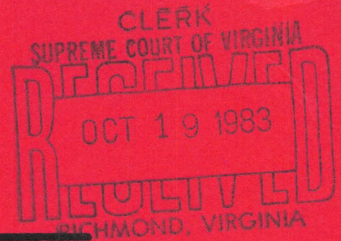


227VA82



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 822080

SHEILA J. MIDDLETON

Appellant,

v.

BRIAN C. MIDDLETON

Appellee.

JOINT APPENDIX
VOLUME II

Donald K. Butler, Esquire
526 North Boulevard
Richmond, VA 23220

Counsel for Appellant

B. VanDenburg Hall, Esquire
Suite 400, Equity Building
4085 Chain Bridge Road
Fairfax, VA 22030

Counsel for Appellee

TABLE OF CONTENTS

Volume II

	<u>Appendix Page</u>
Letter to Judge Gates, filed 6-18-82.....	340
Copy of Letter to Mr. Butler, filed 7-6-82.....	341
Copy of Letter to Mr. Hall, filed 7-7-82.....	342
Notice, filed 7-19-82.....	343
Motion for Custody, filed 7-19-82.....	344
Letter to Judge Gates with copy of Order, filed 7-23-82.....	350
Order, filed 7-23-82.....	351
Defendant's Response to Motion, filed 7-26-82.....	355
Request for Admissions, filed 8-11-82.....	359
Letter to Judge Gates, filed 8-23-82.....	364
Motion for Rule to Show Cause, filed 8-23-82.....	365
Rule to Show Cause, filed 8-23-82.....	368
Order, filed 8-24-82.....	369
Notice of Appeal, filed 8-30-82.....	375
Copy of Letter to Mr. Hall, filed 9-8-82.....	376
Notice, filed 9-17-82.....	377
Notice, filed 9-24-82.....	378
Notice, filed 10-1-82.....	379
Order, filed 10-4-82.....	380
Motion to Compel, filed 10-4-82.....	381

TABLE OF CONTENTS

Volume II (continued)

	<u>Appendix Page</u>
Order Making Transcripts Part of the Record; filed 10-13-82.....	383
Assignment of Error.....	384
Transcript of Testimony heard 12-8-81.....	385
Transcript of Hearing heard 12-29-81.....	420
Transcript of Testimony heard 6-2-82.....	459
Transcript of Testimony heard 8-23-82.....	489
Transcript of Hearing heard 9-22-81.....	538
Transcript of Telephone Conversation on 6-27-82.....	629

LAW OFFICES
MORANO AND BUTLER
526 NORTH BOULEVARD
RICHMOND, VIRGINIA 23220

DONALD K. BUTLER
JAMES F. MORANO, JR.
CHARLES L. ROGERS

TELEPHONE (804) 353-4931

June 17, 1982

The Honorable Ernest P. Gates, Judge
Chesterfield Circuit Court
Chesterfield Courthouse
Chesterfield, VA 23832

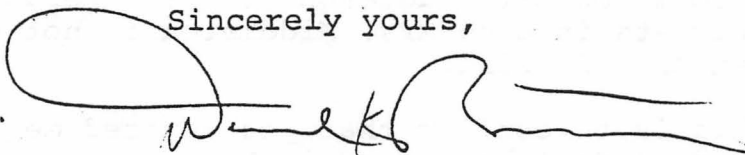
Re: Middleton v. Middleton

Dear Judge Gates:

On June 17, 1982, I received a letter from my English counsel, W. A. Goyder, stating that Mrs. Middleton's affidavit had been sent to you. Along with a copy of this letter, I am sending a copy of the affidavit to Mr. Hall.

If for some reason you have not received the affidavit by the time you receive this letter or if you require that anything additional be provided, please advise.

Sincerely yours,



Donald K. Butler

DKB/aas

cc W. A. Goyder, Esq.
B. VanDenburg Hall, Esq.

RECEIVED

JUN 18 1982

CHESTERFIELD CIRCUIT COURT
JUDGES CHAMBERS

B. VANDENBURG HALL

ATTORNEY AT LAW
SUITE 400 EQUITY BUILDING
4085 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

B. VANDENBURG HALL
PHILIP A. WELLS *
DRAKE T. BRODIN

AREA CODE 703
385-8777

*ALSO MEMBER D.C. BAR

June 28, 1982

Donald K. Butler, Esquire
Morano & Butler
526 North Boulevard
Richmond, Virginia 23220

Re: Middleton v. Middleton
In Chancery No. 3305-77
Circuit Court of Chesterfield County

Dear Mr. Butler: , ,

Enclosed is a copy of the proposed Order on summer visitation which encompasses the notification provision which we discussed and agreed to. The notification provision in the second ordered paragraph is inserted solely to allow Mr. Middleton to get a refund on the plane tickets in case Mrs. Middleton is not sending these children on July 23rd.

This is to confirm that you advised me last Friday that your client's attorney in England had advised you that Mrs. Middleton had obtained an Order in England to allow these children to come to Virginia to visit their father for the summer.

If the enclosed Order meets with your approval, please forward it to Judge Gates for entry if he so desires.

Thank you for your cooperation.

Sincerely yours,

B. Vandenburg Hall
B. VanDenburg Hall

cdm
Enclosure
cc: The Honorable Ernest P. Gates
Mr. Brian C. Middleton

RECEIVED

JUL 6 1982

CHESTERFIELD CIRCUIT COURT
JUDGES CHAMBERS

LAW OFFICES
MORANO AND BUTLER
526 NORTH BOULEVARD
RICHMOND, VIRGINIA 23220

DONALD K. BUTLER
JAMES F. MORANO, JR.
CHARLES L. ROGERS

TELEPHONE (804) 353-4931

July 6, 1982

B. VanDenburg Hall, Esq.
Suite 400 Equity Building
4085 Chain Bridge Road
Fairfax, VA 22030

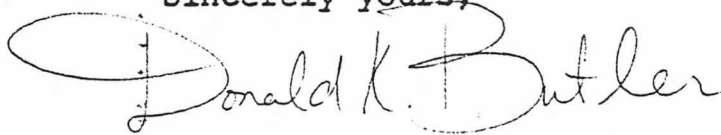
Re: Middleton v. Middleton
In Chancery No. 3305-77

Dear Mr. Hall:

Enclosed please find a sketch for an Order that I feel more accurately embodies the Judge's rulings of June 2, 1982. I am enclosing that along with the sketch that you drafted noting my objection thereon. Please either endorse my draft and send it on to the Court for entry or endorse my draft as objected to and send both drafts on to the Judge asking him to enter either Order that he feels is appropriate or to draft and enter his own Order if neither is appropriate.

With regard to the proceedings in England, I talked with my co-counsel there subsequent to my conversation with you in which I indicated that I thought that an Order had been entered allowing the children to visit here this summer. I was incorrect. The situation, as explained to me by my co-counsel, is that he feels it will be no problem getting the English court's approval of the children leaving the country in time for visitation, if there is assurance that the children will be returned to England. To clarify the matter for us and Judge Gates, I have asked him to prepare a brief explaining the position of the British Court in a situation such as this and explaining what requirements must be met in order to obtain that Court's approval of the children leaving the country. As soon as that is received, I will forward it on to you and the Court.

Sincerely yours,



Donald K. Butler

RECEIVED

DKB/aas

Enclosures

cc The Honorable Ernest P. Gates, Judge

342

JUL 7 1982

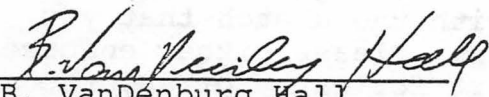
CHESTERFIELD CIRCUIT COURT
JUDGES CHAMBERS

NOTICE

TO: Sheila Joan Middleton
c/o Donald K. Butler, Esquire
MORANO & BUTLER
526 North Boulevard
Richmond, Virginia 23220

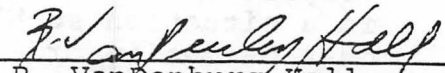
PLEASE TAKE NOTICE that your complainant, Brian C. Middleton, by counsel, will present the attached Motion for Custody on Monday, August 23rd, 1982, at 9:00 a.m., or as soon thereafter as he may be heard, to this Honorable Court.

BRIAN C. MIDDLETON
By Counsel


B. VanDenburg Hall
Counsel for Complainant
Suite 400
4085 Chain Bridge Road
Fairfax, Virginia 22030
385-8777

Certificate of Service

July I hereby certify that I have this 17th day of July, 1982, mailed, postage prepaid, a true copy of the foregoing Notice and its attached Motion for Custody to Donald K. Butler, Esquire, MORANO & BUTLER, Counsel for Defendant, at 526 North Boulevard, Richmond, Virginia 23220.


B. VanDenburg Hall

RECEIVED AND FILED

JUL 19 1982

LEWIS H. VADEN, CLERK

JUL 19 1982

LEWIS H. VADEN, CLERK

MOTION FOR CUSTODY

COMES NOW your Complainant, Brian C. Middleton, by counsel, and moves that this Honorable Court enter an order granting him the custody of the parties two minor children, Claire Michelle Middleton, born September 4, 1969 and Nicole Amie Middleton, born September 9, 1971, for the following reasons:

1. These children prefer to live with their father, the Complainant herein.
2. Their father is clearly a fit parent and it would be in the best interest of these two minor children if they were awarded the custodial care of their father.
3. Their father offers these children a very nice, warm and stable home where he and his wife live in Annandale, Virginia.
4. These children have many friends in their father's neighborhood.
5. Their father's neighborhood offers excellent schools, parks and other facilities.
6. These minor children were born in Virginia and are American citizens who are entitled to the benefits of being raised in the United States of America.
7. The Defendant/mother has had sexual relations with a single male named Mike Davies on numerous occasions while the

minor children were present in the home.

8. Their mother has repeatedly shown her contempt for this Honorable Court by:

(a) taking these children out of the United States of American after knowing that she was enjoined by this Court from so doing;

(b) refusing to submit herself to a deposition in northern England after her attorney and agent promised that she would do so;

(c) refusing to allow these children to be deposed in northern England after her attorney and agent agreed that she would allow such a deposition;

(d) denying the father and these children Christmas visitation together in 1981 after this Court ordered it and the father made plane tickets available;

(e) refusing to come to her deposition or any Court hearing in Virginia.

9. The Defendant/mother has been attempting to alienate these minor children from their father.

10. This Court overruled Defendant/mother's Plea to the Jurisdiction and this Court has continuing jurisdiction over this matter. Furthermore the Defendant/mother has personally submitted herself to this Court by filing an answer and otherwise participating by counsel in these proceedings.

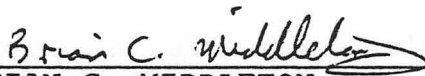
11. The Defendant/mother has been accorded every right to be heard and to due process.

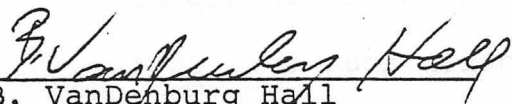
12. Instead of submitting herself to a deposition where she could be questioned by the Complainant's attorney, and where, by having her attorney question her, she could put

forth her side of the story, she has resorted to sending a letter directly to this Court without even sending a copy to opposing counsel and to ex parte proceedings in England without prior notice to the father so that the father has not had reasonable notice to defend his and his children's rights.

WHEREFORE for all of the reasons stated above and in view of the pleadings filed herein, the testimony previously taken in this cause, the Request for Admissions and response thereto filed herein, the home studies, the briefs filed herein, and the previous orders entered in this cause, your complainant prays that he be allowed to present some additional evidence and that shortly thereafter this Honorable Court grant him the custody of these two minor children, Claire and Nicole Middleton.

Respectfully submitted,


BRIAN C. MIDDLETON
Complainant/father


B. Vandenburg Hall
Counsel for Complainant/father
Suite 400
4085 Chain Bridge Road
Fairfax, Virginia 22030
385-8777

Certificate of Service

I hereby certify that I have this 17th day of July, 1982, mailed, postage prepaid, a true copy of the foregoing Motion for Custody to Donald K. Butler, Esquire, Counsel for Defendant/mother, at 526 North Boulevard, Richmond, Va. 23220.


B. Vandenburg Hall

O R D E R

THIS CAUSE came on to be heard upon the Plaintiff's Petition for change of custody of the parties' children, Claire and Nichole, and Affidavit in support thereof; upon the Order of the Court on September 2, 1981, enjoining both parties from removing either or both of the children from the Commonwealth of Virginia, United States of America; upon the service in person on the Defendant of a Notice and a Motion to reinstate this cause in this Court so that a new determination of custody can be made by this Court; upon the service in person on the Defendant in England of the Plaintiff's Petition for Changing custody and an Affidavit; upon an affidavit showing such personal service on the Defendant; upon the Order of the Court on September 14, 1981, reinstating this cause to reconsider custody matters which have arisen since the parties' divorce on October 19, 1977; upon Defendant's Answer to the Petition for change of custody; upon Defendant's Memorandum of Law in Support of Special Appearance and her Plea to the Jurisdiction and brief in support thereof, and the Plaintiff's Opposition thereto and brief in support thereof; upon Defendant's Notice and Motion that this Court decline jurisdiction over this matter; upon the Court's Letter Opinion dated October 27, 1981, holding that this Court has continuing jurisdiction over this matter; upon an Order entered on November 16, 1981, overruling the Defendant's Plea to the Jurisdiction; upon Plaintiff's Request for Admissions; upon the Court's Order dated November 16, 1981 compelling a response thereto; upon the Defendant's response to the Request for Admissions; upon Plaintiff's motion for pendente lite custody, for restraining order, for temporary injunctive order, to take depositions in England, and to compel Defendant's personal appearance with the children to give testimony in Virginia; upon

the Court's Orders on November 16, 1981 authorizing the taking of depositions in England and taking under advisement Plaintiff's Motion for Restraining Order; upon Plaintiff's several Notices of Depositions of Defendant and others to be taken in England; upon Plaintiff's counsel going to England in part to take these depositions; upon a Rule to Show Cause being entered on November 24, 1981 directing the Defendant to show cause why she should not be held in contempt of this Court; upon this Court's Order dated December 17, 1981 granting Christmas visitation to the father; upon this Court's Order granting Plaintiff's Motion to Compel the Personal Appearance of Defendant with the children, denying his motion for pendente lite custody at that time, and setting a custody trial on December 29, 1981; upon the testimony in this Court of Plaintiff and his witnesses; upon a home study being done of Plaintiff and his home in Virginia and it being filed with this Court; upon a Welfare Officer's report being done about Defendant, her home, and these children in England and it being filed with this Court; upon a brief being filed herein by the Plaintiff; upon a brief being filed herein by the Defendant; and upon argument of counsel for both parties.

IT APPEARING TO THIS COURT that it has jurisdiction to hear this Motion for Custody and that it would be in the best interests of these minor children if they were awarded the custodial care of their father, with reasonable visitation reserved for them to see their mother, it is therefore

ADJUDGED, ORDERED AND DECREED that the father, BRIAN C. MIDDLETON, be, and he hereby is, awarded the sole custody and care of the two minor children of these parties, Claire Michelle Middleton and Nichole Amie Middleton, that the mother, Sheila Joan Middleton, be, and she hereby is, ordered to turn over these two minor children, Claire Michelle Middleton and Nicole Amie

Middleton, to their father, Brian C. Middleton, or his agent at 10:00 a.m. on the _____ day of _____, 1982, at the front door of Flat 6, St. Mary's Court, Ridley Drive, Norton Cleveland, England, and it is further

ADJUDGED, ORDERED AND DECREED that the mother, Sheila Joan Middleton, be and she hereby is, awarded visitation with these children for one month of each summer after 1982 during these children's school vacation period at a location of her choice, and it is further

ADJUDGED, ORDERED AND DECREED that the previous obligation of the father, Brian C. Middleton, to pay child support to Sheila Joan Middleton be, and it hereby is, terminated effective on the _____ day of _____, 1982.

AND THIS ORDER IS FINAL.

ENTERED this _____ day of _____, 1982.

JUDGE

I ASK FOR THIS:

B. VanDenburg Hall
Counsel for Plaintiff
Suite 400, 4085 Chain Bridge Road
Fairfax, Virginia 22030
(703) 385-8777

SEEN:

Donald K. Butler
Counsel for Defendant
MORANO & BUTLER
526 North Boulevard
Richmond, Virginia 23220
(804) 353-4931

B. VANDENBURG HALL

ATTORNEY AT LAW
SUITE 400 EQUITY BUILDING
4085 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

B. VANDENBURG HALL
PHILIP A. WELLS*
DRAKE T. BRODIN

AREA CODE 703
385-8777

*ALSO MEMBER D.C. BAR

July 22, 1982

The Honorable Ernest P. Gates
Judge
Circuit Court of Chesterfield County
Courthouse
Chesterfield, Virginia 23832

Re: Middleton vs. Middleton
In Chancery No. 3305-77

Dear Judge Gates:

Enclosed are both an Order prepared by Mr. Butler and another Order prepared by me in regard to the ruling on June 2, 1982. Please review these and enter the one you believe is more appropriate or an Order drafted by you if you feel that neither is appropriate.

I am sorry for the delay. Mr. Butler's proposed Order arrived in my office when I was on the west coast.

Thank you for your cooperation in this matter.

Sincerely yours,

B. Vandenburg Hall
B. Vandenburg Hall

BVH/sds
Encl.

CC: Donald K. Butler, Esq.
Mr. Brian Middleton

RECEIVED

JUL 23 1982

CHESTERFIELD CIRCUIT COURT
JUDGES CHAMBERS

ORDER

THIS CAUSE came on to be heard upon a Notice and a Motion for Custody, an Affidavit filed by Complainant, an Answer, Request for Admissions filed by Complainant, an answer thereto, other pleadings filed, testimony presented by the Complainant, and argument by both parties' counsel.

