IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHRISTINE LOPS,
Petitioner
vs.
MICHAEL LOPS and ANNE HARRINGTON
Respondents

FILE NO. CV197-298

FINDINGS OF FACT and CONCLUSIONS OF LAW

Before:
Honorable DUDLEY H. BOWEN, JR., Chief District Court Judge at The Federal Courthouse Building, Augusta, Georgia, on the 22 day of December 1997, commencing at the hour of 2:15 p.m.

RICHARD A. DUERINGER, CERTIFIED COURT REPORTER

P. O. BOX 2106
AUGUSTA, GEORGIA 30903
(706) 790-6212

APPEARANCES OF COUNSEL:
On behalf of the Petitioner:
LINDA GARDNER, Esq.
JOHN CRESON, Esq.
L. DANIEL BUTLER, Esq.

On behalf of the Respondents:
JOHN HARTE, Esq.
SHERRY BARNES, Esq.

THE COURT:
This action was filed under the provision of the International Child Abduction Remedies Act and the Hague Convention which prompted ICARA on December 3rd, 1997. The subject of the action, of course, is the urgently sought return of the children Carmen and Claire.

We have expended two very full days of trial time on December 12th and December 19th, 1997. After concluding the evidentiary phase of the proceedings about 8:00 p.m. on the 19th of December I postponed final arguments and the Court's decision until today December 22nd, 1997, beginning at about 1:15 p.m.

I will make the comment that the argument of counsel made today has been enlightening and that argument presented on both sides was excellent. My purpose is not to throw any roses, but since I have made some comments in earlier sessions about how some things were handled and how some matters were conducted and that was not always complimentary I think, in fairness, it is appropriate to tell you that the argument session was as good as one could expect. To put it as bluntly as I can you have both exposed, on either side, the light that is most favorable to your own client. You have pointed out things about the other fellow's side of the case that aren't so favorable and you have succeeded in making an enormously difficult decision even more bur-

densome. I do not take any umbrage at that. You have done what you could do and you have done what you should do.

Anyone that may have come to this courtroom this afternoon with the notion that the case was, in any way, predisposed could not have been any more incorrect. If this were a matter wherein I could accept all of any-one's argument I dare say that the case would have been concluded on December 12th. I've found throughout a career in the law and over 20 years on one federal bench or another that there generally are two sides to any story and sometimes there are two sides to the story and then there is the truth in between. It is my view that we find ourselves in the latter situationtoday.

This is an unusual proceeding. It is a proceeding that is parallel to another virtually identical proceeding that was initiated in the Superior Court of Columbia County and which was later transferred to the Family Court of Aiken County, South Carolina. While it is not entirely necessary for me to do so I will mention that th Superior Court, in relying on traditional notions of residency and domicile to determine its jurisdiction, applied a jurisdictional standard which is more strict than the International Convention in this case requires. The children, of course, the subject matter of our proceeding, were, in effect, seized on the order of the Superior Court of Columbia County and the order of the Family Court of Aiken County. Warrants for their detention, if not their arrest. Notwithstanding the fact that the case was pending before the Family Court of Aiken County, because of urging received by way of correspondence from the Department of State, which I will place into this record as Court's Exhibit 1, and because of my concern that the case should not languish and those children should not be detained at an admittedly excellent, but nevertheless an institutional shelter, and because of the facts that were alleged in the ICARA petition we moved forwar with an expedited hearing which began over the ardent objections of the Respondent on the December 12th aforementioned. While it is a non-jury proceeding and while it is an expedited proceeding one, which by law requires only a limited inquiry, this is nevertheless an adversary proceeding. It goes beyond being a mere contested matter as we know those in the federal law and the Court is required in the carefully prescribed areas of its inquiry to make certain findings of fact and to apply thereto certain conclusions of law. Accordingly, in consonance with the mandate of Federal Rule of Civil Procedure 52 I will enter at the close of these proceedings, after the closing arguments, my findings of fact and my conclusions of law into the record that will be subsequently tran-scribed.

Now, as I frequently do, I will observe that these findings and conclusions, stated extemporaneously from my trial notes, may be in some respects less artful, less grammatical, and less well organized as they might have been were they expressed in a carefully drafted, corrected and redrafted written memorandum of opinion. However, for any less artful or otherwise statement I make no apology because it is my firm view wherever possible the interest of the parties can be better served by a more prompt resolution of all of the issues than would admit of the preparation of such a lengthy and carefully prepared document.

In my view the lack of quality in the expression of the reasons of my decision is more than compensated by the early delivery of such decision. Moreover, in my view, while it is considerably more difficult to do for the presiding judicial officer, it is better yet that the parties and their attorneys, at the conclusion of the proceed-ings, hear directly an expression of the reasons for the decision in the direct words of the judicial officer decid-ing as they are delivered. Consequently, I will enter my decision at this time of my findings and conclusions therefore.

The United States District Court for any federal district is by statute a court of limited jurisdiction. Consequently, before any dispositive decision on the facts and the law can be made a federal district court should and must determine the extent of its jurisdiction or power to act in the given controversy.

In determining its own jurisdiction a federal district court is not bound by res judicata. Nor are the parties

bound by any collateral estoppel with respect to the factual findings made by any other court. Indeed, it is the duty of a federal district court to determine a sufficiency of jurisdictional facts to properly decide or ascertain its own jurisdiction.

Section 11603(a) of the act that deals with International Child Abduction Remedies Act, a federal statute, enabling and enforcing the Hague Convention on the same subject matter, provides to the federal and state courts concurrent jurisdiction over petitions that seek the return of children pursuant to the terms of the Convention. Specifically, this section provides that a petition may be filed in any court authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed. I underscore the word"located" because, while I have a great respect for the sensitivity that Judge Allgood, I am sure, applied to this case, I believe that the operative word in that section is "located." Had the Congress chosen to include traditional concepts of residence or domicile in the calculus that a court should examine to determine its jurisdiction it could have done so. It did not. It chose instead to extend jurisdiction to the courts authorized to exercise jurisdiction in the place where children are located at the time that the petition is filed. And "located" has no particular meaning beyond the conversational meaning. It simply means where the child is placed or positioned or situated at the time the petition is filed. Traditional concepts of domicile and residence in may view are, therefore, unnecessary.

I have had some concerns, and the very capable Mr. Gore and Mr. Harte have pointed out areas that I should be concerned with, relating to the parallel state proceedings that were originated in Georgia and subsequently transferred to the Family Court of South Carolina. I do not know of any concept that would bar the prosecution of both of those cases at the same time. I take very little comfort in Ms. Gardner's ready assertion that any contest to this Court's jurisdiction was withdrawn on the Petitioner's part and the Petitioner would adjure any relief from the Family Court of South Carolina. Notwithstanding those comments in the record of this proceeding it is my view that the same case that was, admittedly originated in the state court, can, nevertheless, be heard simultaneously in that state court, albeit filed there, first along with the hearing of such a case in a federal court.

