. Duquette*, n100 the court did not allow article 13(b) to be used as a loophole. The court held,

The failure of the trial judge to interview the child was not plain error . . .
To the contrary, interview with the Judge, under the circumstances before the Court, could not have served a useful purpose. Article 13 of the Convention excuses the duty to return if a child of appropriate age and maturity object.

This standard simply does not apply to a nine-year-old child.
n100 *Tahan v. Duquette*, 613 A.2d 486 (N.J.) Super. Ct. App. Div. (1992).

E. *SUPERSAC V. SUPERSAC*

In *Supersac v. Supersac*, n101 restitution of Jeannette Supersac to her father was denied, pursuant to, inter alia, article 13(b), paragraph 2. *Supersac v. Supersac* is another example of how a court misapplied article 13(b) and created a loophole for PAS. The court held the following:

The child spent two-and-a-half years with her grandmother. In her personal hearing, Jeannette expressly refused a return to her father. She would like to remain Augsburg, an environment she is familiar with from her past.

After additional time has elapsed, in which Jeannette father's influence over her has disappeared, a strengthened resistance on the part of the child is to be anticipated. At the child's age of nine-and-a-half years, her will cannot go unconsidered.

. . . Jeannette expressly refuses returning to her father. In her hearing, it became clear that there are no special bonds with her brother, who lives in France. Hence, the so-called issue of separation of siblings is not in need of any further consideration.

. . . In the meantime, Jeannette has reached an age and level of maturity, by which it seems appropriate to take her opinion into consideration. Hence, it is to be considered according to the present situation and Article 13 Abs. II. n102

n101 *Supersac v. Supersac*, available at www.hiltonhouse.com/cases/09OCT96_frg_pas.txt, trans E. Mancini; see also *Whitney*, *supra* note 61.

n102 *Id.*

In a case involving Great Britain and Germany, n103 restitution to a father was denied based upon article 13(b). The court found the following:

Because [Jane Doe] has spent a substantial part of her life, more importantly, the part she could remember, alone with her mother, who is the only real family member for Sarah. As a result, [Jane Doe] poses emphatic resistance to a return to her father. If she is to be separated from her only constant family member, in order to fit to her father's family, who are practically strangers to her, this would severely damage Sarah. A result of separation from an important personal link would lead to a loss of trust. Expert literature describes this as a loss of "old trust." This could be decisive in the child's later life and in her future relationships. Based on the child's temperament, it can manifest itself in anxiety, aggression or disassociated behavior. From Sarah's behavioral style, it can be anticipated that she would adjust to the shock on the outside, but keep her anxieties on the inside. A psychological shock, as she would experience, would further destabilize her and carry with it the risk of neurotic development. Based on this information, a return of the child to England--an infringement of a basic right, as far as the child is concerned.

. . . The senate does not fail to recognize that even intermittent development of the child and the encountered danger of her return to England without accompaniment by her mother would result in the child's psychological detriment, which ought to be accounted for by the plaintiff, since she has stated time demands and that she does not want to accompany the child. She cannot, of course, be forced under the net agreement [Hague Convention Treaty] to do so. And since this is primarily about protecting the child's basic rights, this able, reproachable behavior is not to be further exacerbated with the consequences that would follow the child's return to England. Moreover, it appears that this cannot be asked of the child. n104

n103 A Case Involving Great Britain and Germany, available at www.hiltonhouse.com/cases/15NOV99_frg_pas.txt, trans E. Mancini.
n104 Id.

In a case involving the United States (Maryland) and Germany, n105 a two-year-old girl had lived with her parents in the United States since birth until her mother took her to Germany without the consent of her father. The father's request to return his two-year-old daughter to him in the United States was denied because the exemption of article 13, paragraph 1(b), applied.

n105 A Case Involving the United States (Maryland) and Germany, available at www.hiltonhouse.com/cases/29decisions_frg.txt, No. 6.

The court based its decision on the fact that the mother had been the main person in the girl's life since her birth, providing her with care, speaking German to her, and spending the whole day with her whereas the father had been working full-time. The father thus could only hire a third person, a stranger to the child, to care for her upon her return to the United States.

The court held that the child's situation in Germany seemed to be positive and stable, as she was in her mother's care and communicated in German.

In a case involving France and Germany, n106 a father's requests to return his eleven-year-old daughter to him in Paris were denied. The exemption of article 13, paragraph 2, applied.
n106 Id. No. 8.

The court rendered its decision after hearing the eleven-year-old girl after her parents had left the room.