AND IT APPEARING TO THE COURT that there is reason for concern that the defendant may not obey this Court's orders and that the children clearly want to at least visit with their father this Summer, it is therefore

ADJUDGED, ORDERED and DECREED that the two minor children of these parties shall be taken by the defendant to an international airport in London, England on July 23, 1982 in time to depart on the airplane on which their father, the Complainant herein, has made reservations for the two minor children of these parties to leave London for the purpose of flying to Virginia, and it is further

ADJUDGED, ORDERED and DECREED that the father shall be able to visit with these two minor children, Claire and Nicole Middleton, at locations of his choice from July 23, 1982 until sometime on Sunday, August 29, 1982, and it is further

ADJUDGED, ORDERED and DECREED that the father, the Complainant herein, shall take these children to an airport

in the United States in time for them to depart on an airplane destined for London, England on August 29, 1982, and it is further

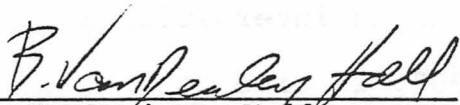
ADJUDGED, ORDERED and DECREED that the father/Complainant shall pay for the transportation costs for the aforesaid air travel, but, if the mother/Defendant is not going to send these children to these United States by air to visit with their father on July 23, 1982 as aforesaid then she must notify the father/Complainant by July 10, 1982 that she will not be sending them to their father on July 23rd, 1982.

AND THIS MATTER IS CONTINUED.

ENTERED this _____ day of _____, 1982.


ERNEST P. GATES, JUDGE

SUBMITTED:


B. VanDenburg Hall
Counsel for the father/Complainant
Suite 400
4085 Chain Bridge Road
Fairfax, Virginia 22030
(703) 385-8777

SEEN: *and objected to:*

MORANO & BUTLER
Counsel for mother/Defendant
526 North Boulevard
Richmond, Virginia 23220
(804) 353-4931

By: 
Donald K. Butler

ORDER

This cause again came to be heard on June 2, 1982, for disposition of the Complainant's Motion for Change of Custody; upon pleadings and discovery previously filed and evidence previously presented; and upon evidence presented this day in behalf of the complainant, and was argued by counsel.

Upon consideration whereof, the Court finds that it is not now appropriate to make a final disposition with regard to the complainant's motion for custody until the defendant has demonstrated to the Court her willingness to abide by its previous orders and any future orders that may be entered. Accordingly, it is ADJUDGED, ORDERED and DECREED, that the defendant shall make the children available to the complainant for summer visitation by delivering them to an international airport in London, England on July 23, 1982, in time to depart on the airplane on which the complainant has made reservations for them to leave London for the purpose of flying to Virginia, and it is further ADJUDGED, ORDERED and DECREED that the father shall be able to visit with these two minor children, Claire and Nicole Middleton, at locations of his choice from July 23, 1982, until sometime on Sunday, August 29, 1982, and it is further ADJUDGED, ORDERED and DECREED that the father, the Complainant herein, shall take

these children to an airport in the United States in time for them to depart on an airplane destined for London, England on August 29, 1982, and it is further AJDUGED, ORDERED and DECREED that the father/Complainant shall pay for the transportation costs for the aforesaid air travel, but, if the mother/Defendant is not going to send these children to these United States by air to visit with their father on July 23, 1982, as aforesaid then she must notify the father/Complainant by July 10, 1982, that she will not be sending them to their father on July 23, 1982.

AND THIS MATTER IS CONTINUED.

ENTER 7/23/82

Ernest R. Salts

JUDGE

SUBMITTED:

Chy. O. B. 100 page 585

B. Vandenburg Hall

B. Vandenburg Hall
Counsel for the father/Complainant
Suite 400
4085 Chain Bridge Road
Fairfax, VA 22030

(703) 385-8777

SEEN AND OBJECTED TO:

Donald K. Butler

Donald K. Butler
Morano & Butler
Counsel for mother/Defendant
526 North Boulevard
Richmond, VA 23220
(804) 353-4931

JUL 26 1982

LEWIS H. VADEN, CLERK

DEFENDANT'S RESPONSE TO COMPLAINANT'S
MOTION FOR CUSTODY OF JULY 17, 1982

Now comes the defendant, Sheila Joan Middleton, by counsel, and her response to the complainant's motion for custody served on July 17, 1982, states the following:

1. The allegations contained in paragraph one are denied; in fact, the report of the homestudy from England indicated the contrary is true.

2. That the fitness of the father as the custodian to these children is at the very least questionable in view of the unfounded and irresponsible allegations that he has made against his children's mother; in view of his actions in refusing to return the children to the lawful custody of the mother at the conclusion of the visitation period; and in view of his unsuccessful, yet perhaps pitiable, attempts to alienate these children from their mother. Accordingly, it would not be in the best interest of these children to be in the custodial care of their father.

3. It is admitted that the father offers the children a very nice home where he and his wife live in Annandale Virginia; however, for the reasons set forth above, it is denied that such a home would be warm and stable.

4. The allegations contained in paragraph four of the Motion are admitted and offered by the defendant as evidence that the children are well adjusted, and until the complainant's actions herein, were happy living with their mother and spending time in the United States with their father.

5. The allegations contained in Paragaraph five are admitted.

6. It is admitted that these children were born in Virginia and have dual citizenship, including American. It is also admitted that the children are entitled to the benefits of being raised in the United States of America, but it is further submitted that they are entitled to the benefits of being raised in the United Kingdom where they have lived the greater part of their lives, where they presently live, and where they desire to continue to live. It is further submitted that if the children are deprived of the future benefit of spending time in the United States of America, then such is the fault of the complainant.

7. The allegations contained in paragraph seven are admitted, but the defendant states that this situation has not presented an unwholesome environment to which the children have been exposed; that further, the defendant notes that the complainant had previously alleged that she and Mike had appeared nude in front of the children, which she previously denied, and which is not in fact true.

8. The defendant denies that she has shown her contempt for this court.

9. The defendant denies that she has been attempting to alienate the children from the father, but on the contrary, states affirmatively, that it is the father who has attempted to alienate the children from her.

10. The defendant admits that the Court overruled her plea to the jurisdiction, and while she admits that the court has continuing jurisdiction by virute of its previous orders entered with regard to custody, she states that under the Uniform Child Custody Jurisdiction Act, the matter

should have been deferred to the English Courts for adjudication of the custody issues. The defendant denies that she has personally submitted herself to this court by filing an answer and otherwise participating by counsel in these proceedings, but says that the court has personal jurisdiction over her by virtue of the fact that this court had previously entered orders regarding the custody of these children.

11. The defendant admits that she had been accorded opportunities to be heard and to do process in this court, but she further states that under the applicable law, the matter should be litigated in the English Courts where the children have resided for a substantial period of time and where the witnesses, except for the complainant and his wife, are present.

12. The defendant denies that she has resorted to sending a letter directly to the Court instead of submitting herself to a deposition, but she admits that such a letter was sent. She denies that the proceedings in England were commenced without notice to the complainant.

WHEREFORE, the defendant prays that this court reconsider its previous ruling on her plea to the jurisdiction and order that this matter be transferred to the English Courts for adjudication; that should the court again deny this plea to the jurisdiction, then the defendant prays that she be awarded custody of the infant children of the parties and that the complainant's prayer for a change in custody be denied.

SHEILA JOAN MIDDLETON

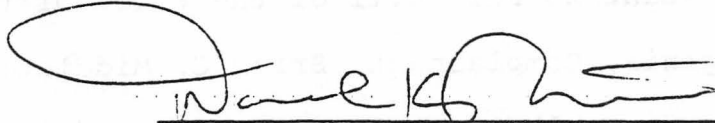
By 

Of Counsel

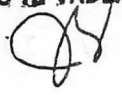
Donald K. Butler, p.d.
Morano & Butler
526 North Boulevard
Richmond, VA 23220

CERTIFICATE

I hereby certify that a true copy of the foregoing Defendant's Response to Complainant's Motion for Custody of July 17, 1982, was mailed, postage prepaid, this 22nd day of July, 1982, to B. Vandenburg Hall, Esq., suite 400, Equity Building, 4085 Chain Bridge Road, Fairfax, VA 22030 counsel for the complainant.


Donald K. Butler

AUG 11 1982

LEWIS H. VADEN, CLERK


REQUEST FOR ADMISSIONS
FOR SHEILA JOAN MIDDLETON

Pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia, Complainant, Brian C. Middleton, requests that that the Defendant, Sheila Joan Middleton, admit within twenty-one days after service of this request and for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the hearing, that each of the facts stated herein is true and correct. If any fact is not admitted, the complainant demands that the defendant deny the matter. Further, if the defendant can admit only a part of the facts stated herein, or can admit the facts subject to a qualification, complainant demands that she specify so much of such fact as is true and deny the remainder.

The matter is admitted unless, within twenty-one days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by her attorney.

An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless she states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to admit

or deny.

You are further advised that under Rule 4:12(c), should you fail to admit the genuineness of any document or the truth of any matter set forth herein as requested, and the Complainant thereafter proves the genuineness of the document or the truth of the matter set forth herein, the Complainant will apply to the Court for an order requiring you to pay the reasonable expenses incurred in making the proof, including reasonable attorney's fees. Please note that all words within parenthesis were not stated by either the Complainant or the Defendant, but were included only for clarification.

WHEREFORE, Defendant will either admit or deny the following:

1. That on Sunday, June 27, 1982, at about 7:00 o'clock, p.m., England's Time, you received a telephone call from the Complainant, Brian C. Middleton.

2. That during this phone conversation of June 27, 1982, you stated in response to the Complainant's question, "Are the children coming this summer for the holiday?", as follows: "If I can work it out, yes, I would. Have you sent me this month's money? June."

3. That during said conversation when the Complainant questioned you as to what had been done in the English Courts and whether or not the children were going to be allowed to visit him, you responded, "I'm telling you this, if everything goes through, all right. I can't let them (the children) go over to you thinking you're going to keep them again, can I?"

4. That during said conversation when Complainant stated that the Judge here in Virginia has custody of the children and that regardless of what you are doing there (in the English

Courts), you cannot escape the fact that he, the Judge (Ernest P. Gates), has jurisdiction over this case, you said, "I know, I accept that."

5. That during said conversation when the Complainant asked you whether or not you had obtained a release Order from the English Court which would allow the children to come over to the United States to visit, you stated, "We haven't been to the English Court yet. All we have is an Affidavit sent by me."

6. That during said conversation when the Complainant asked you whether you would obtain a release from the English Court so the children could come to visit, you stated, "I will get the release so they can come. Yes, if I can get assurance that my kids will be sent back to me at the end of it."

7. That during said conversation when the Complainant explained to you that he was under a Court Order here to return the children, and that he would have round-trip tickets for the children, you stated, "Let the Judge (Ernest P. Gates) tell me that and I will believe him."

8. That during said conversation when the Complainant explained to you that the Judge in Virginia had said it was okay when he (the Complainant) did not return the children to you when they were here in the United States during their last visit, you stated, "I don't care what he (the Judge) said, he's not me; he's not the mother of these children."

9. That during said conversation when the Complainant explained to you that the Judge (Ernest P. Gates) in Virginia had requested to speak to the children and, therefore, he had to comply with what the Judge wants, you said, "I've got to do what I'm told at this end as well; and I think the children should

stay with me until they're old enough to make their own minds up."

10. That during said conversation you stated that, "I wanted them (the children) to go with you (the Complainant) when they got older. I wanted it."

11. That during said conversation when the Complainant explained to you that Nicole would have to explain her feelings to the Judge in Virginia, you stated, "She can't explain her feelings to a judge."

12. That during said conversation, the Complainant stated to you that he had made plane reservations for the children for Friday, July 23, 1982 and that tickets were round-trip.

13. That during said telephone call, both Nicole and Claire talked to their father.

14. That you overheard the conversations between the Complainant and his children during this telephone call.

15. That you overheard what the children said to the Complainant during said telephone call.

16. That during said telephone conversations between the Complainant and the children, both Nicole and Claire expressed their desire to visit with their father at his home in Virginia, U.S.A.

17. That during the last twelve months, Nicole has expressed her desire to live with her father to you.

18. That during the last twelve months, Claire has expressed her desire to live with her father to you.

19. That during said telephone conversation you stated that "I've said it to the social worker, the Judge here, there is nothing wrong with the father (Complainant) of these children."

20. That during said telephone conversation, when the Complainant asked you to clarify the age at which you felt the children should be allowed to live with him, you said "What age do you think they would become teenagers and to be able to say what they want out of life."

21. That up until June 27, 1982, you did not make any arrangements to obtain the necessary releases from the English Courts which would have allowed your children to visit their father this summer in the State of Virginia, U.S.A.

22. That you took no steps to obtain the necessary releases from the English Courts which would have allowed Nicole and Claire to visit their father this summer in the State of Virginia, U.S.A.

23. That during said telephone conversation, you said to the Complainant, "I have said to you that I have never wanted them not to come over, but I am definitely not going to let them live there while they tell me they want to be here."

24. That the Complainant has a tape recording of this June 27, 1982 telephone conversation between you and him.

Respectfully Submitted,

B. C. Middleton
BRIAN C. MIDDLETON
Complainant

B. VanDenburg Hall
B. VanDenburg Hall
Counsel for Complainant
4085 Chain Bridge Road, Suite 400
Fairfax, Virginia 22030
(703) 385-8777

Certificate of Service

I hereby certify that I have this 9th day of August, 1982, mailed, postage prepaid, a true copy of the foregoing Request for Admissions for Sheila Joan Middleton to Donald K. Butler, Esquire, Morano & Butler, Counsel for Defendant, 526 North Boulevard, Richmond, Virginia 23220.

B. VanDenburg Hall
B. VanDenburg Hall

B. VANDENBURG HALL

ATTORNEY AT LAW
SUITE 400 EQUITY BUILDING
4085 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

(703) 385-8777

B. VANDENBURG HALL
DRAKE T. BRODIN

August 19, 1982

The Hon. Ernest P. Gates
12th Judicial Circuit
P.O. Box 125
Chesterfield, Va. 23832

Re: Middleton v. Middleton
Chancery No. 3305-77

Dear Judge Gates:

Please find enclosed a Motion for Rule to Show Cause and a Rule to Show Cause Order which I have prepared for the above-referenced case. Both myself and Counsel for the Defendant, Sheila Joan Middleton, have agreed that this motion should be heard at our next scheduled court date, therefore would you please consider this Motion on Monday, August 23, 1982 at 9:00 A.M. and enter the Rule to Show Cause Order if you deem it appropriate at that time.

Thank you for your kind consideration.

Sincerely yours,

B. VanDenburg Hall
B. VanDenburg Hall

vmr
enclosure

RECEIVED AND FILED

AUG 23 1982

LEWIS H. VADEN, CLERK
BR

AUG 23 1982

LEWIS H. VADEN, CLERK

BA

MOTION FOR RULE TO SHOW CAUSE

COMES NOW your Complainant, Brian C. Middleton, and moves this Honorable Court to issue a Rule to be served upon the Defendant, Sheila J. Middleton, to compel her to show cause, if any there be, why she should not be adjudged in contempt of this Court and states as the basis thereof the following:

1. That this Honorable Court entered an Order on July 23, 1982, which ordered in part:

.....That the Defendant shall make the children available to the Complainant for summer visitation by delivering them to an international airport in London, England, on July 23, 1982, in time to depart on the airplane on which the Complainant has made reservations for them to leave London for the purpose of flying to Virginia, and it is further ADJUDGED, ORDERED and DECREED that the father shall be able to visit with these two minor children, Claire and Nicole Middleton, at locations of his choice from July 23, 1982, until sometime on Sunday, August 29, 1982.

2. That the Defendant, Sheila Joan Middleton, in direct violation of this Court's Order of July 23, 1982, has refused to make the parties' children available to the Complainant, Brian C. Middleton, in order that he could exercise his summer visitation rights with them.

3. That the resulting denial of both the father's and the children's visitation rights with one another is detrimental to the general welfare and best interests of not only the father but also the children, who have a right to see and visit with their father.

4. That your Complainant is fearful that similar willful, malicious and harmful conduct by the Defendant will continue into the future with ever increasing detrimental effects upon the children's well-being, and he consequently seeks affirmative relief thereof.

WHEREFORE, the Complainant, Brian C. Middleton, respectfully prays that:

1. Defendant, Sheila J. Middleton, be found in contempt of court for willfully refusing to make the parties' children available to the Complainant, Brian C. Middleton, in direct violation of this Court's Order of July 23, 1982.

2. Custody of Claire and Nicole Middleton be granted to the Complainant, Brian C. Middleton.

3. Defendant, Sheila J. Middleton, be ordered to pay a fine of one hundred dollars (\$100.00) for her contempt of this Court's Order of July 23, 1982 plus reasonable counsel fees for having to bring this cause of action.

4. Defendant, Sheila J. Middleton, be ordered by this Court to present herself to the Sheriff of Chesterfield County, Virginia, to be incarcerated in the County of Chesterfield jail for a period of ten (10) days for violation of this Court's Order of July 23, 1982, since she continues up until the present time to be in contempt of that Order.

Respectfully submitted,

Brian C. Middleton
BRIAN C. MIDDLETON

STATE OF VIRGINIA
City of Alexandria
~~XXXXXXXXXXXXXXXXXXXX~~, to-wit:

SUBSCRIBED AND SWORN to before me, a Notary Public,
on this 19th day of August, 1982.

Michelle S. Saffa
Notary Public
My Commission expires: August 5, 1983

B. Vandenburg Hall

B. Vandenburg Hall

Counsel for Complainant/Brian C. Middleton

4085 Chain Bridge Road, Suite 400

Fairfax, Virginia 22030

703-385-8777

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of August, 1982, mailed, postage prepaid, a true copy of the foregoing Motion for Rule to Show Cause to Donald K. Butler, Esquire, Morano & Butler, Counsel for Defendant, 526 North Boulevard, Richmond, Virginia 23220.