Interestingly, because of the apparent heavy schedule of the Family Court of South Carolina, a hearing date could not be established until January 15th, 1998. Because of a less demanding schedule, apparently, this Court has been able to act and seeks to conclude the matter on this 22nd day of December.

I have examined the arguments and assertions that the order of December 3rd, which essentially maintained the status quo with respect to the children's residence at the shelter, somehow violated the Anti Injunction Act, 28 United States Code, Section 2283. I conclude that neither this proceeding and its continued maintenance, this Court's decision of issues presented in this case, or the Court's order of December 3rd violates any provision of the Anti Injunction Act.

If there is any cotangential contact between this court's order of December 3rd, 1997, and the Anti Injunction Act provisions, the order entered December 3rd falls within the expressly authorized exception to the Anti Injunction Act, because Section 11604 of ICARA gives to this Court broad authority to take those preventive measures which are necessary to protect the well-being of the children or to prevent their further removal or concealment pending final disposition of the petition.

I will be the first, in most instances, to give great deference to a pending proceeding in state court. However, the mere pendency of a parallel proceeding does not require the dismissal of a federal suit. This case, in my view, does not require dismissal of the federal action. Indeed, in my view, it is more appropriate for the federal court to proceed to disposition. After all, the act and the treaty, which the Petitioner seeks to enforce, are creatures of the federal sovereign as opposed to any state's sovereignty.

The apparent election of the forum by the Petitioner can be and has been easily explained because the Georgia Courts were already involved through the efforts of the Georgia Bureau of Investigation to locate the children. And, indeed, Judge Mulherin of the Augusta Judicial Circuit, including Columbia County, had entered the order by which the trap and trace order was permitted with respect to the telephone calls.

These observations, coupled with the fact that the case primarily involved the interpretation and application of federal law, impel me to continue in this matter to a dispositive level in this ICARA petition action. Accordingly, it is my finding and conclusion, mixed of fact and law, that this federal district court is possessed of jurisdiction to decide the matter in its entirety with respect to the limited scope that is allowed by ICARA and the Hague Convention on the subject of international child abduction.

Having determined the existence of this Court's jurisdiction I will proceed into a consideration of the petition and its allegations and that which has been proven by the parties' evidence, I will sift it, I will apply those findings to the inquiry which I am charged to make. Before I do so I want to make a few prefatory observations.

In this type of case the court's duty is to determine certain pivotal issues. Not to determine whether a person is a good person, a bad person, a villain or a Saint. Few parents fit into any of those categories. And I might add seldom do we find children over the age of emancipation who fit into any of those categories. At the moment, in their present innocence, Carmen and Claire could be close to Saints or angels, but they are the only ones and the only ones as to which any such allusion might be made. It is not my purpose, not my duty, nor my wish to determine the value of any individuall person. I simply say that because I will, without apology, make every necessary allusion to the conduct of every person involved in this case to the extent that such conduct bears upon the facts of the case that require decision in the limited areas that I will address.

First of all I will determine whether the Petitioner has shown by a preponderance of th evidence that the children have been wrongfully removed or retained within the meaning of th Convention.

I will go directly to Article 3 of Convention: The removal or the retention of a child is to be considered wrongful where it is in breach of rights of custody attributed to a person either jointly or alone under the law of the state in which the child was habitually resident immediately before the removal or retention. And at the time of removal or retention those rights were actually exercised either jointly or alone or would have been so exercised, but for the removal or retention.

The rights of custody to which this article speaks may arise in particular by operation of law or by reason of a judicial or administrativ decision. Or by reason of an agreement having legal effect under the law of that state. While it is not necessarily controlling in any way I will observe that the rights of custody that are in question here do, in fact, arise in different quantities of measure under all three means.

First: By operations of law. The German statute is very simple and very clear to the effect that until determined otherwise both parents, the ather and the mother, share joint custodial rights and joint parental responsibilities. In a way on May 10th and thereafter the rights of custody that are involved here, to a degree, may have arisen by judicial decision or through judicial intervention. Or in concert with private agreements that were developed during the course of a meeting with a judicial officer.

As I say, the degree or measure of the genesis of the rights, whether that be operation of law, by contract, or by judicial decision, is not controlling, but in this case the rights of custody seemed to be grounded, if somewhat amorphously, in all three origins. Child custody matters are best handled informally. Whether it's a German judge or an American judge in Georgia or South Carolina I have no doubt that any judicial officer in deciding a child custody matter, absent some most compelling circumstance, will take every avenue of oppor-

tunity to resolve a dispute amicably toward the best interests of the children involved. And I have no doubt that Judge Giwitz on May 10th, in the meeting which provided the parties with their respective opportunities in this case, was motivated to develop an agreement between the parties for the benefit and to promote the welfare of the children.

Once the threshold decision is made as to the wrongfulness of the removal of the children then this Court's inquiry is directed by the issues joined in this proceeding to Article 12 and Article 13 of the Convention.

Of course, if the petition for return of the child is filed within a period that is less than one year from the date of the wrongful removal there is no question the Court is to order the return of the child forthwith, right now. However, once the somewhat arbitrary, but not surprising, period of one year has expired the Court has the responsibility of making another even more difficult inquiry and that is, has it been demonstrated by the parent in present possession, by a preponderance of the evidence, that the child is now settled in his or her new environment.

Further it is noted that under Article "Where wrongful removal is shown the court is not bound to order the return of the child if the person opposing return establishes that the person seeking the return was not actually exercising custody rights at the time of the removal or had consented to or subsequently acquiesced in the removal or retention."

Accordingly, this Court will address the aforementioned issues. To amplify or refine upon the issues that I will address I will make an allusion to the Robinson case, decided in the United States Court for the District of Colorado on November 1997, by the Honorable Walter D. Miller. Obviously, Judge Miller has struggled, as I have, and I think has come up with so some very, very lucid observations. When are the children settled? That term is not defined in the Convention or in ICARA. Nor is the word settled a legal term of art in any of my judicial experience. When we speak of "settled" on a normal conversational basis about legal matters we are generally looking to or talking about the compromise of a case or some issue in a case. Moreover, as Judge Miller observes, quite cogently I think: "To fall back on genera definitions, the normal conversational meaning of the word is of little help." We can make some post-decisional rationalizations, but wherever you look for the word in Blacks Law Dictionary, or any other, it's a word of equivocal meaning different things in different contexts. The particular sense in which the word is used is generally explained by the context and the circumstances. The Convention, ICARA and their purposes ultimately provide the context for the meaning of the word "settled" in such a case as this. There is nothing magic about the one year period. Its basic purpose is to provide an objective chronological trigger telling when the Court should consider more subjective matters in the case those matters which are always of paramount importance in matters relating to the custody of infants. The implication in ICARA and in the Convention is that it would be harmful to wrongfully remove the children from their habitual residence and that it may also be harmful to remove them again if they have been so connected to, or settled in, their new environment that their further uprooting would be injurious to them mentally or physically.