According to the court, she appeared to be old and mature enough for her views to be taken into account (under article 13, paragraph 2). She did not seem to be influenced by anyone. She decisively refused to go to Paris with her father for several reasons (such as, for example, his excessive shouting at her). The girl also seemed to have stomach problems because of him.

In a case involving France and Germany, n107 a court denied a father's request for return by granting the exemptions of article 13, paragraph 2. The court's decision was based in part on the girl's own testimony in favor of staying with her mother in Germany. The court thought her testimony was convincing and had not been influenced by the mother.

n107 Id. No. 15.

In a case involving the United States (Texas) and Germany, n108 the children were six, five, and two years old. The court applied article 13, paragraph 1(b), saying that the children had been cared for since their birth by their mother and that the focus of life was with her. (This was confirmed by the two older girls' testimony, which was heard in court; the girls said that they wanted to stay with their mother). The court easily determined that it would be incompatible with the well-being of the children to return them to Texas, where they did not know anybody except the father, who was working full-time as an Air Force officer, and where nobody known by them could care for them.

n108 Id. No. 21.

In a case involving the United States (Tennessee) and Germany, n109 a father's request to return his six-year-old daughter to him in the United States was denied because of the exception of article 13, paragraph 1(b). The court granted the exception of article 13, paragraph 1(b), as the girl had developed in Germany from an undisciplined and nasty child into a well-behaved, progressing student who lived in a perfectly normal and safe environment with her mother and maternal grandparents.

n109 Id. No. 22.

In a case involving England and Germany, n110 the five-year-old and two-year-old children were returned to their father in England. The court held that the children were not old or mature enough to be heard under article 13, paragraph 2.

n110 Id. No. 27.

In a case involving the United States (New York) and Germany, n111 the court did not grant the exception under article 13, paragraphs 1(b) and 2, as the child was only two years old and the mother could help him get used to his old/new environment in the United States, if she was really interested in the well-being of the child. The court had the impression that the mother was willing to do so. The fact that German was the child's only spoken language had no impact. The boy was too young for any consideration under article 13, paragraph 2.

n111 Id. No. 29.

It is imperative to understand that decisions that allow the misuse of the article 13(b) exception only serve to ". . . drive a coach and horses through the provisions of this Convention, since it would be open to any 'abducting' parent to raise allegations under Article 13." n112

n112 *Evans v. Evans* (U.K. 1988) Court of Appeals (Civ. Div.) No. AD 1716 of 1988.

IV. Can the Article 13(b) Loophole Be Closed?

An excellent example of how the courts can close the loopholes of article 13(b) in these circumstances is demonstrated by the decision in *The Matter of L.L. Children*. n113 The children were abducted from The

Netherlands to New York, and an action under the Hague Convention Treaty was brought for their return. The mother in *L.L. Children*, like the mother in the *Blondin* cases, implored that the children not be returned because the children were suffering from psychiatric disorders caused by domestic violence by the father.

n113 *The Matter of L.L. Children*, N.Y.L.J., 05/22/2000 (Jurow, J. N.Y. Fam. Ct.).

A New York court in its review of the matter found that all of the major commentators concerning the Hague Convention Treaty agreed on the requirement of strict interpretation in the application of article 13(b). The court then communicated with The Netherlands authorities and made arrangements for the return of the children to The Netherlands under the supervision and care of both New York and The Netherlands child protection agencies.

After analyzing the facts of *L.L. Children* with those of the *Blondin* cases and finding them very similar, the New York court found that the principle purpose of the convention would be upheld by a prompt return of the children to The Netherlands. The New York court stated the following:

In short, the problem with most "post traumatic stress" claims of psychological harm in the Convention Article 13(b) context is that the claim is too broad. Familial domestic violence and excessive corporal punishment are not infrequent, and are commonly accompanied by associated psychological disturbances in the affected children. Were all such claims to be routinely granted Article 13(b) exception status--particularly when the country of habitual residence is made aware of the claims and is willing to use an established child protection apparatus to address them--exception will begin to swallow the rule.

To be clear about what the Court is saying and is not saying: the Court is not suggesting that there is no risk to the children associated with the return. An exacerbation of psychological disturbance, of unknown degree, may be possible.

