fying the law, plenary review of mixed questions should be applied. See Ornelas v. United States, 517 U.S. 690, 696-97 (1996) (independent appellate review necessary where appellate court in at least as good position as district court and decision may clarify law).

**B. Article 13(b) Was Not Appropriately**

**Invoked to Deny Return**

Article 13(b) of the Convention permits, but does not require, non-return where “there is a grave risk that [a child’s] return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.” Hague Convention, art. 13(b). This exception is to beconstrued narrowly, and must be harmonized with the Convention’s central purpose of, wherever possible, deterring abductions by returning abducted children promptly, and honoring the treaty commitment to allow custodial determinations to be made by the court of the child’s habitual residence. Blondin II, 189 F.3d at 248. Thus, it is important that a court consider not only whether return would subject the child to a grave risk of harm, but also whether the State to which the child would be returned can and will take steps to ameliorate any potential harms. Id. at 248-49.

Consistent with the above, this Court explicitly directed the district court to consider on remand whether the abducted children could be reasonably protected from the "grave risk" posed by Blondin's abusive behavior "while still honoring the important treaty commitment to allow custodial determinations to be made -- if at all possible -- by the court of the child's home country." Blondin II, 189 F.3d at 248. Because the district court on remand found that the children would not have to stay with their father pending the new determination, that the French system could support Marie-Eline and Francois pending the adjudication of the custody case, and that the French system could protect the children from further abuse, Blondin III, 78 F. Supp. 2d at 288-89, 299, the type of "grave risk" contemplated by the Convention was ameliorated, and return to France should have been ordered, see Blondin II, 189 F.3d at 249-50.

Instead of following this mandate, the district court refused return on the ground that France could not "protect [the children] from the trauma of being separated from their home and family and returned to a place where they were seriously abused, amidst the uncertainties of court proceedings and being on public assistance." Id. at 298. This conclusion was based on testimony from a psychiatrist that any return of the children to France, even for a one-to-three-month period during which a French court would determine custody, would cause them to experience post-traumatic stress disorder due to the prior abuse. Id. at 295. The psychiatrist was of the opinion that psychological harm would be caused by "return[ing] them to the scene of their original trauma" and by placing them in an insecure position based on the uncertainties surrounding a custody proceeding in France. Id.\*

As this Court held in Blondin II, issues of past abuse should not constitute a grave risk of future harm under Article 13(b) without the additional finding that there is a likelihood of, and no adequate option to prevent, future abuse upon return. Blondin II, 189 F.3d at 248-49; see also Tabacchi v. Harrison, No. 99 C 4130, 2000 WL 190576, at \*12-13 (N.D. Ill. Feb. 10, 2000) (return ordered where Italy can protect child from alleged abuse); Croll v. Croll, 66 F. Supp. 2d 554, 561 (S.D.N.Y. 1999) (same with respect to Hong Kong), appeal pending, No. 99-9341 (2d Cir.); In re Walsh, 31 F. Supp. 2d 200, 206-07 (D. Mass. 1998) (same with respect to Ireland); compare Turner v. Frowein, FA 970084450, 1998 Conn. Super. LEXIS 3781, at \*17-21 (Sup. Ct. Conn. June 25, 1998) (refusing return where court found sexual abuse of child by father, and Dutch authorities were not responsive to mother).

The district court criticized this Court's interpretation of Article 13(b) as "unduly narrow" and "unwarranted." Blondin III, 78 F. Supp. 2d at 298. In support of this criticism, the district court analogized this case to a portion of a State Department legal analysis that was published when the Convention was first adopted here. Id. at 298 (citing 51 Fed. Reg. 10,494, 10,510 (1986)). Under that analysis, sexual abuse of a child by one parent is an example of an "intolerable situation" permitting a court to deny a petition for return. This analogy was flawed. The Department of State has confirmed to us that the example assumes (as did the district court in its initial ruling in this case, 19 F. Supp. 2d at 127-29) that the return would be to the custody of the abusive "custodial parent." 51 Fed. Reg. at 10,510. The example did not consider the additional possibility of return in the custody of the non-abusive parent, or of other alternative arrangements to protect the child in that situation.

The district court also erroneously concluded that, even under what it regarded as this Court's "unduly narrow" standard, a grave risk of harm had been established. Blondin III, 78 F. Supp. 2d at 299. The district court believed that its findings of past abuse made this case exceptional, and warranted its acceptance of expert testimony regarding the children's emotional ability to adjust to a return to France. Id. at 297. Both portions of this conclusion were incorrect. First, while allegations of abuse are not always made, invocation of such allegations is becoming more ordinary as "parents attempt to stave off return orders in the name of the child's welfare." Linda Silberman, Hague International Child Abduction Convention: A Progress Report, 57 LAW & CONTEMP. PROBS. 210, 267 (Summer 1994). Moreover, much of the testimony credited by the district court was primarily addressed to the psychological harm that may flow to the children based on the uncertainties of custody proceedings in France. See 78 F. Supp. at 295-96.