There must be and we have considered evidence that the children in this case are, in fact, settled in or connected to their environment. And I must consider whether it is shown, at least inferentially, as argued by the Respondent, that the return of the children at this time, in December of 1997, after their alleged abduction in June of 1995, would be so disruptive that it would likely have harmful effects. In such a matter, quite frankly, I am going to consider every thread of information that I have before me.

Certain suggestions have been made that this record might be incomplete or that we are lacking other documents. I have no such perception. Frankly, while the statute, very carefully, gives me the comfort of a burden of proof that is merely by the preponderance of the evidence, 50.001 percent of the weight of evidence or whatever way we might want to describe it as, if I make a decision regarding these two children, in my view it

will be supported by more than a mere preponderance.

There is another factor and it, like most things, is not nearly so simple as it at first blush might seem. That is the simple passage of the one year period. There is nothing in ICARA and nothing in the Convention that indicates that a one year period is somehow tolled or abated, interrupted or suspended by any action of the alleged abductor that might be equated to concealment of the true facts related to the child.

Nevertheless, my experience of more than 30 years in the application of the federal statutory law and after a life in the world of the common law I cannot conceive of a time period arising by a federal statute that is so woodenly applied that it is not subject to some tolling, interruption, or suspension, if it is shown or demonstrated clearly enough that the action of an alleged wrongdoer concealed the existence of the very act which initiates the running of the important time period and creates any sort of bar date.

Here the Petitioner will bear the burden of proving the wrongful removal and the Respondent the burden of proving the expiration of the one year period. The Petitioner has the burden of proving concealment and the suspension or tolling of the one year period. And the Respondent the burden of proving the settlement of the children in their current environment and that's the way I will proceed.

With that focus on our inquiry I will wade into some more specific discussion of the evidence in this case and the facts as I find them. While I have issued complements on the parties closing arguments, I don't retreat for a moment in some of the criticism I had to start about how the matter was presented. I think that I finally got everybody's attention Friday a week ago. The Respondent started out with a sort of "object to everything," a scorched-earth type of defense policy. And I observed to Petitioner's counsel when you come into the Federal District Court in the Southern District of Georgia, especially on an expedited matter, I expect you to be ready, to be prepared. To know exactly where you think you want to go with your case and to handle the documents, the all important documents, in a less than fumbling way. Now, I will leave that alone. The subsequent presentation has emerged increasingly as one which affords me a more lucid platform of analysis and examination of the true facts of this case.

I want to make a comment or two also about this type of proceeding. In a way it is what we English common law educated types refer to as a sort of a star chamber proceeding. The guns are loaded, the decks are cleared, all of the artillery is run out, in the initial request for return. Which, as we have seen in this case, has been passed back and forth between all of these agencies that have dealt with it through their twixes, e-mails and radiograms so many times and with so much resultant confusion that it has become a sort of self-authenticating and even self-arrogating enterprise.

Looking through the attachments to Mr. York's declaration one can see what this district judge finds to be a surprising lack of precision in the information that has been exchanged by thes agencies. I'm not going to tick off the particular examples. An examination of the exhibit in close perspective will suffice for that. I won't take the time to look for it. One radiogram, e-mail or twix languished in Wiesbaden or somewhere else for three or four months without an answer. In my view some of the information that is contained in those transmissions grossly overstated what Ms. Buttrill said with respect to the GBI's ability to locate the children at Ms. Harrington's residence. The suggestion and the time that was wasted in looking around the Bahamas for Mr. Lops was the product of nothing but speculation and an unsupported rumor from a hotel clerk who may very well have had connections to Lops and whose information, therefore, should have been, and even was, according to the transmission, highly suspect.

Much is made about the failure to have stamps on passports. I wasn't aware that it was such a widespread practice. Like some others, I thought there were stamps on passports and that there was some sinister supposition to be applied if there were no stamps on passports until I went and picked up my own passport and found

a notable lack of stamps upon my return to this country. In my view it seems that most foreign jurisdictions are far more assiduous in their effort to stamp people's passports than are our own customs or State Department officials. Knowing that, as well as they must know, I find it is very surprising that all of these people that have all of these noble names on their letterheads: Interpol; German Police Authority; that's Federal German Police Authority; Georgia Bureau of Investigation; Department of State; The Department of Children's Issues; The National Center for Missing and Exploited Children; all of these people who have these important sounding names on their agencies are so quick to conclude by hyperbole and extrapolation that some wrongdoing has been perpetrated by such an event as one of this country's officials failure to stamp a passport.

I can't say what was presented to the German courts. I can say, as was brought out in argument, that there is a good bit of confusion about this July 3rd date and I hit Petitioner's counsel very hard for it. I don't know that they understood what my inquiry was, but it was very frustrating to have some allegation in the request for return and in the petition and in other documents that a certain event occurred on a particular date when the simplest sort of interview with the client would indicate to the contrary.

In any event my point is that even a proceeding that bears the noble nomenclature of one seeking the return of a child which has been abducted through some international scheme ought to be heard in a measured way. A way in which the due process rights of all, including the accused wrongdoer, are heard, shifted and decided. If this were just a case of a child custody dispute between the residents of a rural trailer park the parties would get all of that due process, but there is, in my view, a grave danger that a case of this sort, which has such auspicious beginnings, with all of these agencies, will be, in some quarters, considered with an expectation of the Court's acceptance of the hyperbole and extrapolation that are the natural by-product of a unilateral presentation of one side of the facts of the case for many months. I mention this simply to say that those who advance such petitions ought to be very, very cautious about the allegation, or perpetuation of any allegation, that might be considered an exaggeration of the facts of the case.

I mention the comment that was made early in proceedings that somehow Mr. Lops had abandoned $1 million worth of property when he left and he should, therefore, not be given the opportunity to consult with the South Carolina court regarding any bond for the children and such matters. In my view the potential risk of flight has been considerably overstated in this case, but none of these things is controlling.

Enough aside comments about matters that are not factually determinative. I will now address that which is of importance. Some of which is of supreme importance in this case. The time line presented by plaintiff's counsel during argument is very helpful and this list of data bases, searches and governmental agencies is even more expansive than I had in mind. I'm going to append these to the record, staple them together as Court's Exhibit 4, because I think they are helpful. Although by doing so I do not adopt any factual statement or conclusion that might be stated therein.

We have several dates that are of significance to us here for which I will rely on my own notes. No one except the parties in residence have a good idea of the state or position of affairs that existed in late 1994 between Michael and Christiane Lops. What we do know is on January 20th, 1995, without equivocation, Christiane Lops departed with the children about the middle of day. She went to a remote location in touch with her family members and resided for an unspecified period of time with the cousin Danielle. We know that she came back with the children for a hearing, which had been initiated in a proceeding filed by her lawyer Mr. Weisker, on May 10th, 1995. I have to assume that she was back in Germany at least a few days before that date to consult with Mr. Weisker, if for no other reason.