But although the risk may even be considered serious it does not appear warranted in this context to label it "grave." The distinction is important because, as noted, "the person opposing the child's return must show that the risk to the child is grave, not merely serious." Fed. Reg., supra at 10510; ". . . It is not merely a grave risk of 'any' physical or psychological harm which should satisfy the provision. The harm must be of a weighty kind." *Brown v. Brown* (Fam. Ct. Aust. No. SY9391, 1992). Nor is the Court trivializing acts of domestic violence and excessive corporal punishment; all instances are reprehensible and cannot be condoned. But the Convention requires that distinctions be drawn in terms of severity of risk, even in these regrettable contexts. Finally, a return of the children to Holland is not to sacrifice them at the altar of abstract internationalist doctrine. Rather, pragmatically "The careful and thorough fulfillment of our Treaty obligations stands not only to protect children abducted to the United States, but also to protect American children abducted to other nations whose courts, under the legal regime created by this Treaty, are expected to offer reciprocal protection." *Blondin II*. n114 Were any of the numerous children in New York City who are victims of the type of domestic violence/excessive corporal punishment, and its related consequences, delineated in this record, to be abducted to a foreign signatory of the Convention, their return to the United States would be similarly expected.

Accordingly, the petitions for return of the children for Chanelle and Oscar are granted subject to the conditions detailed in the letter dated February 7, 2000 from the Ministry of Justice of The Netherlands. The petition for the return of the child Jennifer is denied.

It is further ordered that the New York City ACS contact the government of The Netherlands Central Authority, provide a copy of this Decision and Order to them, and make arrangement with the Central Authority for the orderly return of Chanelle and Oscar. If the respondent and the child Jennifer chose to return to the Netherlands, ACS, in consultation with The Netherlands Central Authority, shall make every effort to facilitate their return as well, in a manner consistent with the best interests of the subject children. n115

n114 *See Blondin II*, supra note 91, at 242.

n115 *L.L. Children*, supra note 113.

In *L.L. Children*, the New York court did not fall into the article 13(b) trap; instead, the court found that despite this possible trauma to the children, an important public policy would be served by the return of the children, and this factor outweighed any possible trauma to the children. The court also found that the return of the children to The Netherlands would be in furtherance to the return of children abducted from the United States under similar circumstances.

A. UNDERTAKINGS

An undertaking is an agreement or stipulation between parties on the specific issue of the logistics of returning a child to her habitual residence. In an undertaking, the parties agree that the child will be returned to the habitual residence if certain conditions are met, for example, costs of transport are paid, a third party escorts the child back, the parties report to the family court of the habitual residence immediately upon return, and so on. n116

n116 William M. Hilton, CFLS, *The Limitations of Art. 13(b) of The Convention on the Civil Aspects of International Child Abduction done at the Hague on 25 Oct 1980*, 11 AM. J. FAM. L. 139 (1997), available at [www.hiltonhouse.com/articles/Art_13\(b\)_limit.txt](http://www.hiltonhouse.com/articles/Art_13(b)_limit.txt).

An undertaking would be used in the following circumstances: Assume that the evidence shows that there may be concerns about the immediate safety of the child during the period of return to his or her habitual residence and before the matter can be submitted to the domestic relations courts of the habitual residence. Under these circumstances, the court of the requested state may properly condition the return of the child upon appropriate undertakings being given to the court by either or both of the parties.

The United Kingdom Court of Appeal in *Evans v. Evans* n117 stated that the allegations of the father, if true as to the promiscuity, drug taking, and other matters against the mother, would suffice to make a finding that there was a grave risk in returning the child to the mother. The court also held that the English courts could frame an order such that the child would be returned safely to Australia--in this case, in the care of the father--so that the Australian courts would then hear and rule on these allegations.

n117 *Evans v. Evans*, (1988) Court of Appeal (Civ. Div.) No. AD 1716 of 1988.

The court further held that it could, as an example, order that the child be returned in the care of the respondent or that the petitioner return the child and report immediately to the central authority of the

habitual residence or that the child be escorted back to the habitual residence in care of a third party selected by the court and the child be put in the care of the habitual residence's equivalent of child protective services.

In discussing undertakings, the court in *Feder v. Evans-Feder* n118 stated the following: "We also note that in order to ameliorate any short-term harm to the child, courts in the appropriate circumstances have made return contingent upon 'undertakings' from the petitioning parent." *Thomson v. Thomson* n119 endorses the use of undertakings.

n118 *Feder v. Evans-Feder* (3d Cir. 1995), 63 Fed. 3d 217.
n119 *Thomson v. Thomson*, 119 D.L.R. 4th 253 (Can. Sup. 1994). Id. at 227; see also n.3 of the Dissent, which endorses the use of "undertakings."