B. Vandenburg Hall

B. Vandenburg Hall

RULE TO SHOW CAUSE

THIS MATTER came to be heard upon application of counsel for Complainant, Brian C. Middleton; and

IT APPEARING TO THE COURT from the Motion for Rule to Show Cause, which has been sworn to and signed by the Complainant, Brian C. Middleton, that entry of this Rule is proper, it is

ADJUDGED, ORDERED and DECREED that this Rule to Show Cause be served upon the Defendant, Sheila Joan Middleton, commanding her to appear before this Court on the 23rd day of August, 1982 at 9:30 a.m., and show cause, if any she can, why she should not be held in contempt of Court for denial of court-ordered visitation.

AND THIS CAUSE IS CONTINUED.

ENTERED this 23rd day of August, 1982.

Ernest J. Gale
JUDGE

Chy. O.B. 101 - page 133

I ASK FOR THIS:

B. VanDenburg Hall
B. VanDenburg Hall
Counsel for Complainant
Suite 400
4085 Chain Bridge Road
Fairfax, Virginia 22030
(703) 385-8777

Seen and Agreed To:

*Knows notice was given to
Counsel of date of
the hearing*

O R D E R

THIS CAUSE came on to be heard upon the Plaintiff's Petition for change of custody of the parties' children, Claire and Nichole, and Affidavit in support thereof; upon the Order of the Court on September 2, 1981, enjoining both parties from removing either or both of the children from the Commonwealth of Virginia, United States of America; upon the service in person on the Defendant of a Notice and a Motion to reinstate this cause in this Court so that a new determination of custody can be made by this Court; upon the service in person on the Defendant in England of the Plaintiff's Petition for Changing custody and an Affidavit; upon an affidavit showing such personal service on the Defendant; upon the Order of the Court on September 14, 1981, reinstating this cause to reconsider custody matters which have arisen since the parties' divorce on October 19, 1977; upon Defendant's Answer to the Petition for change of custody; upon Defendant's Memorandum of Law in Support of Special Appearance and her Plea to the Jurisdiction and brief in support thereof, and the Plaintiff's Opposition thereto and brief in support thereof; upon Defendant's Notice and Motion that this Court decline jurisdiction over this matter; upon the Court's Letter Opinion dated October 27, 1981, holding that this Court has continuing jurisdiction over this matter; upon an Order entered on November 16, 1981, overruling the Defendant's Plea to the Jurisdiction; upon Plaintiff's Request for Admissions; upon the Court's Order dated November 16, 1981 compelling a response thereto; upon the Defendant's response to the Request for

Admissions, upon Plaintiff's motion for pendente lite custody, for restraining order, for temporary injunctive order, to take depositions in England, and to compel Defendant's personal appearance with the children to give testimony in Virginia; upon the Court's Orders on November 16, 1981 authorizing the taking of depositions in England and taking under advisement Plaintiff's Motion for Restraining Order; upon Plaintiff's several Notices of Depositions of Defendant and others to be taken in England; upon Plaintiff's counsel going to England in part to take these depositions; upon a Rule to Show Cause being entered on November 24, 1981 directing the Defendant to show cause why she should not be held in contempt of this Court; upon this Court's Order dated December 17, 1981 granting Christmas visitation to the father; upon this Court's Order granting Plaintiff's Motion to Compel the Personal Appearance of Defendant with the children, denying his motion for pendente lite custody at that time, and setting a custody trial on December 29, 1981; upon the testimony in this Court of Plaintiff and his witnesses; upon a home study being done of Plaintiff and his home in Virginia and it being filed with this Court; upon a Welfare Officer's report being done about Defendant, her home, and these children in England and it being filed with this Court; upon a brief being filed herein by the Plaintiff; upon a brief being filed hereby by the Defendant; upon an Order granting summer visitation for 1982; upon another Motion for Custody and Defendant's Answer thereto; upon a Motion for a Rule to Show Cause; upon a Rule to Show Cause why Defendant should not be held in contempt of court for denial of visitation in the summer of 1982; upon additional testimony being given by Plaintiff and his wife; and upon argument of counsel for both parties.

IT APPEARING TO THIS COURT that it has jurisdiction to hear this Motion for Custody and this court finds that:

1. The Defendant is in contempt of this Court's Order dated September 2, 1981 because she removed these minor children from the United States after said Order was entered enjoining her from removing these children from the United States and with knowledge that it had been entered before she removed them from the United States.

2. The Defendant was given an opportunity to be deposed in a town near her residence in England on November 14, 1981 at which time the Plaintiff/father's attorney would have been there to depose her and her counsel, by cross-examining her. could have put forth her case; that she could have taken depositions of other persons in England and filed the transcripts of them in the Circuit Court of Chesterfield County, Virginia; that even though this Court gave permission for these depositions to be taken in England, the Defendant refused to show up there for these depositions and failed to present any evidence at any time in this case by deposition of herself, other witnesses or any other lawful means.

3. That this Court and the Plaintiff have tried by this Court allowing depositions to be taken near Defendant's home in England and by Plaintiff causing his counsel to be in Northern England in mid November, 1981 to take those proposed depositions of Defendant and her witnesses to make Defendant's giving of evidence as convenient as possible for her.

4. That the Circuit Court of Chesterfield County, Virginia both has jurisdiction to hear this cause and is the most convenient forum for both parties.

5. That the Plaintiff/father proved that he owns an appropriate three-bedroom home in Annandale, Virginia near (a) good schools which are in walking distance, (b) a playground; (c) parks, (d) a pool, (e) colleges, (f) museums, and (g) other places of interest.

6. That the Plaintiff/father proved that:

(a) he had arranged for and paid for some visitation with his children every year since his former wife took them to England in 1974;

(b) since 1977 the Plaintiff has arranged for and paid for visitation by his daughters in his home in Virginia, U.S.A;

(c) his children have made many friends in the area near their father's home in Annandale, Virginia;

(d) his children have expressed a desire to live with their father in Virginia;

(e) he has had the same wife, home and employer for a number of years and is otherwise a stable person;

(f) he offers a warm and stable home for his children better than what his former wife offers;

(g) the Defendant has had sexual intercourse with Mike Davies on numerous occasions while the children Claire and Nichole Middleton were present in the home as shown by Plaintiff's Request for Admissions coupled with England's Welfare Department Report;

(h) the children have been told that they have a choice as to where they wish to live;

(i) the Defendant is in additional contempt of this Court for:

(i) failing to appear in Court on December 8, 1981 to show cause why she was not in contempt;

(ii) failing to appear for her deposition on December 23, 1981;

(iii) failing to grant the father and these children visitation with each other over the period of December 19, 1981 to January 5, 1982 as ordered by this Court; and

(iv) failing to send these children to visit with their father in Virginia on July 23, 1982 even though she was ordered to do so, he offered the airplane tickets to pay the air travel costs, and she filed an affidavit dated June 11, 1982 with this Court stating, in effect, that she would do whatever she could to obtain a court order in England to allow the children to come to Virginia for a visitation for the Summer of 1982.

(j) the mother has denied these children's natural and court ordered visitation rights;

7. This Court further finds that:

(a) the Defendant/mother has been accorded every reasonable opportunity to present her case and she has failed and refused to do so further showing her contempt for this Court;

(b) the Defendant/mother has been provided due process by this Court and was represented by counsel in this Court;

(c) the conclusion of the English Welfare Department's Report is erroneous; and

(d) it would be in the best interests of these minor children if they were awarded the custodial care of their father; it is therefore

ADJUDGED, ORDERED and DECREED that the father, Brian C. Middleton, be, and he hereby is, awarded the sole custody and care of the two minor children of these parties, Claire Michelle Middleton and Nichole Amie Middleton, *subject to reasonable rights of visitation to the defendant;* that the mother, Sheila Joan Middleton, be, and she hereby is, ordered to turn over these two minor children, Claire Michelle Middleton and Nichole Amie Middleton, to their father, Brian C. Middleton on the 29th day of August, 1982, by sending them via an airplane to the

Plaintiff/father in Virginia at the expense of the father,
and it is further

ADJUDGED, ORDERED and DECREED that the mother, Sheila
Joan Middleton, be, and she hereby is, held in contempt of this
Court, fined one hundred dollars (\$100.00) and sentenced to
serve ten (10) days in the Jail of Chesterfield County, Virginia
but she can purge herself of contempt and have this sentence
suspended by turning over these children to the Plaintiff/father
on time per this Court Order, and it is further

ADJUDGED, ORDERED and DECREED that the previous
obligation of the father, Brian C. Middleton, to pay child
support to Sheila Joan Middleton be, and it hereby is, terminated
effective on the 24th day of August, 1982.

AND THIS ORDER IS FINAL.

ENTERED THIS 24th day of August, 1982.

I ASK FOR THIS:

Ernest K. Lab
JUDGE

Chy. O. B. 101-page 156

B. Vandenburg Hall
B. VANDENBURG HALL
Counsel for Plaintiff/father
Suite 400
4085 Chain Bridge Road
Fairfax, Virginia 22030
(703) 385-8777

SEEN and objected to:

Donald K. Butler
DONALD K. BUTLER
MORANO & BUTLER
Counsel for Defendant/mother
526 North Boulevard
Richmond, Virginia 23220
(804) 353-4931

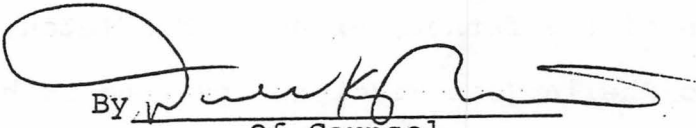
copy mailed
8/26/82

NOTICE OF APPEAL

TO: Brian C. Middleton
c/o VanDenburg Hall, Esq.
Suite 400, Equity Building
4085 Chain Bridge Road
Fairfax, VA 22030

You are hereby notified that the defendant appeals from the Order of this Court entered on August 24, 1982. The written transcripts are to be made a part of the record herein.

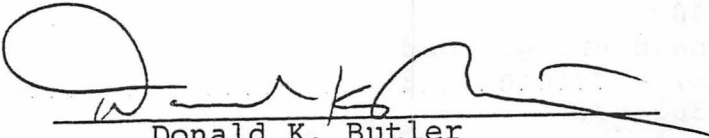
SHEILA JOAN MIDDLETON

By 
Of Counsel

Donald K. Butler, p.q.
Morano & Butler
526 North Boulevard
Richmond, VA 23220

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice of Appeal was mailed, postage prepaid, to B. VanDenburg Hall, Esq., Suite 400, Equity Building, 4085 Chain Bridge Road, Fairfax, VA 22030, counsel for the complainant.


Donald K. Butler

RECEIVED ~~UNDER SEAL~~
AND FILED

AUG 30 1982

LEWIS H. VADEN, CLERK


LAW OFFICES
MORANO AND BUTLER
526 NORTH BOULEVARD
RICHMOND, VIRGINIA 23220

DONALD K. BUTLER
JAMES F. MORANO, JR.
CHARLES L. ROGERS

TELEPHONE (804) 353-4931

September 7, 1982

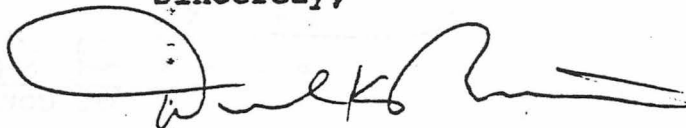
B. Vandenburg Hall, Esq.
4085 Chain Bridge Road, Suite 400
Fairfax, VA 22030

Re: Middleton v. Middleton

Dear Mr. Hall:

Enclosed herewith please find a sketch for an Order making the transcripts of the five hearings a part of the record herein. If you have an objection, please give me a call. Otherwise, please endorse it and send it to the Court for entry immediately, since the twenty-one day period will expire on September 14, 1982, and will then require me to use the alternative and more cumbersome provisions for making them a part of the record.

Sincerely,



Donald K. Butler

DKB/aas

Enclosure

cc Lewis H. Vaden, Clerk
Chesterfield Circuit Court

RECEIVED AND FILED

SEP 8 1982

LEWIS H. VADEN, CLERK
OR

NOTICE

TO: Brian C. Middleton
c/o B. VanDenburg Hall, Esquire
Suite 400
4085 Chain Bridge Road
Fairfax, VA 22030

You are hereby notified, pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia, that the following transcripts of hearing which had been filed in the Office of the Clerk and are to made part of the record herein:

September 22, 1981

December 8, 1981

December 29, 1981

June 2, 1982

August 23, 1982

SHELIA JOAN MIDDLETON

BY: 

Of Counsel

Donald K. Butler, Esquire
Counsel for the Plaintiff
MORANO & BUTLER
526 North Boulevard
Richmond, VA 23220

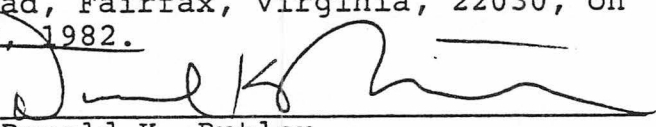
RECEIVED AND FILED

SEP 17 1982

LEWIS H. VADEN, CLERK 

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Notice was mailed to B. VanDenburg Hall, Esquire, Suite 400, Equity Building, 4085 Chain Bridge Road, Fairfax, Virginia, 22030, on this the 15th day of September, 1982.


Donald K. Butler

NOTICE

TO: Brian C. Middleton
c/o B. VanDenburg Hall, Esquire
Suite 400
4085 Chain Bridge Road
Fairfax, VA 22030

Please take notice that on October 4, 1982, at 8:45 a.m.,
or as soon thereafter as counsel may be heard, I shall appear
before one of the Judges of the Court and move the Court to
enter an Order making copies of the following transcripts of
hearings in this matter, a part of the record herein:

September 22, 1981

December 8, 1981

December 29, 1981

June 2, 1982

August 23, 1982

You should be present to protect your interests.

SHELIA JOAN MIDDLETON

BY: 

Of Counsel

Donald K. Butler, Esquire
Counsel for the Defendant
Morano & Butler
526 North Boulevard
Richmond, VA 23220

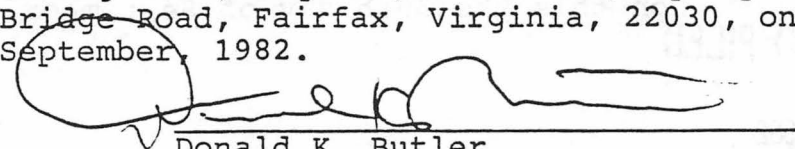
RECEIVED AND FILED

SEP 24 1982

C E R T I F I C A T E

LEWIS H. VADEN, CLERK

I hereby certify that a true copy of the foregoing Notice
was mailed to B. VanDenburg Hall, Esquire, Suite 400, Equity
Building, 4085 Chain Bridge Road, Fairfax, Virginia, 22030, on
this the 22nd day of September, 1982.


Donald K. Butler

NOTICE

TO: Sheila Joan Middleton
c/o Donald K. Butler, Esquire
Morano & Butler
526 North Boulevard
Richmond, Virginia 23220

Please take notice that on October 4, 1982, at 8:45am, or as soon thereafter, I shall appear before one of the Judges of the Court and move the Court to enter an Order granting me the following telephone communication with my children, Claire Michelle Middleton and Nichole Amie Middleton:

The Defendant, Sheila Joan Middleton, shall place a collect call to the Plaintiff, Brian C. Middleton, at his residence in Annandale, Virginia each weekend and permit the children, Claire Michelle and Nichole Amie, to talk with their father in privacy and without hindrance or interference. Further, the defendant, Sheila Joan Middleton, shall instruct persons in her residence who answer her telephone, to inform the Plaintiff, Brian C. Middleton, when he calls by telephone, the whereabouts of the children and the time the children will be home, if temporarily absent. Further, the defendant, Sheila Joan Middleton, shall allow the children to talk with their father, Brian C. Middleton, by telephone in privacy and without hindrance at any reasonable time.

BY:

Brian C. Middleton
Brian C. Middleton

Brian C. Middleton
4463 Edan Mae Court
Annandale, Virginia 22003

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Notice was mailed to Donald K. Butler, Esquire, Morano & Butler, 526 North Boulevard, Richmond, Virginia, 23220, on this the 30th day of September, 1982.

RECEIVED AND FILED

OCT 1 1982

Brian C. Middleton
Brian C. Middleton

LEWIS H. VADEN, CLERK

BL

O R D E R

THIS CAUSE came to be heard on October 4, 1982, upon Complainant's petition to Compel the Defendant To Restore Visitation With The Children.

IT APPEARING TO THIS COURT that it is in the best interest of the children to maintain contact with their father, the Plaintiff; it is therefore

ORDERED that the Defendant shall:

1. Place a collect telephone call to the Plaintiff's residence for the children each weekend and permit the children to talk with their father, Brian C. Middleton, in privacy and without interference.

2. Allow the children to talk with their father, Brian C. Middleton, by telephone in privacy and without interference at any reasonable time.

3. Instruct persons in the residence of the Defendant to inform the Plaintiff whenever he calls by telephone the whereabouts of the children, if temporarily absent from the home.

ENTERED THIS 4th day of October, 1982

Edward P. Galt
JUDGE

Chgo. Bank 101-Page 711

I ASK FOR THIS:

Brian C. Middleton
BRIAN C. MIDDLETON
4463 Edan Mae Court
Annandale, Virginia 22003
(703) 256-3276

SEEN:

Donald K. Butler
DONALD K. BUTLER
MORANO & BUTLER
Counsel for Defendant
526 North Boulevard
Richmond, Virginia 23220
(804) 353-4931

MOTION TO COMPEL DEFENDANT
TO RESTORE TELEPHONE VISITATION
WITH THE CHILDREN

COMES NOW the Complainant, Brian C. Middleton, and prays this Honorable Court to order the Defendant, Sheila Joan Middleton, to restore telephone communication with the children.