The January 20th, 1995, departure creates something of a chink in the armor of credibility that Christiane Lops would like to put on. Because when argued in this courtroom by so capable a counsel it can be made to appear that she was the first wrongdoer in an international abduction. However, with that observation

advanced it must b observed that, while Mr. Michael Lops was somewhat thereby offended because of its less than confidential means of delivery, Mr. Weisker did send him a fax and a more official hard copy notification of Christiane's and the children's departure on the very date thereof and shortly thereafter.

The parties' stories differ about what happened in the late winter and spring of 1995. Mr. Lops presents and invokes by that presentation a great deal of sympathy in recounting his efforts through detectives and otherwise to locate his children. And Christiane Lops' testimony about her residence with Danielle is unembellished, without a great deal of facts.

In support of what Michael Lops has to say I note that his passport does contain one entry date on the 19th April of 1995 to the country of Luxembourg or principality, whatever it is. On the other hand I note that surely by that time Mr. Naumann, who seems to be lurking just about everywhere during these legal proceedings, must have been contacted and at the very least two lawyers, members of the bar of the family court, in whom their respective clients had confidence, were possessed of the information, at least about their client's whereabouts.

Now, I don't want to speculate about the laws or the legal system of another country, but I do find it somewhat curious that a court in a contested situation would allow one of its officers to actively assist in the concealment of the location of children who had, if the court were so apprised on good authority, been abducted internationally. I am very querulous about that concept. I pose that question, but, obviously, I cannot answer same. But it applies to the allegation that might be made with respect to Mr. Weisker and those which have been made with respect to Mr. Naumann.

The facts of the late winter and early spring aside, as they are not controlling, we know that the parties met in the presence of Judge Giwitz in a properly convened proceeding, whatever that may have been under the laws of that state at that time, on May 10th, 1995. Of course, Mr. Michael Lops was present; his mother was present in the parking lot; Christiane Lops was present; Carmen and Claire were there; along with the lawyers of whom we have heard much, Mr. Weisker and Mr. Naumann. The lawyers and Judge Giwitz were impressed with the apparent amicable nature of the communications between the two clients and it was suggested, perhaps even by the judge himself, that custody be shared. That Michael Lops be allowed to take the children for an ice cream cone or otherwise. And Christiane Lops, albeit with some reservation and hesitation about passports and the prospect of an international abduction, based upon her fears that were expressed in that department, went along with that program.

That evening Michael Lops did not return the children as agreed. The children were withheld in his Rodgau residence. And I take it from the evidence that this Rodgau residence was not an insubstantial one. Christiane Lops was living apart from that home. We know that in that home, at least on January 20th, there was a cleaning lady; a nanny; a grandmother; a step grandfather; a father; the two children and the mother. She was estranged from that home on May 10th. She was on her own, so to speak, and without any similarly comfortable place to keep the children. And I have no doubt that over the evening, although a call to Mr. Weisker had been made, there was no great urgency to her concern for the loss of her children by the simple act of immediate acquiescence for that time being.

Thereafter, within the next couple of days, Christiane Lops called off her lawyer, Mr. Weisker, and there ensued a program of potential reconciliation from about May 11th to about May 25th, where Christiane would regularly visit at Michael's Rodgau residence. And, interestingly, we note from Anne Harrington's testimony that when Chris would arrive she, Anne, would leave.

Seemingly consistent with the testimony of both the Lopses, Christiane Lops left on or about May 25th for a visit with her parents in Luxembourg. She was driven to the airport in Frankfurt, somewhere between 15 min-

utes and a half hour away, by Michael Lops and I'm not sure if the true purpose of her mission had been disclosed to Michael. That is, so that she could speak with her parents about the prospect of their reconciliation. In any event she did return on or before May 30th, from the visit and by telephone advised Michael Lops that she had no interest in further reconciliation efforts with him. The full ambit of that discourse is yet unknown.

Shortly thereafter, with Michael Lops saying that Christiane Lops had virtually surrendered and abandoned the children, he went to Spain with the children leaving his mother, Anne Harrington, at the Rodgau residence to wait for any call from and to look out for any appearance by Christiane Lops.

Shortly before the departure to Spain, however, Mr. Michael Lops and his mother, Anne Harrington, went to the United States consulate at Frankfurt, which must be the large city in Germany in that area, and obtained new passports for Claire and Carmen. Although they had earlier held passports from the country or principality of Luxembourg, upon Michael Lops and his mother's representation that their mother had abandoned the two girls, one of the children received a passport of limited duration because they did not have a birth certificate, and the other received a passport in the regular form and for the regular duration.

Michael Lops shortly thereafter went to Spain on a holiday in a rented motor home. The date of the return is probably not too specific, but it was on or about June 25th. And we now know that Anne Harrington, who had been present for the major events that I have alluded to heretofore, left on June 27th, for Augusta with the children. She left by way of Frankfurt Airport, arrived, I believe, at Dulles and then went by way of Delta to Atlanta and subsequently to Augusta, all on the 27th of June. The children traveled with their grandmother. They all left Michael Lops in Germany.

In Germany there was a hearing again before Judge Giwitz attended by Mr. Naumann, attended Mr. Weisker, attended by Christiane Lops and, depending on whose version you accept, attended by Michael Lops. Frankly, it doesn't matter. There was a hearing. There was no disclosure either by Naumann or by Michael Lops that the children had gone with their grandmother and on July 8th, after packing up all of the furniture, at least that which he wanted to transfer, Michael Lops departed for America.

A word about the German court to whose judgments, orders and lawful decrees I'm to extend and accord full faith and credit: I have seen no transcript. I have seen no tape recorded record which we think to exist. And I'm marginally disappointed that I have no more information from the court than I do. I'm delighted that Judge Giwitz saw fit to write a letter, but letters in this court and in his, I'm sure, are less credible after the fact than is a contemporaneous record of the proceeding transcript or even tape recording.

Moreover, while their practice might be somewhat different from ours, I see very, very few findings of fact. One very important, but other important findings just do not appear. However, what is clear, beyond any cavil that I know of, is that proceeding before Judge Giwitz was properly instituted, however that may be in Germany. All of the necessary parties were before the court. The children at the time of the institution of the proceedings were habitual residence within the Federal Republic of Germany. And all of the parties; whatever their citizenship; that of Luxembourg; that of the United States; that of duality; were before the court.

Whether the case was suspended, put in the dead docket as we sometimes say, or provisionally closed on May 10th or May 12th, is unimportant. It was resumed on July 3rd and probably before by some order of the court at a proceeding wherein Michael Lops contends he was, indeed, present. And in those and all subsequent proceedings he was represented by counsel or at least counsel was notified to appear.