Similarly, the court in *Walton v. Walton* n120 approved a stipulation whereby the petitioner agreed to certain terms in an order for return of the child to his or her habitual residence. n121

n120 *Walton v. Walton*, 925 F. Supp. 453 (S.D. Miss. 1996).
n121 Id.; see also [www.hiltonhouse.com/article/Art_13\(b\)_limit.txt](http://www.hiltonhouse.com/article/Art_13(b)_limit.txt).

B. RECIPROCAL OR MIRROR ORDERS

Reciprocal or mirror orders of protection are issued in the country where the child is being retained and then filed in the country to which the child is being returned. An order issued in the country in which the child is being retained can have no enforcement value in the country to which the child is being returned unless it is filed in advance of the child's return.

C. RE-ESTABLISHING BONDS OF PARENTS AND CHILDREN

A cry is heard in <e->in Ramah <-e>
Wailing, bitter weeping--
Rachel weeping for her children.
She refuses to be comforted
For her children, who are gone. . . n122

n122 Jeremiah 31:15, Nevi'im (The Prophets), The Jewish Bible, TANAKH THE HOLY SCRIPTURES--The New JPS Translation according to the Traditional Hebrew Text (New York: Jewish Publication Society, 1985), at 837.

After a child's return, a void exists for which facilities, programs, and protocols are needed for the successful reestablishment of bonds between the returning child and family. This process is a critical component that is necessary to ensure the smooth transition of the child back into the home environment.

Programs that reestablish bonds that are designed to meet the needs of returning abducted children and the left behind parents and families provide a powerful new tool in rendering article 13(b) of the Hague Convention Treaty null and void. The usual argument of alleged risk of psychological harm or trauma to the returning child cannot be invoked when facilities exist to ensure that the returning child's needs, both physical and emotional, are met. Furthermore, implementation of article 21 of the Hague Convention Treaty concerning visitation access rights will be facilitated by providing resources for parent and child visits through the aegis of re-bonding programs, which should be tailored to the needs of each individual case. Programs of this kind should be closely supervised and run by competent professionals whose credentials should be carefully verified and who are specifically licensed in this field.

Standards should be established and an individual plan should be set up for each child, with permission from the parents for treatment by accredited professionals. Great care should be given to weeding out amateurs, for example, persons licensed in other fields and grass roots, self-proclaimed foundations, which only cause harm with their unorthodox treatments.

A project of this magnitude would be a major step in the parental abduction issue on both the international and domestic front. The cases have become more complex, and the returns have become increasingly problematic. Many children are being returned to parents they fear. Many have been told horrendous tales of abuse and neglect by the abductor which, over time, they may have been indoctrinated to believe. An environment that provides hands-on intervention by trained professionals reduces the trauma felt by both the victim parent and the child and starts them on the path to reestablishing bonds with realistic goals and expectations. n123

n123 Personal communication from Marsha Gilmer of the National Center for Missing and Exploited Children (NCMEC), www.missingkids.com.

Restrain your voice from weeping,

Your eyes from shedding tears;

For there is a reward for your labor

They shall return from the enemy's land.

And there is hope for your future

Your children shall return to their country . . . n124

n124 Jeremiah 31:16-17, Nevi'im (The Prophets), supra note 123, at 837.

V. Conclusion

Once a court gives significant weight to the child's wishes or desires, especially a child whom the court opines has obtained an age and degree of maturity, article 13(b) becomes diluted, and a loophole for PAS is created.

Prior to the implementation of the Hague Convention Treaty, one could not send a child outside of the United States and expect that the child would be returned. Because it was felt that children should be able to travel to places where other family members were living, or to travel to attend school and cultural events, the present Hague Convention Treaty was drafted and submitted for signature.

To date, some fifty-five countries have ratified the Hague Convention Treaty, making it one of the most popular conventions on private International Law. The specific purpose of the Hague Convention Treaty is to ensure that despite allegations to the contrary, children are regularly and routinely returned to their cultural habitual residence.

There is no justification for article 13(b) to be improperly applied or for PAS to be used as a loophole. If the circumstances of article 13(b) are raised, they should serve only to inform the court that special care must be taken in the return of the children so that there will be minimal trauma to the children as a result of the return.

European courts are beginning to recognize the reintegration/reunification of parents and children. The United States is also seeking to implement programs to reestablish bonds. Attorneys, judges, court personnel, mental health professionals, and parents around the world should be educated as to the potential of reintegration/reunification closing the loophole of article 13(b) and diminishing PAS.