In support thereof, the Complainant states the following:

1. The Complainant was last permitted to talk to the children by telephone on June 27, 1982.
2. On August 24, 1982, this Court entered an Order giving the Plaintiff custody of the children.
3. On August 23, 1982, the Plaintiff telephoned the Defendant's residence in England. A female who identified herself as Sue answered the telephone and refused to divulge the whereabouts of the Defendant or the children.
4. The Plaintiff made numerous attempts between August 24, 1982, and August 29, 1982, to telephone the Defendant in order to make arrangements for the children to return to the Plaintiff as ordered by the Court. The telephone rang unanswered on every occasion.
5. The Plaintiff telephoned the Defendant on September 5, 1982, and asked the female who identified herself as Sue to speak to the child Nichole in order to wish her a happy birthday. Again Sue refused to divulge the whereabouts of the children or the Defendant and cut off the call.
6. The Plaintiff telephoned the Defendant again on September 7, 1982, which was answered again by the unknown female Sue. The Plaintiff asked to speak to both children as this was the occasion of their birthdays. Sue informed the Plaintiff that she was under instructions from the Defendant not to divulge the whereabouts of the children or if they were present in the home. Again the call was cut off.
7. On September 13, 1982, the Plaintiff sent by registered airmail a letter demanding access to the children by telephone and offered to accept collect calls at his home and work to facilitate contact.
8. On September 16, 1982, a copy of the Plaintiff's letter was sent by registered airmail to the Defendant's English attorney, William Andrew Goyder.

9. On September 16, 1982, a copy of the Plaintiff's letter was sent by registered mail to the Defendant's attorney, Donald K. Butler.

10. The Plaintiff's attorney, B. Van Denburg Hall has orally informed the Defendant's attorney, Donald K. Butler of his client's unlawful denial of telephone contact with his children.

11. The Defendant is in contempt of this Courts Order of August 24, 1982, by not returning the children to the Plaintiff on August 29. 1982, as so ordered.

WHEREFORE, the Complainant, Brian C. Middleton, prays to enter an Order to compel the Defendant to restore and facilitate telephone communication between the Complainant and the children.

BC Middleton

Brian C. Middleton
Complainant

*filed
10-4-82
JH*

ORDER MAKING TRANSCRIPTS PART OF THE RECORD

It is hereby ORDERED that the transcripts of the following hearings herein are made a part of the record herein:

September 22, 1981

December 8, 1981

December 29, 1981

June 2, 1982

August 23, 1982

ENTER: 10/13/82

Ernest Gates
Judge

Chgo. Bank 101 - Page 847

I ask for this:

, p.d.

Donald K. Butler
Morano & Butler
526 North Boulevard
Richmond, VA 23220

ASSIGNMENTS OF ERROR

- (1) The Court erred in overruling the appellant's plea to the jurisdiction of the Court below for the reason that under the standards set forth in the Uniform Child Custody Jurisdiction Act, that Court should have deferred to the more appropriate forum of the Courts in England, to decide the change of custody issue.
- (2) The Court erred in admitting into evidence testimony regarding a conversation between the appellee and an unknown person identifying himself as an agent of the appellant, said testimony having been offered for the purpose of establishing that the appellant was aware of the entry of an ex parte injunction order of September 2, 1981.
- (3) The Court erred in changing the custody of the infant children from the appellant to the appellee because this ruling was contrary to the law and the evidence. Specifically, the appellee (father) failed to prove that the appellant (mother), who had been awarded permanent custody of the children in 1977, was unfit and that a change of custody was in the best interests of the infant children.
- (4) The Court erred in terminating the support payable by the appellee to the appellant for the reason that this termination was punitive against the mother and not based on the best interests of the children when the evidence showed that they were in need of such support.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Original

NOV 26 1982

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF CHESTERFIELD COUNTY, VIRGINIA

4 - - - - - :
5 BRIAN C. MIDDLETON :

6 vs :

7 SHEILA JOAN MIDDLETON :
8 - - - - - :

9
10
11
12 Transcript of the testimony and other
13 incidents pertaining thereto, when heard on December 8, 1981,
14 commencing at 9:00 o'clock a.m., before the Honorable
15 Ernest P. Gates, Judge.

16
17
18
19 APPEARANCES:

20 B. Vandenburg Hall, Esquire, 4085 Chain Bridge Road, Fairfax,
21 Virginia 22030;
22 counsel for the complainant;

23 Donald K. Butler, Esquire 526 North Boulevard, Richmond,
24 Virginia 23220,
25 counsel for the defendant.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

2.

I N D E X

Angela Middleton Direct
11

Brian C. Middleton 31

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

3.

1 NOTE: This hearing having been set for
2 9:00 o'clock a.m., and the court reporter having been duly
3 sworn, commences, viz:

4 MR. HALL: We are here, as you know, on
5 three motions, basically. We are primarily seeking
6 temporary custody of the children. We are seeking
7 to hold her in contempt of court for taking the
8 children out of the jurisdiction after an injunction
9 was entered pursuant to a show cause, because she
10 knew about it. She removed the children. She knew
11 about the order, and we are seeking an order of
12 the Court that it set a date for a permanent custody
13 hearing and order that she return here with the
14 children to testify at that time. Actually, an
15 order, also, to have her return the children over
16 to the father. He doesn't mind bearing the expense
17 of having them flown here, if that's the problem.
18 That's the thrust of the motion. We are getting
19 close to the end of the school session, before
20 Christmas, and I think it's an appropriate time to
21 send for the children, at the Christmas holidays.

22 In that connection, we have here Mr.
23 Middleton and his wife. Before going any further
24 in the opening statement, perhaps opposing counsel
25 has something to say and then I would go ahead.

1 THE COURT: All right. Mr. Butler?

2 MR. BUTLER: No.

3 THE COURT: Go ahead and present your
4 evidence.

5 NOTE: At this time the witnesses are
6 sworn.

7
8 THE COURT: Did you take any depositions?

9 MR. HALL: We tried and were very much
10 frustrated in that regard. In fact, I talked to
11 Mr. Butler in regard to that prior to going over
12 and he had confirmed to me that it would not be
13 necessary to issue subpoenas to hold that
14 deposition, and I confirmed that by letter to him;
15 that it would not be a necessary requirement, but
16 when we got there we found she had gone to court
17 seeking several orders. One was to prohibit him
18 from having any custody case. To prohibit him
19 from taking the children out of the country. She
20 had done it ex parte. We found out by accident by
21 the local counsel talking about it. Despite the
22 promise of Mr. Butler, she had gone to court to
23 enjoin him from taking the depositions of the
24 children. They were successful, just a day or so
25 before the depositions would be taken, which was on

1 the 12th, in getting an English order prohibiting
2 the children from being deposed temporarily. This
3 was all ex parte. We found out a couple of hours
4 beforehand. There was no time to prepare. Mr.
5 Middleton, at that time, had not been served and was
6 not before the Court. We had not filed any kind of
7 answer. We had no personal appearance before the
8 Court. We did not have an observer there. The point
9 of it is, we were turned around. Not only were the
10 children not presented, but without a subpoena being
11 issued, we would have sought one if we had been told
12 we needed that.

13 In addition, even though there was no
14 English order enjoining her from being deposed, the
15 mother refused to be deposed on the 12th of
16 November. We were set up for it. I had local
17 counsel to do it.

18 I would also like to bring to the Court's
19 attention the fact the answers were supplied to the
20 request for admissions. I think some of those are
21 critically important to the Court before we start
22 taking testimony. In the request for admissions,
23 in my format, I copied in the initial part of it
24 what is kind of a paraphrase of the 4:11 Rule, and
25 part of what I also put in this you will see later.

1 An answering party may not give lack of information
2 or knowledge as a reason for failure to admit or
3 deny unless he states that he has made reasonable
4 inquiry and that the information known or readily
5 obtainable by the defendant is insufficient to en-
6 able him to admit or deny. That rule is not impor-
7 tant to this first point.

8 On the first point we asked her to admit --
9 I'm maintaining she is deemed to answer this pur-
10 suant to your order. We asked her to admit: Have
11 you had sexual relations with a single male, Mike
12 Davis, on several occasions while my clients were
13 present in the home? She responded: The defendant
14 admits she had sexual intercourse with Mike Davis,
15 but never in the presence of the children. She
16 does not deny she had sexual relations with him while
17 the children were present in the home. That's the
18 critical point, I think, in Your Honor's experience,
19 and certainly in mine, in these cases one seeks to
20 prove. The investigator saw the children -- if
21 there were an investigator -- saw the children and
22 mother going into a home, and the boyfriend at the
23 same time, or shortly before or afterward. They
24 stayed overnight. He saw no doors or windows open
25 and no one left. He would only be testifying, in

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

7.

1 effect, that there was time and opportunity for the
2 mother and this strange boyfriend -- in the sense they
3 are not married -- to be in there and they had the time
4 and opportunity to have sexual intercourse. No one
5 left overnight. This answer of hers not denying she
6 had sexual intercourse, but admitting she had, and not
7 denying while the children were present in the home,
8 not denying that, she is deemed to admit that under
9 our routine rules. The next one is basically the
10 same thing, only at Mr. Davis' home. I think that is
11 the major point, which is the very point pursuant to
12 the case of Brown vs Brown. I'm sure Your Honor is
13 familiar with that case. It has been admitted.

14 Secondly, in #14, we stated in our request
15 for admissions, asking her to admit that: On Saturday,
16 August 30, 1981 the child, Claire, informed your sister
17 Linda Watson, by telephone, that she wished to remain
18 with her father, Brian, in America and does not want
19 her mother to escort her back to England. Her re-
20 sponse: As the defendant has no way of knowing the
21 contents of the telephone conversation to which she
22 was not a party, the allegation is neither admitted
23 nor denied.

24 She goes on and admits #15, where in we
25 say that you, Sheila Middleton, was present in the
home in England where your sister called the children

1 by telephone on Saturday, August 30. She admits her
2 sister was right there, yet she has no way of knowing.
3 She has a duty, Your Honor, under our Rules, as I
4 stated, paraphrasing here: An answering party may not
5 give lack of information or knowledge as a reason for
6 failing to admit or deny unless the defendant states
7 she had made reasonable inquiry. She could have asked
8 her sister. She was in Sheila's home and the informa-
9 tion readily obtainable by the defendant. The children
10 did state on August 30, 1981, this year, that they
11 wanted to remain here. They did not want their mother
12 to return here and pick them up and take them to
13 England. She has admitted that.

14 In #20, an additional reason why it's
15 important. These children are old enough to ex-
16 press their wishes. I think Your Honor has taken
17 testimony on that. We stated in our #20, asking
18 her to admit there was an agreement the children
19 would make up their minds at 10 years of age. She
20 responded in the first sentence of her response --
21 one most important -- The children have always been
22 told they have a choice as to where they wish to
23 live. This is her response stating that. It may
24 be easier, Your Honor, to look at my copy, if you
25 like. It shows the signature of Mr. Butler over it

1 in that regard. If you would like to glance at that.

2 I think we have made a valiant effort to
3 gather the evidence. In fact, I agreed with
4 opposing counsel that if he wished to present
5 evidence, having people deposed over there -- this
6 was immediately after my conversation with you, and
7 Mr. Butler was on the phone just prior to your letter
8 ruling. We agreed that if he wanted witnesses there
9 we would go to the depositions and I would be there
10 so their depositions would be valid pursuant to our
11 procedures. I would be noticed, and even if I was
12 not there, the depositions would be valid. They
13 chose to do nothing. They chose to frustrate us.
14 There was no injunction in England saying his client
15 should not be deposed. In fact, there is a specific
16 order from this Court that the depositions shall
17 take place in England in November 1981. She has
18 done nothing but show her contempt for this Court.
19 She has shown her contempt by snatching the children
20 and then, after knowing of the Court order, she took
21 them on the 2nd of September. The dates are impor-
22 tant here. The evidence will show this. She then
23 had an agent call to find out what the situation
24 was. The agent said the children were in Florida.
25 Your Honor's order says she is not to remove them

1 from Virginia or the U.S. The children were in
2 Florida roughly an hour and a half, at least. before
3 Your Honor signed that order on the 2nd, according
4 to their statement to one of the witnesses.

5 Then, they called again the next morning
6 and were told that the order had been signed. That
7 is, an agent of Sheila Middleton called. That person
8 who called asked details and questions about when
9 it was signed, what it said, and so on.

10 We have evidence that she did not arrive
11 in England until the 4th of September. Your Honor
12 knows it's only a six to eight hour flight, depending
13 on the wind. Six and a half hours it took me to go
14 to England, and she arrived in England on the 4th
15 of September. I don't know what hour.. She had
16 knowledge before she left the U.S. that Your Honor's
17 order had been entered enjoining her from taking the
18 children from the U.S. and Virginia, yet she thumbed
19 her nose at it, basically, and has done the same
20 thing, in effect, to the depositions.

21 So, I would suggest that for all those
22 reasons we have established, as I see it through her
23 own answers, a prima facie case that custody should
24 switch to the father, pursuant to the Brown case.
25 And to the contempt provision, the Court has the

1 power, because of that, to consider, basically, what
2 is the best interest of the children based on the
3 evidence before it already, plus at this time I
4 would like to go forward.

5 THE COURT: All right.

6
7
8 ANGELA MIDDLETON, a witness, called by
9 counsel for the plaintiff, having been duly sworn, was examined
10 and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HALL:

13 Q Would you state your name?

14 A Angela Middleton.

15 Q You are married to Brian Middleton?

16 A Yes, sir.

17 Q Would you indicate if you have talked to
18 the children and if so, when?

19 A Prior to them leaving?

20 Q Yes, prior to September.

21 A Yes, we talked in great detail. We had
22 a lot of private discussions. They would bring up things
23 bothering them. Claire especially had some problems at this
24 time. They had gone to Portugal --

25 MR. BUTLER: I object to anything the

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

12.

1 children told Mrs. Middleton.

2 MR. HALL: I would like to bring to
3 your attention two things.

4 THE COURT: All right.

5 MR. HALL: First of all, what she says
6 is clearly relevant. What they establish and what
7 they say. It's not presented for the truth. I
8 am seeking an order for the children to be brought
9 here for testimony.

10 THE COURT: It doesn't go to the truth
11 or falsity of her statement to Mrs. Middleton.
12 It's whether or not she did make a statement.

13 MR. HALL: Yes.

14 THE COURT: Do you agree with that?

15 MR. BUTLER: It's a routine circumvention
16 of the hearsay rule. I can anticipate what she's
17 going to say. How it could have any significance
18 without --

19 THE COURT: What happened in Portugal?

20 MR. BUTLER: What she alleged happened.
21 The fact the statement was made is significant,
22 but the content of the statement made -- Well, let
23 her testify and then you rule. I can't imagine what
24 the statement contains cannot be of any effect.

25 THE COURT: Go ahead.

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

13.

1 MR. HALL: I would also point out the
2 fact the Brown case does quote what the father said
3 the children were saying.
4

5 BY MR. HALL: (Continuing)

6 Q Would you indicate to the Court what the
7 children said in that regard?

8 A Claire said she was upset. She felt
9 very uncomfortable. A man kept picking her up and carrying
10 her and putting her on a bar. Nichole said you are an old
11 prune, but they were over kissing and hugging in the corner with
12 so and so. He was like in his 20s.

13 Q How old are the children?

14 A Claire is 12 and Nichole is 10. Claire
15 felt very uncomfortable about it. We talked about it. And,
16 you know, we discussed it. She wasn't a prune, but she should
17 have higher values, and later on she was upset because she
18 said she couldn't stop lying. It upset her, because she said
19 her mother makes her lie all the time to protect her. She
20 lies constantly and can't stop. We talked about that; how
21 upset she was. We both cried a lot, talking about being
22 truthful and honest. She is concerned about god and church.
23 She has just started church. She was very concerned about all
24 this lying. She had gotten to the point she would lie several
25 times in a sentence and contradict herself. We talked about

Angela Middleton - Direct

14.

1 that. To please help her on various things. She brought
2 up about various things going on. She had to lie to her
3 grandmother, her mother's mother. She would ask her who is
4 there. She would say we have to lie. We have to protect her.
5 It was very upsetting to her.

6 MR. BUTLER: I renew my objection to the
7 testimony. She is obviously trying to get before
8 the Court evidence she couldn't do otherwise.
9 It's all hearsay. The fact the children said it
10 doesn't exclude it from the objection. It's based
11 on hearsay. It's not part of the res gestae.

12 THE COURT: I don't think the res gestae
13 exception is applicable. I think for what it's
14 worth, the statements were made to her. Mr. Hall's
15 statements are true. You sure have frustrated him
16 in taking the children's testimony in England when
17 he was available to take that and have it offered
18 to the Court. I overrule your objection.

19 MR. BUTLER: I would like to present our
20 position with regard to the depositions of the
21 children if it pertains to this ruling. I have a
22 copy of an order I received yesterday. What the
23 deal was, apparently, Judge, according to my co-
24 counsel in England, is that the courts over there
25 are in great disfavor of children testifying in these

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

15.

1 matters. That was the concern with the children.
2 The children had been made wards of the court, and
3 Mr. Gorday, my co-counsel, discussed at length the
4 effect of your order and my agreement with Mr.
5 Hall, and Mr. Gorday brought to my attention that
6 in England they don't allow the children to testify.
7 They have them talk to social workers and sometimes
8 to the judge, but not a deposition. He emphasized
9 especially this case in view of the allegations
10 made and the petition and request for admissions.
11 Many of those allegations involve the children,
12 and whether or not the children would be asked
13 any questions about some of the absurd conduct
14 alleged in the petition that Mrs. Middleton has
15 engaged in. They went to court and tried to notify
16 them they had an ex parte.