The suggestion that Mr. Naumann was somehow unauthorized because he had not received written authority to attend any particular proceeding I do not find to be a very practical one. Once engaged and once authorized in this district court or even something as particular as German Family Court, I suspect that counsel's representa-

tion carries through the entirety of the case without interruption or the need for a subsequent ratification of counsel's authority on the occasion of each subsequent hearing. There were subsequent orders, subsequent orders of the German Family Court dealing with child custody, dealing with the issue of the divorce of the marriage and the terms and amount of monetary obligations between the parties. There was an appeal to the superior court, or whatever it is that Oberlandes Gericht translates to, which must have been a superior court or court of appeals, and the jurisdiction of the court was finally determined with respect to all parties and the issues including the children and the judgments of the lower court were affirmed. Or, as our translator said, the appeal was rejected.

It is my view that all of the German court orders are not only relevant, but they are in one respect controlling. Full faith and credit must be extended to those documents, and if I were in the slightest bit suspicious about the lack of any authenticity or exemplification of the orders I would demand some further showing in that regard.

I was displeased at the outset because my translations were offered from a known partisan source, Mr. Weisker, but I have alleviated that concern by summoning my own translator and by the party's subsequent provision of Ms. Walker, who was a neutral translator, and who, with some difficulty because of manner with which things were presented to her, finally, in essence, ratified and affirmed Mr. Weisker's translation in most respects. Hence the a series of documents, 3A and 8A for example.

On these facts there is no question in this case that the taking or asportation of the children on June 27th, by the grandmother, Ms. Harrington, was wrongful in the terms of Article 3 of the Hague Convention and the concomitant section of ICARA. I am making that decision not simply because of the so called Certificate of Unlawfulness issued by the German court, which I think really is surplusage. It is gilding the lily. I make it on the facts. The parties were before the court, Ms. Christiane Lops had the right to exercise, at least, joint parental custody over the children. She had not gone so far in my view as to virtually abandon the children. Nor had she signed any such agreement. She had the right of parental custody by operation of law and by agreement before the judge. And although the children were not whisked away to America, as was initially alleged incorrectly the petition, on the date of the hearing before Judge Giwitz, they were withheld. They were subsequently taken to Spain under conditions that I find very curious for a relaxing family holiday. And they were then taken, not by Michael Lops the father who had joint parental custody, but by his mother, the children's grandmother, and the Petitioner's mother-in-law, Anne Harrington. Thus Ms. Christiane Lops had been deprived of her rights of parental custody by the asportation of these children without any authority and Article 3 of the Convention was thereby breached in that her rights of custody and those attributed to her by virtue of operation of law and by official judicial decree were breached.

Now, when these people arrived in America at Augusta Airport and then subsequently out to Martinez they immediately went into Ms. Harrington's residence after a long day's travel and I'm sure rested as quickly as they could. Having met th children I would imagine that one of them in particular might have been a little vocal about her condition of stress after a long trip, but that's an unimportant aside.

In any event the grandmother; the two children; Wayne Harrington, the step grandfather; and Michael Lops, after July 8th, 1995, stayed at the Martinez residence for almost a month when a house in North Augusta was purchased under peculiar circumstances. Nothing unlawful about them, but under a contract of sale that was recorded as such in the real estate records, but which had terms to which I will make further reference in a few moments.

Those of us who practice law for a long time and have presided in judicial matters for a long time in this area, sitting here within less than a mile of the State of South Carolina, know that as far as the states and the state courts are concerned that river might as well be about ten miles wide. While people like Mr. Harte and I have

known each other for years and years and come to know each other, we would certainly know each other better if we lived within the same state 20 or 25 miles away as opposed to the relationship we would have if we lived in different states.

There are a number of differences between the legal system in the States of Georgia and South Carolina. Some people in Georgia in the creditors ranks contend that it is much more difficult to collect a debt in the State of South Carolina than it is in Georgia, which has always been sort of a creditors state, notwithstanding the fact that it was settled by debtors with General Oglethorpe. Some people refer to the state across the river as the magic kingdom because of the peculiarities, as we perceive them, in the quaintness of its legal system, but those things too are an aside.

There is nothing unusual about people living in North Augusta, working in Augusta. Or living in Georgia and working in South Carolina, notably at what we call the bomb plant. For some purposes we virtually ignore the river, considering the bridge as just another stretch of highway, but for other purposes, particularly for legal purposes, conceive it and perceive it as a body of water that is much larger than it actually is. In any event Michael Lops and his children took up residence in this curiously purchased house.

Now, Michael Lops' affairs present a picture of a very peculiar, unconventional and atypical pattern. First of all while this man formerly had an income of 400,000 or $500,000 or 750,000 Deutsche marks, that's not particularly controlling in any way, but he moved into a house that his mother bought from one Justine W. Long. And the house was bought not with the more typical deed or blue folded South Carolina title to real estate with all sorts of fancy and unintelligible spaces for people to sign on the back of it. These two people bought it on a very simple, straightforward installment contract of sale that lawyer Doug Smith in North Augusta came up with. It was a house of some significance. It was $100,000 house, a $96,000 house in 1995. It was paid for at $8,000 down and in the contract between the mother Ms. Harrington, and Ms. Justine Long Ms. Harrington agreed to pay Ms. Long, in addition to the $8,000 in cash $849.23, monthly, which was a time balance of 240 installments bearing interest at a rate of ten percent per annum, which, even at that time, was fairly high. The interest rate is not in any way controlling, but the peculiar thing about this is that the parties envisioned that the loan to Ms. Long owed by Ms. Harrington, as evidenced by this document, would be paid over 20 years before any deed would be executed. I'm not going to make a finding, but I've got a feeling that somewhere there is a deed that's in somebody's safe keeping or trust so that the parties will be entirely protected. Of course, it could not be released until this loan were paid.

The reason that I have alluded to this, as peculiar as it is, is because of the provision in this contract that the seller disclosed and the buyer acknowledged that the Trust Company Bank of Augusta is currently holding the mortgage and that mortgage is not to be assumed or paid by the buyer, but shall remain the sole responsibility of the seller. If this were a commercial transaction I would refer to it as a wrap around deal. It is not a commercial transaction and it is very rare to see a wrap around type deal in a residential real estate transaction.

One inference that might be drawn from that type of transaction is that the buyer or seller, one or the other, did not want the financial institution to know of the transaction. Did not want any creditworthiness examination to be made of the new purchaser, but simply wanted the matter to go on without any further investigation or knowledge by any financial company or lender.

We add to that circumstance that came up on August 3rd, the rather peculiar fact that the automobile that Michael Lops drove and used on such a regular basis was also in his mother's name. A nice car, a $30,000 van, with no notification to her insurance company of the primary driver.

Mr. Michael Lops tells us that loans from his brother-in-law and from one Arnold Kovitz in unspecific amounts, without any documentation to evidence those transactions, enabled him to support himself and his

children in a comfortable life style. Although, however deeply I explored the matter, Mr. Lops was unable to tell me of any transaction that involved the delivery of cash of more than $10,000 at any one time. Perhaps he is aware of federal law's proscription on the transfer of such cash amounts without the notification of federal authorities, perhaps not.