17 THE COURT: How do you get to be ex parte
18 in England? You have a mother. The Court has
19 granted custody in the United States. Something is
20 wrong in the way she is taking care of the children
21 to make them a ward.

22 MR. BUTLER: No, that's not the situation.
23 What effect a ward has with regard to conflict of
24 laws when you have jurisdiction over the case, I
25 can't reconcile that either, but the children are

Angela Middleton - Direct

16.

1 in England. Since they are there, apparently, their
2 law takes the position they are charged with watch-
3 ing out for the welfare of the children.

4 THE COURT: It looks to me like for the
5 welfare of the children this Court needs to have
6 evidence to determine whether or not the allegations
7 of Mr. Middleton are correct. There should be an
8 opportunity for them to testify and they could
9 refute everything he alleges. I don't understand
10 that. It looks like interference of this Court's
11 jurisdiction to prevent them from taking depositions.
12 In our system, for them to take jurisdiction of a
13 case like this, there would have to be neglect or
14 misconduct on the part of the parent that has
15 custody. That's the way I read it. I feel the
16 court made them a ward for some valid reason.
17 What did they order a welfare report for?

18 MR. BUTLER: They were made wards of the
19 court at the request of Mrs. Middleton and not
20 that she was unfit on her part. The procedure there
21 is, quote, "foreign" to me.

22 THE COURT: Do you want me to file this?

23 MR. BUTLER: Yes, I want to give it to
24 you.
25

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

17.

1 MR. HALL: I would say this. This was
2 entered without any proper notice to him.

3 MR. BUTLER: That's true.

4 MR. HALL: Do I understand on her case
5 this Court will not give it full credit?

6 THE COURT: For those reasons I won't.

7 MR. BUTLER: I tender it for the purpose
8 of what that court ruled in regard to the children's
9 depositions. The point is they not be required to
10 testify is it true you have seen the allegations.
11 For them to have to refute it is not in their best
12 interest. They should prove it independently.
13 As far as the children's wishes, as far as something
14 Mrs. Middleton has done to them, if anything, they
15 can discuss it with a social worker. You will see
16 in there the court is very concerned about its
17 relationship with this court, and they have addressed
18 this question. What they are doing at that point,
19 under the exigency of the circumstances, the
20 depositions and rule, certainly, Mr. Hall is over
21 there and they get an ex parte order because they
22 are concerned about the children being asked to
23 testify in that proceeding, especially in view of
24 the allegations. Mrs. Butler, or somebody, put in
25 there she wanted a welfare investigation done over

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

18.

1 there as soon as possible and it be sent here, and
2 to Mr. Hall or to Mr. Middleton. They are not
3 fighting the jurisdiction of this court, as Mr.
4 Hall put it. They are trying to protect the children
5 while there and at the same time cooperate with
6 this court and they have instituted to have an in-
7 vestigation done.

8 THE COURT: I understand. I will file
9 this. You may continue, Mr. Hall.

10 MR. HALL: In regard to the depositions
11 themselves, I would like to show you this letter
12 setting up times for the depositions. The middle
13 paragraph states: Since you promised that and you
14 have not objected to --

15 THE COURT: Yes, I am familiar with that.

16 MR. BUTLER: The letter to me confirming
17 the depositions?

18 MR. HALL: Yes.

19 THE COURT: It's part of the record in
20 this case. I assume it's in the file.

21 MR. HALL: Yes, the letter dated
22 November 6, 1981. There was no response to me,
23 Your Honor.

24 THE COURT: We have that in the file.
25 It's part of the record in the case.

Angela Middleton - Direct

19.

1 BY MR. HALL: (Continuing)

2 Q Would you continue, Mrs. Middleton?
3 Indicate what the children did say to you in regard to her
4 having Mike Davis over to the house when they were living there
5 in that area.

6 MR. BUTLER: Judge, I am not going to
7 continue interrupting, but we object to anything
8 the children said. Go ahead.

9 THE COURT: I don't think I can consider
10 this evidence, what the children told you about
11 that other man today.

12 MR. HALL: Your Honor, I can only say this
13 about that. The Brown case --

14 THE COURT: They specifically objected to
15 the court making a ruling?

16 MR. HALL: The report doesn't indicate
17 whether there was an objection or not. At the
18 bottom of page 197, the last paragraph, The
19 Supreme Court relied upon the statement by the
20 father as to what the children had been saying.

21 THE COURT: You said the bottom of 197.
22 The court has given its stamp of approval to that
23 type of testimony?

24 MR. HALL: Yes, sir, and the children are
25 parties to this case. You can say what the parties

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Angela Middleton - Direct

20.

1 say.

2 MR. BUTLER: The children are not parties
3 and you have ruled on that. The issue in the Brown
4 case that is addressed and the assignment of error
5 does not address the admissibility of that testimony.
6 The opinion is of facts stated on certain evidence
7 its considering. It doesn't give the court's
8 opinion in regard to the admissibility of evidence.
9 It does not stand for the proposition that a parent
10 can testify what a child says.

11 THE COURT: I don't think a parent can.
12 I just don't think anybody objected to it.

13 MR. HALL: I can't say.

14 THE COURT: I will overrule your objection.
15 If I am wrong, the Supreme Court can hear it. Go
16 ahead. You can proffer your testimony.

17
18 BY MR. HALL: (Continuing)

19 Q Go ahead, Mrs. Middleton.

20 A What they have stated was Mike was the
21 only single boyfriend she had. They felt that there was
22 some problems between her and Mike. He couldn't have found
23 out about the other men, because they wouldn't have told him.
24 that type of situation was going on. Also, they were saying
25 about the thing that she doesn't like to wear a nightie and

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Angela Middleton - Direct

21.

1 they laughed about Mike. He looked funny, because Mike is
2 wearing pajamas and Mommy doesn't like to wear anything.
3 They stated they went to Mike's house before he lost his job
4 and had to move in Mike's house. They had their own room.
5 They would go over there and stay with Mother and Mike, and
6 he would come to their house.

7 Q Did they indicate whether or not Mike had
8 stayed overnight, when they were living with their mother?

9 A Yes, they said they would go to his house
10 and he would come to their house.

11 Q Did they indicate whether or not she had
12 any other American stay at the children's home in England
13 with the mother?

14 A Well, I don't know. I don't remember.
15 They said overnight they said they had caught her in a couple
16 of activities she was doing and --

17 Q Such as?

18 A They had said that when she had friends
19 in they have to shout: May I go to the bathroom? This one
20 time they heard her and she was giggling with Gordan, and
21 they caught Gordan naked with her. They peeked in the door,
22 and Claire had seen it on several occasions, and caught Gordan.
23 And Gordan is married. They were discussing about the problem
24 he would have to stay away from her for awhile. About the
25 others, they were concerned that most of the man she was

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

22.

1 seeing were married.

2 Q You're talking about --

3 A Mike was single.

4 Q Did the children talk about any other
5 man whose names they did not know coming to the house and
6 seeing their mother?

7 A Yes, they said what they had to do was
8 call them one name, because it was so many. It was a joke
9 about all of them had the same name. Nichole got punished
10 because she walked up to a man and said: Does your wife know
11 you are here? That's what upset them about the number of
12 married men coming in. I don't remember hearing that they
13 stay overnight, but just, you know, other things happen.

14 Q Would you indicate what the children told
15 you in regard to whether they would prefer to stay here in
16 America this past summer or return to england to live?

17 A They said they wanted to stay here, short-
18 ly after they had arrived, and we talked to them about it.
19 Why they didn't come out right at the start. Do you really
20 want to stay here? and let's think it over and talk about it.
21 Yes, Claire was very upset at the time and then she started
22 some other things. She started coming out about her reasoning.
23 She said she liked it here; the people and everything. We
24 started talkinb about some other things. She like the home
25 life we had here and was very happy.

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

23.

1 Q What did she mean about the home life?

2 MR. BUTLER: I have to renew my objection.

3 THE COURT: Sustained.

4 MR. BUTLER: Now we are going to ask her
5 what she thinks this child's opinion is.

6 THE COURT: I sustained your objection.

7 MR. HALL: I will withdraw that.

8
9 BY MR. HALL: (Continuing)

10 Q Did you at any time take the children to
11 any nearby schools?

12 A We took them to the school where they
13 were enrolled here in Annandale, and they met the principal
14 of the school. We took them around the school.

15 Q What did they remark concerning the
16 school in Fairfax County near where you live?

17 A They were impressed that the school was
18 so clean and new. They kept saying about the differences
19 around the school. They were very impressed with the school,
20 although the school is not new. Nichole had expressed it a
21 number of times. We had taken them, I guess, two weeks before
22 they were to start school. Two or three weeks, and she kept
23 saying I wish school was starting tomorrow. They were excited
24 that they were going with the children right in our court in
25 the neighborhood.

Angela Middleton - Direct

24.

1 Q I show you this, and if you would, I ask
2 you to identify the names of those people and the date of the
3 article.

4 A The Sunday Times, November 29, 1981.

5 MR. HALL: Your Honor, the Sunday Times,
6 I would like to introduce this as an exhibit,
7 particularly, for the article shown on page 6 there-
8 of.

9 MR. BUTLER: I suppose this is not offered
10 for the truth of the article, but for the fact it
11 was written. I object.

12 THE COURT: It's hearsay.

13 MR. BUTLER: I don't know who the reporter
14 is.

15 MR. HALL: I think it is something that
16 reports, in effect, on the condition of the English
17 schools. It's a comment on the report by --

18 THE COURT: This particular school where
19 this child goes?

20 MR. HALL: No, a report on schools
21 generally in England.

22 THE COURT: I don't think I can take that.
23 You would have to have somebody testify to that under
24 oath. You would have to examine someone who would
25 be in authority on it.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

25.

1 MR. BUTLER: I think our recent experience
2 with the Pulitzer Prize report shows how reliable
3 it is.

4 THE COURT: I think it pretty well solves
5 the problem. There is no question, unless you have
6 some evidence to the contrary, that I will direct
7 Mrs. Middleton to be here on December 23 at 2:00
8 o'clock with the children to take their depositions.
9 They frustrated the Court in not allowing you to
10 take them while you were in England. I will direct
11 that they be here and take their testimony. There
12 is no question about hearsay, and we have to have
13 the evidence. As far as notice giving temporary
14 custody, we will withhold that and set this matter
15 down for a hearing on permanent custody at the time
16 convenient with both of you. Then, as far as citing
17 her for contempt, we will take that matter under
18 consideration and advisement until I hear the case
19 on its merits when we make the final arrangements.

20 MR. HALL: I would like to present evidence
21 in regard to the contempt matter. I think it would
22 be very important.

23 THE COURT: You present your evidence.
24 I will still take it under advisement. I want to
25 have her here when I make the decision about contempt.

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

26.

1 I would like her to testify why she did what she
2 did. I think she should have the opportunity to do
3 it before I make the decision. Since she will be
4 here December 23, I think we will set a hearing with
5 her for the final disposition of the case.

6 NOTE: At this time there is a discussion
7 off the record.

8
9 THE COURT: Is there anything else?

10 MR. HALL: Yes, if you have time, I
11 would ask for a few more questions in regard to
12 one particular area as to the contempt.

13 THE COURT: All right.

14
15 BY MR. HALL: (Continuing)

16 Q Mrs. Middleton, would you continue
17 testifying by indicating to the Court what occurred on the
18 evening of September 2, 1981 in regard to telephone calls you
19 may have received relating to the court activity, or the chil-
20 dren being snatched from you?

21 A When I got home, I got the call that
22 the children were with their mother and on their way to England --

23 MR. BUTLER: I object to the contents of
24 the telephone conversation. It's hearsay.

25 THE COURT: Who was it?

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

27.

1 THE WITNESS: I answered the phone and
2 this person told me the children were safe, and he
3 was calling for the mother. They were with their
4 mother, and they were safe, and with their mother,
5 and on their way to England.

6 THE COURT: Did this person identify
7 himself?

8 THE WITNESS: No, I asked him who he was
9 and he said he was an agent for Mrs. Middleton. He
10 could not give me his name at the present time or
11 where he was, or any information like that. He
12 would call me back the next day and let me know
13 after they arrived in England. They were okay.

14
15 BY MR. HALL: (Continuing)

16 Q This was what day?

17 A They day they were taken.

18 Q What time?

19 A Approximately, 4:00 or 4:30. I'm not
20 sure of the time. I had come home and the door was open.
21 I was looking for them.

22 Q Would you indicate what you told that
23 agent, if anything, concerning any court procedures?

24 A My first response to him was that's
25 against the law. It's in court now. It's held up in court.

Angela Middleton- Direct

28.

1 No, he said, she has legal custody and she had the papers
2 stating she has custody of the children. He said he would
3 call me at work or home. I was concerned that I had no way to
4 get in touch with him. He said, I will call you either at
5 home or work. I will make sure I do get in touch with you.
6 Then he called, I guess, a couple of hours later and said :
7 Sheila was concerned about the children. The children were
8 unhappy. She didn't want to take them back to England and
9 have them be unhappy. They wanted to be with their father.
10 She wanted to talk with Brian and what was the number she
11 could get in touch with him about 3:00 o'clock the next day?
12 At the time, I told him I didn't know. We had an order
13 through the court, or we were getting an order through the
14 court that she was not to remove the children. He said the
15 children were in Florida. He said, When did you get the
16 order? She had the children before you got the order. It has
17 no value. I told him when I talked to Brian and got the
18 number of where he would be when he called home, he said he
19 would call me at 10:00 o'clock the next morning like he
20 originally planned.

21 MR. BUTLER: I object to giving her an
22 opportunity to get this evidence in. It's some-
23 body she doesn't know, identified as an agent of
24 Mrs. Middleton, and it's hearsay. I don't believe
25 they proffered anything to put it under any type

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

29.

1 of exception.

2 THE COURT: With the person not identify-
3 ing himself except as an agent, and being familiar
4 with everything involved in this case, it appears
5 to me it's proper testimony for the fact she did
6 receive the call. Now, I think it's incumbent upon
7 Mrs. Middleton to produce evidence to show that
8 she didn't have any knowledge of it.

9 MR. BUTLER: Sheila Middleton?

10 THE COURT: Yes, since she is under a
11 contempt hearing.

12 MR. BUTLER: That's what I object to.
13 We are receiving evidence from the present Mrs.
14 Middleton, this witness, that it's going to put the
15 Court in the position of saying my client, the
16 defendant, had knowledge of a court order, and the
17 way she had knowledge, the evidence is, this Mrs.
18 Middleton spoke to someone identifying himself as
19 an agent of my client, and I don't think that's
20 a basis for shifting the burden of proof.

21 THE COURT: I will take it under considera-
22 tion and rule at the hearing whether or not it is
23 admissible.

24 BY MR. HALL: (Continuing)
25

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

30.

1 Q Would you indicate whether a call was
2 received at approximately 10:00 a.m. on the morning after the
3 children were snatched and did you hear anything in regard to
4 that conversation?

5 A Yes, he made the call the next morning
6 for us to give him the number.

7 Q What do you mean by the next morning?

8 A The 3rd. He made the call around 10:00
9 o'clock like he promised he would make, and at this time we
10 were supposed to give him a number where she could call Brian
11 to discuss the children, and Brian answered the phone. I
12 listened in on the extension.

13 Q Was the call to your residence?

14 A Yes. Brian told him about the court
15 order and so forth. He still stated she was in Florida with
16 the children and would be calling around 3:00 o'clock that
17 afternoon.

18 Q What did your husband tell whoever was
19 calling into your home concerning the court order?

20 A He said he had a court order signed by
21 the judge that the children were not to leave Virginia or the
22 United States.

23 Q What was the reaction of the person who
24 had called once he heard that?

25 A He just said, What time was it taken?

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Angela Middleton - Direct

31.

1 When did you have it signed? That it wasn't valid.

2 MR. HALL: I have no further questions
3 of this witness at this time.

4 MR. BUTLER: No questions.

5 -----
6 WITNESS STOOD ASIDE.

7 MR. BUTLER: I object to the testimony
8 about a person identifying himself as an agent of
9 Mrs. Middleton.

10 THE COURT: I will take the matter under
11 advisement.

12
13
14
15 BRIAN C. MIDDLETON, the complainant,
16 called in his own behalf, having been duly sworn, was examined
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HALL:

20 Q How long were the children with you this
21 summer?

22 A Approximately, four weeks.

23 Q During that period of time they were
24 living with you at your home in Fairfax County?

25 A Yes, they were.

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Brian Middleton - Direct

32.

1 Q Would you indicate to the Court what they
2 indicated to you regarding where they prefer to live?

3 MR. BUTLER: Same objection.

4 THE COURT: All right, continue.

5 A After the children were here about three
6 days Claire came to me and said, Daddy, she would like to
7 stay with me in America and not return back. At that time
8 when I asked Nichole what she wanted to do, she said she
9 wasn't sure just yet.

10 Q What was the conversations like in that
11 subject area later in the summer?

12 A Later in the summer, particularly when
13 we were at Nags Head the last week of our vacation, we had
14 long talks about their desire to stay. I tried to make sure
15 they really knew what they wanted and were not making a de-
16 cision on the spot, but they really wanted to stay here. I
17 kept giving them the option. If they wished to return, that
18 was their desire, I would let them. I gave them an airplane
19 ticket and reservations, and on the 29th, prior to going, I sat
20 them both down and asked, Do you really want to stay here? If
21 you really want to go back, I will put you on the plane.
22 They were both aware it was a free choice.

23 Q Were you with them when they received a
24 call from your former wife's sister on August 30?

25 A Yes, when we came back from Nags Head on

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Brian Middleton - Direct

33.

1 Saturday, the 28th, we received a call from Sheila's sister,
2 Linda Watson. As the call went on, Linda would relay the
3 information from me and come back to me.