Mr. Lops has no employment that requires him to disclose a Social Security account number. The only disclosure of the Social Security account number that I have found in any of these documents, interestingly, including those documents that were being passed back and forth by all these fancy agencies, only one document, the request for return, contained Mr. Michael Lops' Social Security account number.

He had no driver's license in the State of South Carolina and no real gainful activity that he could point to except his efforts to borrow money from his brother-in-law and Mr. Arnold Kovitz, a very generous person, except for his work with House Rentals where he was an independent contractor for Mr. Wayne Harrington, his step father.

House rentals has an office either in Richmond or Columbia County, Georgia off the Bobby Jones Expressway, pays the rent and is listed in the phone book as House Rentals, but has no real estate license of any kind. Nor does Mr. Michael Lops or Mr. Wayne Harrington.

There is no record, no documentary record, of any income and no ability on the part of Michael Lops or anybody else in this proceeding to tell us what they make from time to time or from one period to another. We know that Mr. Michael Lops had what some people would call a vast income while employed in Germany prior to January 20th. And that he retained some residual sources of income at least until May 10th, but thereafter he denies any deferred compensation or any other income from his former profession, which he tells us is a foreign exchange broker.

He has paid no estimated tax or made no federal deposit. He has paid no Social Security or self-employment tax. He has filed no federal tax returns, nor any in the State of South Carolina.

Unfortunately, I have to find on this record that Mr. Michael Lops really has no source o any legitimate income other than possibly these loans. Although I'm finding that a bit difficult to accept. And I say that, moreover, the attribution of any income to House Rentals, if any there may be, would seem to be illegal in light of the fact that the laws of South Carolina and the laws of Georgia clearly require valid licensure for an individual to act as a broker or a middle man with respect to the rental of any real estate. The South Carolina Code Sections are 40-57-20 and the Georgia Code Section 43-40-30, and they so state with no equivocation whatsoever.

Moreover, the conduct of any such business without a license, while I find it doubtful at the outset, is a misdemeanor. Mr. Lops has no conventional credit; no credit cards; engages only in cash transactions; pays no utilities; his mother takes care of those; has no lease with his mother. This is a curious existence.

Also the fact of no driver's license in the State of South Carolina is troubling. Troubling that one would risk that failure to license one's self if one did not have some motive, some covert reason for not doing so.

On my review of the law of South Carolina I find that it is illegal for a resident of the State of South Carolina to drive an automobile in that state while a resident after the expiration of a period of time, I believe that it is 90 days in any calendar year. Mr. Lops may want to look it up — it is Section 56-1-30 et seq. Also providing for misdemeanor sanctions for the failure to do so.

Finally, although they may be owned by someone else in another state, every motor vehicle that is regularly

driven within the State of South Carolina, and particularly one that's driven, operated or used by an individual who is a resident of the State of South Carolina, under the effect of Section 56-3-110 must be registered in the State of South Carolina, absent which a misdemeanor sanction is available.

Furthermore, and while I'm on this unfortunate subject, let me mention even with respect to persons who have expatriate income, that is foreign income outside the United States, if they are citizens of the United States, whether they are required to pay any taxes. Whether or not they may have an exemption, exclusion or tax credit under the provisions of Title 26 United States Code, Section 6012 such persons are required to file a tax return. Mr. Lops has not told us when his last tax return was filed, but he has told us he has not filed one for '95 or '96. It would appear that at least one if not more are currently due. And there is no question that the failure to file a federal income tax return is also a federal misdemeanor.

School tuition, of course, was paid in most instances by the checks from Ms. Harrington. On a few instances Mr. Michael Lops paid cash. The school is a fine place for those children to have been. It appears they have had fine teachers and sensitive administrators and that those people, in addition to imparting an education are much beloved by the girls and the other children in their respective classes.

Of course, there could be some aspersions cast by the overly suspicious child finders that by putting the children in Catholic school it occurs by coincidence that they were in private school. I draw no adverse inference by the fact that they were placed in a parochial school environment. However it is a fact that their records would not b disclosed nor their names disclosed through the state system.

Michael Lops' activities have been fairly well described in the foregoing. It should also be noted that contemporaneous with the maintenance of child support and custody and divorce proceedings in the Country of Germany, Mr. Lops was initiating and maintaining custody proceedings in the State of South Carolina. At one point with the highly suspect service effort that was made through Mr. Naumann, which we see by a fax copy dated December 18th, 1997, which bears no date of the fact of service and no indication of service on opposing counsel, Mr. Weisker.

Mr. Michael Lops, at least in the opinion of Mr. Harold Young, most frequently appears in a suit and tie as would any businessman who maintains a comfortable household and standard of living in North Augusta. He does not seek any other employment. He is content to live by loans or by his mother's largess, even after earlier enjoying an income as a foreign exchange broker in excess of 3 to $400,000 a year. He has no real schedule or duties except on a few days of the month. Yet with all the time that is available to him and all the business commitments that the mother has she still picks up the children on a daily basis from school.

The life style of Mr. Michael Lops is apparently normal and apparently typical and conventional to those around him, those in the community and the parents of his children's friends. However upon further examination it is, in fact, highly unusual, atypical and unconventional.

Now, I would like to speak for a moment about Ms. Anne Harrington and her appearance as a greatly concerned and loving grandmother, which I do not doubt for a moment. But about the not so readily apparent control that she exerts in the affairs of those with whom she is closest to. To be sure every family unit has its friction and some are due to relationships with in-laws. I'm not going t speculate about any frictions within this family between Christiane Lops and Anne Harrington, but did note earlier that during the visits from May 12th and May 25th, according Ms. Harrington's testimony: When Chris arrived I, Anne, would leave the Rodgau residence. Moreover, I think it appropriate to note that Anne Harrington, in person, was present in Germany on the important dates that I alluded to earlier January 20th, May 10th, May 12th through 25, and most certainly on June 27th, 1995.

She was notably also present at the Frankfurt consulate when the passports were applied for and when the representation of the mother's abandonment of the children was made to the federal authorities there.

Also from about the 1st of June to the 27th of June, prior to her departure with the children and her actual, personal, physical asportation of the children to the United States she was present at the Rodgau residence either awaiting a call from or awaiting some sighting of Christiane Lops. This while Michael and the children were in Spain on the vacation or holiday to which I have earlier alluded with some suspicion.

The children, without any question, were taken from Germany to America, to Augusta, Georgia not by their father, but by their grandmother. Ms. Anne Harrington's handiwork is prominently seen more on the underside of the patchwork is on its upper side presented to the public view.

I infer from the evidence at this trial that Ms. Anne Harrington is most definitely an astute businesswoman. She maintains a separate telephone for the conduct her affairs. She manages her own real estate and apparently some other interests that enable her to buy a house for her son and buy him a $30,000 van. Interestingly, we have learned very little about these other financial interests that may exist, including what interests, if any, she may have in the inn or hotel that's operated by family members in Germany.