4 Q Did you hear any of that conversation?

5 A Yes, I put Claire on the phone to talk
6 to Linda. Claire said, No, I don't want my mommy to pick me
7 up. I'm happy here. I didn't hear the question she was asked.
8 I did hear the response. Nichole did not get on the phone.
9 She was very upset and was frightened.

10 Q Would you indicate was there anything else
11 you overheard in regard to that subject area as to that conver-
12 sation Saturday, August 1981?

13 A No, just Claire's statement.

14 Q Would you indicate to the Court what
15 conversation you had with someone at about 10:00 a.m. at your
16 home September 3, 1981?

17 A Yes. Angela had told me and I was ex-
18 pecting a call. I was waiting by the phone. Angela was there
19 and Bill Sampson, who gave testimony previously, was there.
20 She had gotten some money from the bank vault so I could fly
21 to Florida. At 10:00 o'clock I received a call. The person
22 asked me where Sheila could reach me at 3:00 o'clock that day.
23 She wanted to talk to me before taking the children back to
24 England. Sheila was concerned that the children were confused
25 and she wanted to work the thing out with me and talk to me

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Brian Middleton - Direct

34.

1 about it. I then told him that I had an order from Judge
2 Gates forbidding them to remove them from the country, and the
3 caller started asking details. Who signed the order? When? I
4 said, Approximately 7:30. He said, That's not valid, and
5 rung off rather quickly. He seemed confused at that point.
6 I didn't get a call at 3:00 that day. We were trying to get a
7 tap on the phone. Unfortunately, the tap didn't get on until
8 11:00. We were trying to get a tap on who this mysterious
9 caller was. We failed to get that.

10 MR. BUTLER: I object to that testimony.

11 THE COURT: I will make a ruling on that
12 later.

13 MR. HALL: May I submit a memorandum on
14 that?

15 THE COURT: Yes, I think it would be help-
16 ful to me. You may respond, Mr. Butler.

17 - - - - -
WITNESS STOOD ASIDE.

CERTIFICATE OF COURT REPORTER

I, Myrtle W. Reid, having been duly sworn, hereby
certify that I was the court reporter in the Circuit Court of
Chesterfield County on December 8, 1981, at the time of the
hearing herein.

I further certify that, to the best of my ability,
the foregoing transcript is a true and correct record of the
testimony and other incidents pertaining thereto.

Given under my hand this the 6th day of
January, 1982.

Myrtle W. Reid
Myrtle W. Reid

RECEIVED UNDER SEAL
AND FILED

JAN 7 1982

LEWIS H. VADEN, CLERK

BR

NOV 23 1982
RICHMOND, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

* * * * *

BRIAN CARTER MIDDLETON

-vs-

* In Chancery No. 3305-77.

SHEILA JOAN THOMPSON MIDDLETON

* * * * *

TRANSCRIPT of the hearing in the above-styled matter
when heard on December 29, 1981, before the Honorable Ernest
P. Gates, Judge.

APPEARANCES

B. Vandenburg Hall, Esquire, Suite 400, 4085 Chain Bridge
Road, Fairfax, Virginia, 22030, counsel for the
plaintiff;

Donald K. Butler, Esquire, of Morano & Butler, 526 North
Boulevard, Richmond, Virginia, 23220, counsel for
the defendant.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

2.

Hearing on
December 29, 1981

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Brian Middleton	8	14	17	-
Angela Middleton	20	-	-	-

E X H I B I T S

	<u>PAGE</u>
Plaintiff's Exhibit Number A Affidavit	23

Reported by Roy Garrison Wood

Typed by nww

1 NOTE: Court is convened in chambers at
2 10:04 o'clock a.m. as follows:

3
4 THE COURT: Mr. Hall, do you want to go
5 first?

6 MR. HALL: Your Honor, I think it might
7 be appropriate initially to just do a little house-
8 keeping. There's a couple of orders which I for-
9 warded to Mr. Butler.

10 THE COURT: I have an order that I entered--
11 let's see--I have a little housekeeping too.

12 Would you endorse this order of November
13 16, 1981, that I entered?

14 MR. BUTLER: Here's the order from the
15 last hearing here.

16 THE COURT: Now, we have an order I entered
17 after the conference we had about custody and
18 visitation. Do you have that one?

19 MR. HALL: The Christmas visitation order
20 I sent you.

21 THE COURT: I don't have your endorsement
22 on that. Endorse that noting your objection.

23 MR. BUTLER: This one here is an order
24 regarding the discovery and the appearance here at
25 the hearing?

1 THE COURT: Yes.

2 MR. BUTLER: Which I think reflects your
3 ruling. I will also endorse that as seen and
4 objected to. I guess you could enter that nunc pro
5 tunc.

6 THE COURT: What is the date of that hearing?

7 MR. HALL: That was the 8th of December.

8 THE COURT: Well, all right, I will enter
9 it nunc pro tunc for December 8.

10 Do you want to do something about this?

11 MR. BUTLER: Your Honor, I have a motion.

12 THE COURT: A motion for continuance?

13 MR. BUTLER: Yes, sir, to the order that
14 was entered by the Court that we filed here the last
15 time. The Court in England, as you will note, has
16 ordered a welfare investigation, I guess is what we
17 call it over here, and part of it has been completed
18 according to my co-counsel in England, and it will
19 be totally completed by January 15th of 1982; and
20 I know the position that my client is in with re-
21 gard to not having complied with the orders regarding
22 depositions and the appearance here today. However,
23 it would seem to me that the Court would be in a much
24 better position to make a judgment in the case if it
25 is inclined to do so with the benefit of that report.

1 I have not seen the report--it is not
2 written yet. That's the reason why I'm not in a
3 position to present it today. The Court in England
4 provides that this be prepared and forwarded to this
5 Court, and certainly should be of some benefit to
6 the Court if the Court is to make a disposition of
7 the custody of these children, and that's why I'm
8 asking for the continuance. It should not take any
9 more than 30 days from now for us to receive this
10 report once it has been completed and mailed and
11 received here. My experience with my co-counsel is
12 that the mail takes anywhere from three to seven
13 days.

14 That is the basis for my motion at this
15 time.

16 THE COURT: Well, if I do go forward with
17 the evidence today, I still would wait my decision
18 upon the custody change until I received that report.

19 MR. HALL: Your Honor, in any event, I
20 would object to any continuance.

21 THE COURT: Well, I would wait to make my
22 decision on the change of custody, because I would
23 like to have the report.

24 MR. HALL: Well, if I may speak to that
25 a moment, Your Honor. In the first place, not only

1 has she refused to come to the deposition which the
2 Court here ordered in November in England, and that
3 Mr. Butler requested that I would be there for her
4 to present witnesses by deposition in northern
5 England in November, and then she refused to come
6 here and refused to bring any of her witnesses. She
7 has acted in a contemptuous manner toward this Court
8 by denying Christmas visitation and refusing to
9 bring the children and come herself for the deposi-
10 tions here, and initially in refusing to adhere to
11 this Court's order that she not take the children
12 out of this country.

13 We have evidence now that she knew about
14 the order of this Court to not remove the children
15 from Virginia or the U.S., which was entered on the
16 2nd of September. She knew about it at 10:00 a.m.
17 on the 3rd and I have evidence that she did not
18 arrive in England--we now have evidence to show that
19 she did not arrive in England until the 4th. So she
20 clearly left the U.S. after knowing about the Court's
21 orders not to leave the U.S. with the children; and
22 most importantly, while he talks about a home study,
23 I would proffer that the evidence would be here to-
24 day that there has been no contact whatsoever by any
25 English authorities with Mr. Middleton or his present

1 wife to do what we would normally do here--a home
2 site study of both sides. It will clearly come as
3 a one-sided report.

4 I just don't see a need for the Court to
5 delay its final judgment.

6 THE COURT: Well, I don't have any
7 evidence about the conditions over there--that's
8 what I would need to know, unless you are prepared
9 to present evidence other than what you have pre-
10 sented already.

11 MR. HALL: I can only present a little
12 more through questioning Mr. Middleton.

13 THE COURT: I think we'll go forward, but
14 I will not make my decision about the change of
15 custody until such time.

16 You can call your witnesses if you care to
17 present your evidence. What are we on here now?
18 The contempt citation and your motion for change of
19 custody?

20 MR. HALL: Yes, sir, Your Honor. Specifi-
21 cally, I would like to call first Mr. Middleton.

22 THE COURT: All right. Everyone who is
23 going to testify, raise your right hand.

24
25 NOTE: All witnesses are sworn.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

8.

1 BRIAN MIDDLETON, the plaintiff herein,
2 called as a witness on his own behalf, first being duly sworn,
3 testifies and says, viz:

4 DIRECT EXAMINATION

5 BY MR. HALL:

6 Q Mr. Middleton, would you indicate first
7 of all whether the children did come here in December around
8 the 19th of this month?

9 A No, the children did not come.

10 Q Did you make any arrangements to send
11 tickets to have the children come over here so that the
12 tickets did arrive in England prior to the 19th?

13 A Yes. I mailed the tickets to my brother
14 who is in London, together with the children's passports.
15 Of course, when she left the country, she must have travelled
16 with the children on her passport. Their passports were left
17 here, so I mailed the tickets and passports to my brother by
18 Express mail.

19 I made copies of them which are in this
20 file, and I called my brother prior to make sure that the
21 tickets did, indeed, arrive before the 19th. I made reser-
22 vations.

23 Q Did they arrive?

24 A No; and I made reservations for Clare and
25 Nicole and made a reservation for Shelia Middleton as well.

B. Middleton - Direct

9.

1 I kept the reservations with the airline right up until I
2 received a call from you on Thursday stating that the children
3 would not be coming as per information from Mr. Butler.

4 At that point, I cancelled the reservations.

5 Q So then you cancelled the reservations on
6 Thursday preceding December 19th?

7 A Yes.

8 Q Because you were told that the children
9 were not coming period?

10 A Yes, and that was--I was not going to be
11 able to get a refund because they needed 24 hours to refund on
12 the tickets.

13 Q All right. What is your brother's name in
14 London?

15 A Peter Carter Middleton.

16 MR. HALL: Your Honor, I would like to
17 have marked into evidence something which I mailed
18 to the Court which is a photocopy of the tickets
19 and a copy of a letter from Brian Middleton indi-
20 cating what arrangements would be made for the
21 children to be able to fly.

22 MR. BUTLER: No objection to that, but I
23 might make things a little easier by stipulating
24 in behalf of the defendant that arrangements were
25 made and tickets were purchased for the children and

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

10.

1 Mrs. Middleton to come to the United States in time
2 for the Court ordered visitation at Christmas, and
3 they did not come if that helps you any.

4 THE COURT: You don't need to go further
5 then.

6 MR. HALL: You are stipulating that he did
7 make arrangements and did purchase tickets?

8 MR. BUTLER: Right.

9 THE COURT: And they elected not to come?

10 MR. BUTLER: They elected not to come.

11 THE COURT: Who made that decision?

12 MR. BUTLER: I don't know who made the
13 decision.

14 THE COURT: All right. So that's stipu-
15 lated--it's unnecessary to introduce that into
16 evidence.

17 Anything else?

18 MR. HALL: Yes.

19 BY MR. HALL:

20 Q (Continuing) Would you indicate what, if
21 any, conversations did you have with your former wife regarding
22 visitation on or about Monday, December 21st?

23 A I had a telephone call with Sheila
24 Middleton on Monday, the 21st, and asked her why the children
25 were not coming.

B. Middleton - Direct

11.

1 Let me go back--first of all, she denied
2 all knowledge of such an order for the children to come. She
3 said that she knew nothing about that when I informed her of
4 the order that was signed by Your Honor. She stated that re-
5 gardless, she would not send the children, because she was
6 afraid of them not coming back. I reaffirmed to her what the
7 order stated--that the order stated visitation from the 19th
8 and was to end on January 4th. I stated that the tickets were
9 return tickets that I sent.

10 I asked her if I could make arrangements
11 to get the children over immediately since I knew there were
12 still vacancies on some of the airlines that I could have
13 gotten. She said that the only way I could visit with the
14 children was me, on my own, to go to England and visit them.

15 Q What did she indicate she would be doing
16 with regard to whether she would allow them to visit you here
17 in the U.S. in the future?

18 A She said that the only way I can visit the
19 children in the future is for me, on my own, to go to England
20 and visit them and that she would not allow them to come to
21 America anymore.

22 Q All right. What, if any, attempts did you
23 make to try to telephone your children around Christmas this
24 year?

25 A Of course I tried on Christmas day, December

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

12.

1 the 25th, a number of times and was not able to get through.
2 The lines were just terribly busy at that time with inter-
3 national traffic. I tried the next day, December the 26th.
4 I tried several times up until 10:30 that night. This time
5 I could get through, but the phone was not answered, and I
6 eventually--

7 Q What phone was not answered?

8 A Their phone was not answered.

9 Q Was that Sheila Middleton's phone?

10 A That was Sheila Middleton's phone, and I
11 called again on Sunday, the 28th--27th--Sunday, the 27th, and
12 I eventually got to talk to the children.

13 Q Would you indicate how that conversation
14 with your children went on the 27th?

15 A The children sounded very down--

16 MR. BUTLER: I object to the characteri-
17 zation of how they sounded. It would be hearsay anyway.

18 THE COURT: That is correct. That's sus-
19 tained.

20 Q Would you continue to indicate what,
21 specifically, you observed concerning the telephone conver-
22 sation and anything you noticed your former wife doing in
23 regard to your telephone conversation?

24 A After my former wife answered the phone,
25 I asked if I could speak to the children. The whole time I

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

13.

1 was speaking to the children, they kept saying they couldn't
2 hear me, and in response to a number of questions I asked the
3 children such as, "What did you do Christmas Day--where did
4 you go," I could hear whispered answers in the background. It
5 would appear that someone--since I know there's only one phone
6 in that house--that phone was pulled away from the children's
7 ears.

8 Q Have you received any mail or had any other
9 contact with anyone seeking to do a home study here in Virginia
10 on behalf of the Court in England?

11 A No. I have received no telephone calls or
12 mail.

13 Q Has there been any change in your job
14 since you last testified in that regard on September 22nd of
15 this year?

16 A Yes. On December 1, I was promoted to be
17 Senior Vice-President of the holding company.

18 Q What company is that?

19 A United Virginia Bank.

20 Q To whom do you now report?

21 A My reporting is to S. L. Banes, Executive
22 Vice-President. My day to day reporting is to the bank
23 president in northern Virginia, which is Walter Street.

24 Q How large is the bank that you work for?

25 A United Virginia Bank is the 50th largest

B. Middleton - Direct

14.

1 bank in the country, and the largest bank in the State of
2 Virginia.

3 Q One of the last questions--did the children
4 come here for the deposition of them on December 23rd, 1981?

5 A No, they did not.

6 Q Did your former wife arrive for her deposi-
7 tion in December?

8 A No, she did not.

9 Q Has there been any major change since
10 September 22nd in your residence other than things relating
11 to your home that the Court should be apprised of?

12 A No, there's been no change in my circum-
13 stances at the homesite.

14 THE COURT: Any questions?

15
16 CROSS-EXAMINATION

17 BY MR. BUTLER:

18 Q Mr. Middleton, back in the summer, you had
19 the children staying with you based on an arrangement of
20 visitation between you and your former wife; is that correct?

21 A That is correct.

22 Q You were to return the children back to
23 England in time for them to begin school; is that correct?

24 A That is correct.

25 Q While they were here or prior to their

B. Middleton - Cross

15.

1 coming, you made a decision not to return them but to seek
2 custody? Is that correct?

3 A That is not correct.

4 Q Tell me what is correct.

5 A The decision to seek the custody of the
6 children only occurred after the children had been here approxi-
7 mately two weeks when I sought counsel with Mr. Hall.

8 Q All right, so it was after they came that
9 you decided you would seek a change in custody; is that right?

10 A That is correct.

11 Q Did you return the children as prearranged
12 between you and the defendant?

13 A No.

14 Q Were you aware that school was to begin
15 on or about the 1st of September in England?

16 A No, I didn't know the date of the school.

17 Q Do you know that your hearing to change
18 custody was scheduled for September 22nd?

19 A I did.

20 Q Did you know that that was after the
21 beginning of school in England?

22 A As I have said in my previous answers, I
23 did not know the date of school starting. As my previous
24 testimony has shown, I have never been able to get the truth
25 regarding school starting and school leaving ever from Mrs.

B. Middleton - Cross

16.

1 Middleton.

2 Q So you don't know whether or not school in
3 England started before or after September 22nd?

4 A I do not.

5 Q But you did refuse to return the children
6 to Mrs. Middleton at the time you previously agreed to; is
7 that correct?

8 A That is correct.

9 Q It was your intention to retain the
10 children until the custody matter could be heard; is that
11 correct?

12 A That is correct.

13 Q You're asking that this Court award you
14 custody of the children as soon as the Court is in a position
15 to make any rulings; is that correct?

16 A That is correct.

17 Q Are you familiar with the children's school
18 situation over there? The schools that they are enrolled in
19 and their performance in school and their activities?

20 A Yes, I spend a lot of time talking to the
21 children specifically about that.

22 Q If the Court were to enter an order
23 changing custody, do you feel that a change should be made
24 prior to the end of the school year or at the conclusion of
25 the school year?

B. Middleton - Cross

17.

1 A I think that a change should be made
2 immediately, particularly for Clare who would be in the sixth
3 grade at Annandale Terrace Junior School, since she would be
4 changing her school at the end of the school year to an inter-
5 mediate school; and talking with the principal of Annandale
6 Junior, she needs to get oriented to the new curriculum.

7 Q So you think this change should be made
8 in the middle of the school year; is that right?

9 A For Clare. For Nicole, I would have to
10 talk to the principal and get her opinion on the effects on
11 the child's education.