Ms. Anne Harrington does not share all of her business interests or does not discuss all of her business affairs with her husband Wayne, who operates his own lawn service business, who very specifically does not speak German by his own testimony and has no real knowledge of any income figures that Michael Lops enjoys by means of his association with Wayne Harrington's license business House Rentals.

It appears to me that Ms. Anne Harrington provides to this very close family the money and hence the control over most of Michael's and the girls' activities. I have already mentioned and I need allude no further to the utilities, provision of the house, the $30,000 van, utilities, school pick up and I do find from the evidence in the case inferentially and directly that Anne Harrington provides all of the familial, female and maternal influence on Carmen and Claire. She is, in her own person, the virtual stand-in mother for these children. In fact, these children are not simple and exclusive residents of the State of South Carolina. On the evidence that I have heard, contrary to the much abbreviated record that was developed before Judge Allgood, these children have a dual residence at least between Anne Harrington's residence in Columbia County and Michael Lops' house that he occupies, courtesy of his mother, in North Augusta.

Ms. Anne Harrington's explanation of her participation in the position of affairs in this matter implies simply that she is the mother of Michael Lops and is assisting her son in ways that she can. That is, as a more or less typical grandmother of his two, certainly darling children. While I have no doubt and no wish to impugn, in any way, her deep and abiding affection and love for her two grandchildren, I cannot accept the position that she is background in this matter. I infer from the available evidence that Ms. Harrington has been in the position of at least a co-parent, if not the principal architect of this tangled web that has been spun in order to bring the two children to this country and provide for their maintenance of a residence here for a period of time that is sufficient to place them under the one year hurdle that is seen in Article 12 of the Convention.

Now, let me refer to my notes on the delay. There is no clear cut time that I can say is tolled by any concealment. Nor am I prepared to say that there is any specific particularized act of concealment. Quite often in matters of the law I am very suspicious of any one act that precipitates the following event. Most often there are causes of a multiple nature that contribute to a particular event.

I will talk about the delay in this way. I will discuss the delay on the act of concealment side. And I will discuss the delay in terms of th efforts of officials and law enforcement or the lack thereof. Admittedly, all of this is retrospective. Hindsight is always a whole lot better than foresight, but sometimes hindsight can become so

clear that it indicates what was happening and we must always rely on the reasonable inferences that might be drawn from the party's conduct and the circumstances existing at the time to tell their intentions, purposes and motivations.

In the concealment column I have been told in this case and I have no doubt, that the children speak only English. I find that very peculiar. Their mother may speak more languages, but she speaks at least German and English. The grandmother is probably equally conversant in both languages. The father is equally conversant in both languages. Wayne Harrington doesn't speak German. If the maintenance of the residence of these two children in North Augusta, in this German-American environment, was so innocent I cannot imagine people of this intelligence, people of this ilk and people of these experiences failing to maintain a level of bilingualism with these children. It is a very subjective point, but I think it has a bearing when considered with the rest of these: No car registration; no credit; no tax return; no driver's license; no automobile registration; no utilities; no ownership of anything; no income from any identifiable source; no records of income and expenses; an atypical real estates purchase of a $100,000 house; no lease, albeit with the mother; all cash transactions; no documents on loans of 10,000 to $50,000; a very comfortable life style and no means of support except what I consider to be the bogus attribution to house rentals and the mother's largess.

I am asked to believe that this position of affairs and this pattern had no purpose. That it occurred simply because Michael Lops was too busy taking care of the children and getting over his grief to immerse himself in a more conventional life style and return to the producing member of society that he said he was earlier, making what a lot of us consider to be a bunch of money.

The other side of the delay if that were not concealment sufficient to toll the statute is what happened or did not happen by all of these agencies with the lofty names. And I don't want to be to defamatory in this regard, but I think, in truth, that Mrs. Christiane Lops was the victim of too much technology. Were it no so serious a matter, were it not such a grave situation I might observe that Luddites like myself might take some perverse satisfaction in the fact that the computers just couldn't do the job here.

Ms. Butrill's assumptions, that she somehow got from an unnamed GBI agent, that there were no children in or around the Harrington home was grossly overstated in these communications. And it was immediately adopted and relied upon as the gospel truth, that they simply weren't there.

Interpol; the FBI; Department of State; GBI; Child Finders and all of these computers and e-mail inquiries developed absolutely nothing. All of these professional law enforcement people who spend so much money, I'm sure, in these programs failed to undertake an interview. They didn't look. They didn't go talk to anybody. The GBI denial of the location of the children, which was not a formal investigation, but a request for a simple ride by which I don't even know if it was done, was grossly overstated.

All of these agents and agencies neglected the obvious simple inquiry that was laying before their very feet there in Frankfurt. As far as I know, Frankfurt is a major transportation center. As far as I know it is known, even in Germany, that Atlanta is a major transportation center. Frankfurt is the closest one to Rodgau. Atlanta is the closest one to Augusta. And yet, while all of this information was fresh in July August, even October 1995, when the request for return was filed with the German Central Authority, nobody thought of checking with one of most prominent airlines in the world by a simple phone call and asking about any of these people having a ticket. Instead, they went off on a tangent and on suspicions and innuendo to investigate things in the Bahamas and elsewhere. Being so suspicious on the failure of some Government official to stamp a passport or to record a customs manifest, they assumed a world-wide search for Michael Lops wa necessary. Yet we know that basically one or two weeks of plain old shoe leather found these children.

I'm not going to condemn any agency or any one, but I will make the observation, that even with the few pri-

vate investigators that we have in this town of Augusta, if somebody really wanted t find them, they would have been observed in even less time than the GBI fellow took to do it after h had begun to concentrate on it.

Both the concealment by Michael Lops and his mother and the patina of normalcy that there friends and neighbors were able to observe and the law enforcement bungling contributed to the delay.

Christiane Lops attempted to work through the system. She and her lawyer, long before I knew anything about it, knew about this international convention and I am willing to find inferentially that the other parties in this case knew something about the International Hague Convention as well because their conduct is far too consonant with the requirements of that convention to be otherwise.

But I cannot impose a time limitation against a single parent with very limited resources. I can say that she could have done more, she should have done more. She might have been more vocal with these agencies, but the advice that she got was to remain aloof and not to contact the family. That's the word that was put out by the GBI and everybody else, although a few direct questions by a good cop might have done a better job.

There is lot of confusion about what calls she made and what calls she didn't make, but when these elaborate procedures are set up between governments internationally through conventions and treaties approved by foreign states and by the Senate of this country it is not up to the individual left behind parent to see to it that she undertakes private investigation. She can if she wants to, but in my view, although a great deal more could have been done, this delay is not such that it can be attributed against Christiane Lops and her position in this proceeding. And the activities of Michael Lops and his mother and the quality of the law enforcement efforts or lack of same all adds up to a concealment which tolls the one year period.