12 Q And Annandale School--the one you
13 mentioned--is the one in Fairfax or your area?

14 A That is correct; yes.

15 Q Did you make any arrangements to go to
16 England to visit with the children over Christmas?

17 A No, I did not.

18 Q Would you be agreeable to Virginia
19 authorities making a study of your home environment?

20 A Certainly.

21 MR. BUTLER: That's all I have, Your Honor.

22

23

REDIRECT EXAMINATION

24

BY MR. HALL:

25

Q Would you elaborate a little as to why you

B. Middleton - Redirect

18.

1 think there's a need for at least Clare to come immediately to
2 the U.S. to start schooling here as soon as possible?

3 A Yes. Clare has just started a new school
4 in England. In other words, she's right at the beginning of
5 a five year period in one school, and to continue through the
6 end of the year really is of no benefit, because she's not
7 going to be continuing the same curriculum, whereas having her
8 into the school here--it's important that she start selecting
9 her curriculum when she goes to the intermediate school which
10 she would be due to go into in September of '82.

11 Q What are the other reasons why she should
12 start in the American school system as soon as possible if she
13 intends to go to an American college?

14 A I've spent extensive time talking to the
15 Fairfax school officials to get guidance from them about
16 curriculum and difficulties that the children would have in
17 adjusting to a different school system.

18 Q What, specifically, have you found?

19 A Specifically, I found--I've talked to a
20 person who deals specifically with foreign students and counsels
21 them on entering into Fairfax schools. Based on those conver-
22 sations, I am informed that the difficulties of the children
23 or European children coming to American schools is that it
24 becomes progressively more difficult as the child gets older.
25 They have more difficulty because of the significant difference

B. Middleton - Redirect

19.

1 in curriculum.

2 Q Specifically what differences are you
3 talking about?

4 A The mathematics curriculum and a lot of
5 sociology courses that they--English literature was also one
6 that was mentioned.

7 Q What do you mean about difficulties in
8 the math curriculum?

9 A Major differences in math. To be specific,
10 English school systems do not teach any math beyond the age of
11 16 prior to college. In college, they will pick it up again;
12 whereas, the Fairfax school system teaches math and does college
13 math in their high school years. That's one of the major areas
14 that foreign students have in catching up.

15 Q By foreign students, were you talking about
16 students who are coming from England or other countries?

17 A My question was directed specifically on
18 English students, because Fairfax County does have a lot of
19 British Embassy children entering Fairfax schools, and it was
20 on that basis that I was talking.

21 Q Were you talking with someone who dealt
22 with that particular problem routinely?

23 A Yes.

24 MR. HALL: No further questions at this
25 time.

1 MR. BUTLER: No further questions.

2 THE COURT: Do you have any other evidence?

3 MR. HALL: Just briefly, Your Honor.

4 This would be corroborative only.

5
6
7 * * * * *
WITNESS STOOD DOWN
* * * * *

8
9
10 ANGELA MIDDLETON, called as a witness on
11 behalf of the plaintiff, having previously been duly sworn,
12 testifies and says, viz:

13 DIRECT EXAMINATION

14 BY MR. HALL:

15 Q Would you state your name for the record?

16 A Angela Middleton.

17 Q Would you indicate just briefly--did Clare
18 and Nicole Middleton come for Christmas visitation sometime
19 around the 19th of December or thereafter of this year?

20 A No.

21 Q Have you seen the children here at all in
22 the State since that time?

23 A No.

24 Q Have you seen any mail or heard any
25 telephone calls from anyone indicating that they were doing a

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

21.

1 home study for the English Court?

2 A No.

3 MR. BUTLER: Do you mean of their home?

4 MR. HALL: Yes. I have no further
5 questions.

6 MR. BUTLER: No questions.

7
8 * * * * *

9 WITNESS STOOD DOWN

10 * * * * *

11
12 THE COURT: Do you have any evidence about
13 the contempt violation that the former Mrs. Middleton
14 had of the Court's order directing that the children
15 not be taken out of the United States?

16 MR. HALL: Yes, Your Honor, we do have
17 that. If I may just glance at this file of mine
18 for a moment.

19 Your Honor, I would offer as evidence what
20 appears to be an affidavit--an affidavit filed on
21 behalf of Sheila Joan Middleton, Plaintiff, in an
22 English High Court of Justice action within their
23 family division; and I would direct the Court's
24 attention, if I may, to paragraph four on page two
25 in which she states, "After taking legal advice, she

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

22.

1 returned to England with the children on Friday, the
2 4th of September, 1981," and I would introduce that
3 as the next exhibit for the purpose of specifically
4 bringing the Court's attention to the fourth para-
5 graph there.

6 MR. BUTLER: Four?

7 MR. HALL: Yes, on page two, and I believe
8 it was testified to earlier, or I could, if the Court
9 would allow, recall Mr. Middleton for this if the
10 Court wishes to do so; but I believe it was testi-
11 fied to earlier that Mr. Middleton expected to re-
12 ceive a phone call at 10:00 a.m. on September 3rd,
13 1981, from someone who was an agent--said he was an
14 agent--

15 MR. BUTLER: Well, Your Honor, excuse me.
16 What contempt violation--what order are we talking
17 about her having violated?

18 THE COURT: In September about taking the
19 children out of State.

20 MR. BUTLER: Okay. I thought you were
21 talking about the December order.

22 THE COURT: No, we are talking about where
23 she is cited for contempt.

24 Do you have any objection to the intro-
25 duction of this?

1 MR. BUTLER: Her affidavit? I can't find
2 it, but I'm sure I have it. I have no objection to
3 it.

4 THE COURT: Well, it looks like an affi-
5 davit of William Andrew Goyder, who is her solicitor.

6 MR. HALL: Yes, sir, Your Honor, submitted
7 on behalf of Shelia Middleton.

8 THE COURT: No objection? I will receive
9 it in evidence as--well, I guess it's Plaintiff's
10 Exhibit; is that correct?

11 MR. HALL: Yes.

12 THE COURT: I don't know what number--do
13 we have any numbers? I will say A and put this date
14 on it.

15
16 NOTE: The affidavit described above was
17 received and marked as Plaintiff's Exhibit A.

18
19 MR. HALL: Your Honor, I believe you will
20 recall, and if you would wish to inquire of Mr.
21 Middleton about this in the case, if you're not
22 certain, I believe you would recall his testifying
23 sometime earlier--I believe it was on September 2nd--
24 that he had received a phone call from someone
25 claiming to be an agent of Shelia Middleton. I

1 believe it was late in the evening of September 2nd--
2 the evening in which you signed the order, but before
3 it was signed; and the caller indicated that they
4 wanted to know if he would be available around 10:00
5 a.m. on the next morning to receive a phone call.

6 He was there. I believe his wife was
7 there also at his home probably on another extension
8 listening at the same time, and at the time that
9 person identified himself only as an agent of Sheila
10 Middleton, but did not give his name.

11 When he did call, he was told that the
12 order which you had signed the night before had been
13 signed enjoining her from taking the two children
14 out of Virginia and out of the U.S., at which time
15 there was kind of a gasp as a response. Then Mr.--
16 questions were asked by that agent of Mrs. Middleton
17 as to when and how was it signed and when was it
18 signed and questions in that vein. I can't repeat
19 them precisely right now, but clearly that agent
20 knew of the existence of Your Honor's orders and the
21 agent also indicated that the children were confused
22 and the children were in Florida at that point.

23 I think that coupled with the fact that
24 the children did not leave until after consultation
25 by the mother with her attorney as indicated in that

1 affidavit and the fact that they did not arrive in
2 England until the 4th of September, and I think the
3 Court can take judicial notice that it only takes
4 about six to nine hours at most to fly from the
5 U.S. or Canada or one of the nearby islands, if need
6 be, to England. Clearly, she was here with the
7 children until late in the day of the 3rd of
8 September. Otherwise, she would have arrived before
9 the 4th of September, so clearly she left after
10 knowing about Your Honor's order that she was not
11 to remove the children from the U.S.

12 THE COURT: Has Mr. Middleton testified to
13 that before?

14 MR. HALL: I believe he has, Your Honor,
15 but he's here. If you would like to--

16 MR. BUTLER: Well, we would remind the
17 Court that that was all objected to and was not
18 admitted into evidence--this statement of a telephone
19 caller identifying himself as an agent of Mrs.
20 Middleton, so that is not in evidence before the
21 Court.

22 THE COURT: I think I sustained your
23 objection; is that correct?

24 MR. BUTLER: I think that is right.

25 MR. HALL: I can't recall precisely, Your

1 Honor, on that point, but certainly, if as to what
2 he was told by the agent--

3 THE COURT: I think what I should do is
4 ask you.

5 Now, you've heard what your attorney said
6 as to what happened. Is that what happened?

7 MR. MIDDLETON: Only with the exception
8 that this arrangement for the telephone call on the
9 3rd was made with Angela. I was in Richmond and
10 Angela was at home. Those arrangements were made
11 with Angela, but I did take the call myself at 10:00
12 o'clock on September 3rd, and in the phone call, it
13 was arranged that I would be on the telephone so that
14 Mrs. Middleton could talk to me at 3:00 o'clock that
15 day.

16 THE COURT: Did she call you at 3:00 o'clock?

17 MR. MIDDLETON: No, she did not.

18 THE COURT: I think that's proper evidence
19 in this case. Note your objection.

20 MR. BUTLER: To the evidence about what
21 was said?

22 THE COURT: Yes.

23 Do you have any other evidence? You don't
24 have any other witnesses here, do you?

25 MR. HALL: No.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

27.

1 THE COURT: All right, sir. Do you have
2 any evidence as to the contempt proceeding as well
3 as the change of custody?

4 MR. BUTLER: Well, as to the change of
5 custody, I think I have nothing further to say in
6 view of the Court's ruling with regard to the home
7 study except perhaps you may want to order one for
8 Mr. Middleton.

9 THE COURT: Well, I think I will direct
10 the Department of Social Services to make a home
11 study of Mr. Middleton's home and that it be re-
12 turned within 30 days.

13 MR. HALL: All right.

14 THE COURT: You prepare that order and
15 then you should write to the Director of our Depart-
16 ment of Social Services so that the home study could
17 be arranged. Do you think they would require everyone
18 to go through the local Department of Social Services?

19 MR. HALL: Everyone that I have dealt with
20 has required that you go through with the local
21 Department where the Court was sitting.

22 THE COURT: All right. We will do that
23 then. You can write to the Director and inform the
24 Director of the address and where they will be
25 available and when and where and whom they should

1 contact.

2 MR. HALL: I will contact them today while
3 I'm here.

4 THE COURT: All right.

5 MR. BUTLER: With regard to the contempt
6 matter, I would first observe that a civil contempt
7 is of the nature of a criminal charge and the evi-
8 dence if it should not be convincing--be clear and
9 convincing, should be evidence beyond a reasonable
10 doubt.

11 The evidence that is most damaging to my
12 client that we have objected to and that the Court
13 has admitted into evidence concerns a statement made
14 by someone identifying him or herself as an agent of
15 the defendant. That evidence is that that agent was
16 told of the order and its specifics when it was
17 entered.

18 I, myself, do not know of the order, and
19 my understanding is that it was entered late in the
20 afternoon. I think Les Saunders appeared here at that
21 time in behalf of the plaintiff, and there is no
22 evidence as to where my client was or whether the
23 agent who had the conversation with--was it Mrs.
24 Middleton? This Mrs. Middleton? Whether or not
25 that agent passed the information on to the defendant.

447

1 THE COURT: Well, she has had two oppor-
2 tunities to tell her side as to whether or not she
3 had knowledge or didn't have knowledge. I think
4 under the circumstances, the evidence is admissible
5 and determinative of whether or not she had know-
6 ledge of the order, and she's had an opportunity to
7 give her deposition and she has refused to do so.
8 She had an opportunity to come here today or she
9 could have submitted a deposition today. She could
10 have given some reason why she did not.

11 I don't think that's very strong. I think
12 she has done everything she can to subvert this
13 Court's jurisdiction in her request to seek the
14 protection of the English courts when this Court
15 has tried to be tolerant and give her an opportunity
16 to present her evidence to show what is best for the
17 children and to make a determination about their
18 custody and to explain why she did not obey--if she
19 didn't have knowledge of it, all she has to do is
20 come in and say that she did not know of the Court's
21 order. She has had an opportunity given by the
22 Court to find that she is not contemptuous. I'm
23 even going to continue this aspect of it for a final
24 decision when I make the decision about the change
25 of custody.

1 If she wishes to present herself here;
2 present her evidence, take her evidence by deposi-
3 tion in an appropriate place here so Mr. Hall can
4 be there to examine her, then I will be very in-
5 terested to hear her side. She has elected to not
6 allow this Court to do anything but find her in
7 contempt and to change the custody, and it behooves
8 her to present her evidence to this Court. This
9 Court has jurisdiction, and it will not shirk from
10 its duty.

11 MR. BUTLER: Let me just state then for
12 the record with regard to the order entered in
13 September: I was not counsel of record at that time,
14 and of course no one had any way of knowing her
15 whereabouts, and I would object to the entry of the
16 order as being exparte.

17 THE COURT: She could have sought the
18 protection of this Court if she had thought to come
19 here during the pendency of the custody hearing.
20 All she had to do was to come here. This Court was
21 available for her. This Court has continuing juris-
22 diction and she could have come here for this Court
23 and sought whatever relief she should have received.

24 MR. BUTLER: Is that the Court's ruling
25 on that?

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

31.

1 THE COURT: I'm not giving you a ruling--
2 I'm just making a statement that the Court is avail-
3 able for both parties. The Court has jurisdiction
4 over both parties and over the children.

5 MR. BUTLER: At that, I would just state
6 that she has had a lawful custody order when she
7 took them back.

8 THE COURT: Well, when the Court ordered
9 that, she could have come back and asked that the
10 action be remedied which she elected not to do. She
11 elected to take matters in her own hands with the use
12 of self-help and to flee beyond the jurisdiction of
13 this Court.

14 MR. BUTLER: I don't think she did that.
15 I don't think she attempted to do that.

16 THE COURT: All right. What I will do is
17 take both of these matters under advisement pending
18 the outcome of the Social Services study in England
19 and also the study of the home of Mr. Middleton.
20 I will take the matter of her contempt under advise-
21 ment for final disposition.

22 MR. HALL: Your Honor, if I may, just one
23 small last short summary on that matter. I would
24 like to make an argument basically as to the request
25 for admissions. I thought I just might be able to

1 do a little better by requesting--

2 THE COURT: All right.

3 MR. HALL: I direct your attention parti-
4 cularly to our request for admissions numbers one and
5 two in which by the manner of her answers to them in
6 which she said she does admit having sexual inter-
7 course with Michael Davis, but does not distinguish
8 whether they were at the same home when she was
9 having sexual intercourse with Mr. Davis, so she has
10 admitted through that one which is deemed admitted--
11 number one and number two as well as to having
12 sexual intercourse with her boyfriend both at her
13 home and at his apartment when the children were
14 there, whichever place it was, which is in direct
15 contravention of the recent 1977 Brown vs. Brown
16 case which says that, "the moral climate in which
17 children are to be raised is an important consi-
18 deration for the Court in determining custody, and
19 adultery is a reflection of a mother's values.
20 An illicit relationship to which minor children
21 are exposed cannot be condoned;" and at 218 Virginia,
22 page 199, there's an additional quotation there
23 wherein the Court is quoting from the case of Beck
24 vs. Beck from another State along the same lines.
25 I can report to this Court that that case adheres

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

33.

1 to the other jurisdictions and is practiced within
2 the State of Virginia, where custody is being changed
3 upon showing, as we have here, of the children being
4 exposed to an illicit relationship in this manner.

5 I would also bring to the Court's attention--
6 again obviously the father is remarried and he sup-
7 ports his wife and he has a good home and the kids
8 have a lot of friends there. They've got a good
9 school and I think the Court can take judicial
10 notice of that.

11 As to the request for admissions number 14
12 and 15, I would say just that number 14 is deemed
13 admitted. Number 15 is admitted and the gist of
14 that is that the children have expressed a desire
15 to live in the U.S. The Court would read that by
16 a combination of our request for admissions numbers
17 14 and 15 and her responses. I think the Court could
18 only conclude that our requests that she admit the
19 children wish to live here is deemed admitted.

20 Lastly, I bring as to the request for
21 admissions--I bring again to the Court's attention
22 number 20, in which she states, "Her children have
23 always been told that they have a choice of where
24 they wish to live." They've expressed a choice and
25 she has admitted that in number five that they want

1 to live with the father.

2 In addition, as has been indicated, she
3 has shown her contempt to this Court by refusing
4 to appear for her deposition which was scheduled
5 for November, even after counsel asked me to be
6 there so I could hear the witnesses on her side which
7 I agreed to do, and by the letter which she wrote
8 here which was admitted into evidence, she refused
9 to show up and she is in contempt of this Court not
10 only for the violation of the September 2 order, but
11 also as a violation of the more recent order dealing
12 with Christmas visitation and her obligation pur-
13 suant to this Court's order to bring the children
14 here, which my client in effect paid for--offered
15 the tickets so they could come here. She has re-
16 fused to come here herself and she has made it clear
17 as Brian Middleton has testified that she has no
18 intention of ever allowing the children home--to come
19 here again, so she is showing a contemptuous attitude
20 generally towards the visitation which the courts
21 throughout this country have in relatively extreme
22 cases, which I think given the tenor of her refusal
23 to comply, this becomes an extreme case, because she
24 says, "No, there will be no visitation whatever in
25 the future--" I guess one would have to say in the

1 U.S., which obviously is where the father lives--
2 that kind of denial of visitation is the most out-
3 rageous case and the courts throughout this country
4 have said it should result in a change of custody
5 to the noncustodial person assuming he is a fit
6 person who is a proper person to take custody of
7 these children.