The children are beautiful. They appear to be happy. They are exceedingly intelligent. I will never state that they have not been well cared for. They are deeply involved with their friends and with their grandmother. Probably to a greater extent with her than with their father. I do not doubt, nor do I make any negative finding about, anybody's love for their children. But the very idea of these children being placed in a position or status of pawns in the parents skirmishes is, I will have to say, repugnant or deplorable. And this proceeding today and its conclusion is only the natural sequel of the initial decision made in May or June of 1995 to bring the children to the United States without the recognition of the mother's rights as accorded by German law and our treaty.

I want to speak for a moment to the subject of custody and to the many discussions that were had. The custody of these children is not something that came up in 1997 or 1996. This subject of custody has been on the minds of all of actors at least since early, early 1995. There were allusions to threats made in Germany. There is, of course, the application as we know it in the South Carolina Family Court. And all of this in my view bespeaks of a knowledge of the terms of the Convention and a carefully orchestrated plan to avoid its reach.

Christiane Lops should not go without comment. I thought I had examined this evidence carefully. I thought that I had read every document. And I thought I could pick up even the subtle things that might have existed there, but I will have to say and thank Mr. Harte for the observation of the line that was generated by the fax machine and subsequently marked out on most of the other copies.

It may have telling implications. And Christiane Lops initially removed the children on January 20th, albeit with a fax and follow up letter from a lawyer to Michael Lops which was a great deal more than she got. I don't know what the condition of the existence of Christiane and Carmen and Claire were when she lived with Danielle or anywhere else. I have a finding, probably the one specific finding that I wanted to see of all of those that I wanted to see, by the German court that Judge Giwitz and his observation of the children and his discussions with them did not develop any concern about the allegations that the children, because of the size

of the apartment, were exposed to the sexual activities of any one.

Now, Christiane Lops may have another relationship. Michael Lops may have another relationship. They are apparently healthy young people. I will draw no conclusion on those factors.

As I began my observations a little bit after 2:00 I told you that I would make no determination as to who was a Saint and who was not and who was a bad person and who was a good person. I have made a determination that the asportation of these children from Germany on June 27th was unlawful. I have made the determination that to some extent, and to some considerable extent, the one year period that is provided for in Article 12 of the Convention has been tolled.

Yet I want to speak to settlement. I can't say to this record the degree to which that period of time has been tolled. Should it take off a year or should it be take off two years. My crystal ball does not enable me to engage in that sort of fact finding.

As to all outward appearances these children are settled in their environment. They have endured a great deal since November. They miss their grandmother. They miss their father. As I knew they would they miss their friends, their schoolmates, their best friends and friendships are oh so important to children of that age. I found it very laudable to the professional people that have come in here that the children missed their teachers and school administrators as much as they did.

To outward appearance they are settled in this environment and well they should be, to outward appearances. There is no complaint that they have not received the material support and, indeed, the nurture of a mother figure and a father figure. I have nothing ill to say about Michael Lops as a father to his children during this period or about Anne Harrington as a grandmother. I am trying and struggling to determine what settled in their current environment means. I have the sam difficulty that the judge did in the Colorado case and I have to conclude that it has the meaning that it has in the context of the International Convention whose object it is to return children to the jurisdiction of an habitual residence unless it would be unsettling for the children to do so.

As far as settlement is concerned if I looked merely to November 2nd, November 5th, whenever they were taken, if I look to that day and that day alone without the wider view or broader perspective, without the foresight which I have criticized others for not using, I do not think that I would discharge my responsibilities correctly, either factually or legally. If I look at the broader view, the future, and determine the issue of settlement not simply on the past from June 27th 1995 to November 1997, I see some grave concerns.

I see two wonderful children who were wrongfully taken. I'm not willing to say kidnapped like others are so eager to do for reasons of their own, whatever they may be. I will use the word abducted because that's in the Convention and the statute. But I see children were taken from a jurisdiction, a jurisdiction that is certainly respectable one, as to which I have no human rights concerns. A jurisdiction that is entitled to full faith and credit of its judicial orders and decrees. And I see a mother, history's most important figure for the nurture and upbringing and education of children, especially little girl children, who are 6 and 7 and who will soon be 10 and 11. And I see them in an environment which ostensibly is so normal, so typical, with a doting grandmother and a respectable father who provides, seemingly, a comfortable lifestyle and environment. And yet on the underside of that patchwork, as I observed earlier, I see the grandmother who is in virtual control of the financial and other affairs of this family. I see that the grandmother is a co-partner, co-participant in the abduction and in the maintenance of these appearances whose only object could be to conceal the existence of the origins of the children.

And I see Mr. Michael Lops in a situation or in a position or in a pattern of continuing deception and even if

every word that he says about his income and his business affairs is to be believed he is committing either four or five misdemeanors to maintain this pattern and to conceal, at least himself, from any authority. While I have pilloried these agencies for doing nothing but computer work, it is pretty obvious that Michael Lops was successful in concealing at least himself if that was all they were going to do.

And, "settled in their environment," in my view, means a great deal more than simply having a material existence. Even one supported by the love of a grandmother, the comfort of friends and the love of a father. Settled in their environment in the context of this case must mean that there is some conventional, some more typical, some more usual environment that affords these children not the prospect of a father who might be prosecuted for theses various activities that have allowed him to conceal himself from the authorities in a falsetto existence, in an apparently abnormal, but in reality a very peculiar set of circumstances.

Settled in the environment must mean some sort of traditional family unit. Even a single parent family unit which is uncluttered, uncomplicated and not obfuscated by the smoke and mirrors that has shrouded and reflected the existence of these two girls to the community throughout the last two years and several months.

Upon the foregoing, it is the conclusion and factual finding on all of these matters that the children were unlawfully taken from Germany and that the rights, parental custodial rights of Christiane Lops, were breached. That while more than one year has passed since their abduction and before the filing of the petition to enforce Mrs. Lops treaty rights in this court, a substantial portion of that period of time has been tolled. Notwithstanding the tolling of that period of time I am unable to find by any preponderance of the evidence, even by a preponderance, that these children are settled in their current environment as that term is meant in Article 12 of the Convention.

Accordingly, I will order the return of these children forthwith. I will do so by written order which will be entered this afternoon. I want to talk to Ms. Joesbury about how this will be handled. I will talk to her in the presence of the court reporter. And I will talk to, possibly, Mrs. Lops and Mr. Lops after I have that conversation.

Now, the decision is announced and I must prepare the written order. I'm going to direct all of you to go to different parts of the courthouse. Marshal Armitage, I will let you figure that out. Is Ms. Joesbury still in the building? I will undertake that discussion and then I will call you back in either individually or together. That concludes the matter for the moment.

(Hearing concluded.)

C E R T I F I C A T E G E O R G I A:

RICHMOND COUNTY:
I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 64 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case. This, the 25th day of December, 1997.

RICHARD A. DUERINGER, CCR-A-48.
My commission expires on the 12th day of May 2000.