8 I can give the Court a copy of the briefs
9 which I have done in other cases with a few changes--

10 THE COURT: That would be helpful. I
11 would like to receive that.

12 You may reply to it, Mr. Butler.

13 MR. BUTLER: All right.

14 MR. HALL: I will try to do that promptly
15 so you will have a chance to reply.

16 In addition, the Court has heard today that
17 there is now an indication of alienation of the
18 children by refusing to allow proper telephone
19 visitation by her or someone who is obviously
20 listening in on the telephone when he is trying to
21 talk to his children. They can't seem to hear
22 properly and he has heard whispering and apparently
23 they are holding the phone in such a manner so that
24 two people can hear it. I am suggesting that the
25 two people would be one of the children and the

1 mother, and that's the way in which the alienation
2 has been achieved, Your Honor. My brief will also
3 address that point.

4 THE COURT: Anything you wish to say,
5 Mr. Butler?

6 MR. BUTLER: Your Honor, with regard to
7 the inferences from the request for admissions re-
8 garding her relationship with Mike Davis, the cita-
9 tion of Brown vs. Brown--I would point out to the
10 Court that that case, which is misinterpreted by
11 Mr. Hall says that the Supreme Court disapproved of
12 the parents of minor children having illicit re-
13 lationships with those to whom they are not married.
14 That case presented evidence that there was an ad-
15 verse impact on the children, and number two, in the
16 incident case of Brown vs. Brown, there was testi-
17 mony that a relationship between Mrs. Brown and Mr.
18 Leith had an adverse impact on the children, so it's
19 more than that. I'm not putting you in a posture
20 to say that that's why my client hasn't come forth
21 with evidence, but there must be more than just a
22 showing that the children were present when the
23 mother was having sexual relations with another
24 party. It has to be shown that there is some adverse
25 impact on the children. What Mr. Hall is asking you

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

37.

1 to do now just by the very nature of the fact that
2 she had an adulterous relationship is for you to
3 find that she is unfit and that's not what Brown
4 said.

5 With regard to the inferences to be drawn
6 regarding the children's wishes, I don't think that
7 can be read into the responses for request for
8 admissions. I believe she said she was not told by
9 the children what the preference was in the case of
10 one at least--of one of the children. That does not
11 infer the fact that my client admits it, and it does
12 not infer that.

13 MR. HALL: I would just like to very
14 briefly comment concerning the adverse affect of
15 the children. In Brown vs. Brown on page 199, there
16 is a quote from Beck vs. Beck. This is a quote in
17 the Brown case of the Beck case. "It is within
18 common knowledge and experience that a child learns
19 by example, especially from his parents. Such
20 utter disregard for moral guidance and social
21 standards can have but ill effect on the young son."

22 THE COURT: I understand that. I thank
23 you very much.

24 MR. HALL: Your Honor, there was a motion
25 which I will have to say goes to child support and

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

38.

1 attorney's fees. I say this with tongue in cheek,
2 because we know her financial condition is not the
3 best. We understand that her uncle is really the
4 one who has been financing the trip over here and
5 if Your Honor would entertain that, I will give some
6 evidence of that or an affidavit. I have some evi-
7 dence--not the total attorney fees, but I can sub-
8 mit to you or have my client testify as to the
9 financial condition. I don't know if the Court wants
10 to entertain that or not.

11 THE COURT: Well, I really don't think I
12 would.

13 MR. HALL: All right. Thank you.

14 THE COURT: I would like to have a copy of
15 the transcript.

16
17 NOTE: The hearing is concluded at 10:54
18 o'clock a.m.

19
20 * * * * *

21 HEARING CONCLUDED
22
23
24
25

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

39.

CERTIFICATE OF COURT REPORTER

I, Roy Garrison Wood, hereby certify, that I was the court reporter at the Circuit Court of the County of Chesterfield at the time of the hearing herein.

Further, that the foregoing transcription, is, to the best of my ability, a true and correct record of the proceedings of said hearing.

Given under my hand this 31 day of December, 1981.

Roy Garrison Wood
Roy Garrison Wood-Court Reporter

RECEIVED UNDER SEAL
AND FILED

JAN 6 1982

LEWIS H. VADEN, CLERK

NOV 26 1982

822080

RECEIVED

RICHMOND, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

BRIAN C. MIDDLETON

-vs-

IN CHANCERY NO. 3305-77

SHEILA JOAN MIDDLETON

The complete TRANSCRIPT of the testimony
and other incidents in the above-styled case, when heard
on June 2, 1982, before the Honorable Ernest P. Gates, Judge.

APPEARANCES:

B. VanDenburg Hall, Esq., 4085 Chain Road, Fairfax, Virginia,
Counsel for the Plaintiff;

MORANO & BUTLER, 526 North Boulevard, Richmond, Virginia,
By: Donald K. Butler, Esq.,
Counsel for the Defendant.

filed
10-1-82

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

2

I N D E X

WITNESS

DIRECT

Brian C. Middleton

7

Angela Middleton

12

1
2 THE COURT: All right. I guess you are
3 the opening party in this. You can remain seated,
4 stand, whichever is more comfortable for you.

5 MR. HALL: I think I will summarize this
6 a bit. First of all, I think the evidence has
7 shown that clearly the children enjoy being here
8 with their father, they are beloved here, they
9 made indications that they want to stay here in
10 the direct Request for Admissions and by statements
11 to social workers, in particular Mrs. McGary.

12 And, in statements by the mother, Mrs.
13 Sheila Joan Middleton, she admitted to having sexual
14 intercourse with her boyfriend, violating the Request
15 for Admissions by not denying that in the particular
16 point of the Request for Admissions, number one,
17 and in that regard and other Requests for Admissions,
18 in regard to the children expressing their wish
19 to be here with their father.

20 I think the mother has shown her contempt
21 for their natural right for visitation by denying
22 or cutting short of the summer visitations but
23 more importantly by denying the court order for
24 the Christmas vacation in 1981. She has also shown
25 a contempt for this Court despite the fact that

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

4

1 counsel agreed to her and the children having a
2 deposition in England, when I, as counsel for Mr.
3 Middleton, went there. She then sought an order
4 after that agreement in England which said that
5 the children could not be deposed, and then she
6 herself refused to be deposed in England.

7 She was also ordered to be here to submit
8 to depositions and the children for deposition
9 and was told in advance of that and of the trial
10 date of December 9th. She refused to comply with
11 the court order granting the depositions here,
12 even though the father would pay for it, and even
13 though the father would pay for the Christmas vaca-
14 tion, again, she refused that.

15 She has, in many ways, shown contempt,
16 and I believe the evidence has shown that she was
17 aware shortly after the court order was issued
18 that she was not to take the children to England
19 and not keep the children from Virginia, because
20 her agent was aware of it, and subsequently she
21 did remove the children from the U. S. There is
22 contempt in that regard also.

23 I believe the Court has heard this evidence,
24 but if not, we would present some evidence to this
25 effect, we would proffer that the evidence would

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

5

1 be that the mother has subsequently indicated she
2 would not allow the children ever again to be back
3 in the U. S. She has told the father this on the
4 telephone and further that even if he came to England
5 to see them, he would not be allowed by her to
6 see the children alone.

7 This has become her attitude. She has
8 continued to attempt to alienate the children from
9 their father. She has taken unusual actions, and
10 since then has sent a letter to the Court, which
11 I did not receive a copy -- I did read it in the
12 file -- and apparently she got one of the children,
13 Claire, to send a letter also, which I did not
14 receive a copy of, did not see in the file also.

15 As the Court is aware, the home study
16 in Virginia here has returned and resulted in a
17 report which is very favorable to the father, which
18 again indicated the very nice place he has for
19 these children, the fact they do have friends as
20 testified to earlier in the neighborhood of the
21 father's home; that they want to stay here; that
22 Fairfax County has one of the finest school systems
23 in the country; and that he has a very stable marriage
24 and job and home situation.

25 The English home study, it seems to me,

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

6

1 is inconsistent in some regards. For example,
2 it concludes in there at one point that there is
3 no evidence whatsoever that the children have been
4 exposed to any irregular sexual activity by the
5 father. The mother, on the other hand, has had
6 this fellow, Mike Davis, who was there every fort-
7 night and at Christmas visitation time when the
8 children should have been here. It is obvious
9 that he is there when they are there and he is
10 staying overnight, which is basically what she
11 has admitted to in the Request for Admissions.

12 It is clearly the same case, concepts
13 as in the Brown versus Brown case. Her actions
14 of denial are contrary to many, many cases of visita-
15 tion, including, I think, the recent decision in
16 Engelking versus Engelking in the Circuit Court
17 of Richmond, Virginia, wherein, because the mother
18 denied visitation, the Court ordered her to go
19 to jail for a year. That is a local court decision.
20 It is one of the strongest ones I have seen on
21 the point, but there are many, many other decisions
22 where if there is denial, substantial denial of
23 visitation, the appropriate remedy is to switch
24 custody from the custodial parent to the noncustodial
25 parent, and both those cases are cited in my brief.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

7

1 The Carpenter case in Virginia hints at this when
2 it denies the mother the right to go to New York
3 State where she thought she could get a better
4 job. She was on welfare in the Norfolk area, she
5 was a chemist, and the Court said that because
6 of the good relationship that she had with the
7 children and the father had and the fact that they
8 were doing well here, the Court would not allow
9 her to take the children out of the State, emphasizing
10 the importance of the visitation. He did not switch
11 custody; they did not ask for that.

12 I would think that the cases cited in
13 the brief would be of importance to the Court in
14 terms of the alienation factor, which there clearly
15 was evidence heard on it earlier.

16 I would like at this time to present
17 a little bit of evidence, briefly some of the develop-
18 ments that have occurred since we were last before
19 Your Honor.

20 THE COURT: All right.

21
22 BRIAN C. MIDDLETON, the plaintiff, called
23 on his own behalf, having been duly sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. HALL:

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

8

1 Q First of all, Mr. Middleton, state ;your
2 name for the record, please.

3 A Brian C. Middleton.

4 Q Has there been any significant change
5 in your job since we were last in court?

6 A No, there has not.

7 Q What about as to your physical home or
8 your marriage -- any change there?

9 A No changes.

10 Q I would like for you to tell the Court,
11 in view of some of the statements in the defendant's brief,
12 what arrangements were made and who made them and who paid
13 for them in terms of being able to see your children and
14 visit with them beginning with the period back in '74.

15 A Going back to 1974, every year through
16 1977 I paid for the children's round-trip ticket to come
17 to Virginia for the summer visitation. In 1974, I arranged
18 for two visitations between the period of 1974 when she left
19 the United States and June of '77 -- it was five trips.
20 I went to England for my two-week vacation period to visit
21 with the children.

22 After 1977, which is at the point where
23 Nichole was six years old, at which age the airlines will
24 allow you to be flown, I paid for the children to come over
25 every single year through '81, and some years we paid for

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

9

1 them to come twice. I think there was one year in particular
2 we paid for them to come twice.

3 In all, since 1974, there has been at
4 least, as a minimum, one visitation that I have paid for.
5 Sheila Middleton has not paid for any visitations for the
6 whole period.

7 Q Has Sheila been able to pay for any visita-
8 tions for herself in that interim period?

9 A Yes, she took a vacation to Spain, and
10 it was in the evidence before also that she took a vacation
11 in Portugal.

12 Q What if anything have you told the children
13 about your allegations as to Mr. Davis or any other boyfriend?

14 A Nothing. I have not discussed the matter
15 with them since their leaving the United States. Of course,
16 prior to that, they discussed with myself and Angela their
17 concerns about the people that were visiting their mother,
18 but since that period I have not had any discussions with
19 them.

20 Q Have you tried to exercise telephone
21 visitations?

22 A Yes.

23 Q In the last few months?

24 A Yes.

25 Q How has that gone?

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

10

1 A I'm able to reach them about once a month
2 and am writing to them about every week or two weeks. The
3 telephone conversations concern me. The children seem very
4 hesitant on the phone. Obviously, Sheila Middleton is listening
5 in on every phone call. We have the same connection problems
6 as always where they cannot hear. The children -- the informa-
7 tion I can get from the children is extremely limited. For
8 example, I cannot get them to say where they were the day
9 before or what did you do. It would appear to me they are
10 concerned about giving something away. It's a very strained
11 conversation.

12 Q Is this different or the same as conversa-
13 tions you had with them before the summer of '81?

14 A No, I wouldn't believe it's the same
15 children. They were very open and forthright with me during
16 that summer visitation.

17 Q And before the summer vacations, how
18 were the phone calls when you called?

19 A Much more relaxed and happy. Now the
20 child on the phone does not appear to be happy. There seems
21 to be some strain in the voice. My interpretation is they
22 appear to be downward, somber, which is not their nature.

23 Q What if anything has your former wife
24 told you as to her allowing you to visit with the children
25 in the future?

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

11

1 A Going back from my first conversation
2 with her on September 5, which is the first time I contacted
3 her after she came and took the children out of the United
4 States -- on September 5, she indicated that she would never,
5 could never trust me to have the children in the United States.
6 That's been repeated over one more time, which was the December
7 visitation -- I don't recall the exact date -- but it was
8 after you got the order and I called her to confirm with
9 her the arrangements that had been made and she first of
10 all denied all knowledge of such an order and then backed
11 off and said she couldn't trust me to ever let the children
12 come to the United States again, however, I was welcome to
13 go to England on my own -- specifically excluded Angela --
14 but did caution me I would not be allowed to have the children
15 alone because she didn't trust me.

16 Q What are your plans if the Court grants
17 you custody of the children in terms of, pertaining to the
18 children physically and taking care of them?

19
20 MR. BUTLER: That is in all of the home
21 and environment studies. You have the home study
22 right there.

23 THE COURT: I have sufficient information.
24

25 Q (Continuing) If necessary, would you

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

12

1 go to England to enforce this Court's order?

2 A I already have counsel over there, and
3 I certainly -- if the Court view's favorable, I certainly
4 will pursue it in England.

5
6 MR. HALL: I have no further questions
7 of this witness.

8 THE COURT: Mr. Butler?

9 MR. BUTLER: I have no questions.

10
11 WITNESS STOOD ASIDE.

12 * * * *

13
14
15 THE COURT: Is there any additional evidence?

16
17 ANGELA MIDDLETON, a witness called on
18 behalf of the plaintiff, having been duly sworn, testifies
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. HALL:

22 Q Angela, state your name for the record.

23 A Angela Middleton.

24 Q Have you in the last several months ever
25 heard any conversations or had any conversations with the

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

13

1 children on the phone?

2 A Yes, I have.

3 Q Would you describe them?

4 A Hesitant, not light conversation -- like
5 we tried to call you yesterday or last week, and it's hesitant,
6 not a light, free conversation anymore. And it's usually
7 you have to repeat the questions a couple of times or just
8 talking to them, it's, I can't hear you, speak up, and you
9 hear a lot of whispering in the background.

10 Q Is that the same as or different from
11 the way the telephone conversations were before the summer
12 of '81 with the children?

13 A It is different. They seemed more relaxed
14 before, and now they seem hesitant, nervous.

15 Q Has there been any significant change
16 in your job, your lifestyle or you since you were in court
17 in December?

18 A No.

19

20 MR. HALL: I have no further questions.

21 MR. BUTLER: I have no questions.

22

23 WITNESS STOOD ASIDE.

24 * * * *

25

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

14

1 THE COURT: Is that all?

2 MR. HALL: Yes, Your Honor. I would
3 like to summarize a little bit more on the law.

4 THE COURT: You may do that.

5 MR. HALL: Briefly, I think the Court
6 has had an opportunity to read the brief, and I
7 would like to point out one important development
8 that I think has occurred, and that is the House
9 Bill Number 691. It did pass the House and Senate,
10 the Governor has signed it, and it passed the House
11 by 85 to 11 and the Senate by 28 to 10 and is not
12 effective until July 1, '82.

13 It certainly expresses the will of the
14 Legislation and the Executive Branch that there
15 shall not be any presumption or inference in favor
16 of either spouse pertaining to custody. It is,
17 in effect, overturning that part of the case law
18 which set up a presumption in favor of the mother
19 for children of tender years previously.

20 That is about all I would like to add.
21 I think the brief is self-explanatory.

22 THE COURT: Yes.

23 Mr. Butler?

24 MR. BUTLER: First of all, I would like
25 to put credit where credit is due. That wording

1 of inference in the new bill that Mr. Hall is
2 referring to is my doing. I was involved with
3 the Family Law Section when the Board of Governors
4 met and did considerable work on that bill and
5 we had two judges on the panel that wrote they
6 did not want inference put in the law, because
7 it already says there's no presumption. And I
8 said, well, let's not put in presumption. There
9 were several Juvenile judges there, and Judge Koontz
10 out of Roanoke said, when we have these cases where
11 the facts are equal, what can we use to decide
12 the custody and, you know, is helpful to us when
13 these cases come up. I said, if you want to keep
14 it in there, let's do it so that it is constitu-
15 tionally fair. We will leave it with an inference
16 in favor of the mother for two years and an inference
17 in favor of the father for two years and back and
18 forth. They appreciated the humor in that but
19 told us that was a helpful tool.

20 I personally do not feel it should be
21 there -- any inference one way or the other. It
22 should be based on the evidence that supports what
23 is best for the children, period.

24 THE COURT: Mrs. Middleton -- it was
25 she that wanted the children to go where they wanted

1 to go and that was the basis for the whole thing.

2 MR. BUTLER: Right.

3 THE COURT: Mrs. Middleton said she wanted
4 whatever the children wanted to do. She has prevented
5 this Court from even determining what the children
6 want.

7 MR. BUTLER: You mean the depositions?

8 THE COURT: In the depositions, I could
9 have interviewed them in chambers, by myself, if
10 she had allowed them to come to the United States
11 during Christmas. Their depositions could have
12 been taken.

13 She has thrown up every obstacle that
14 could be thrown to the Court to prevent me from
15 knowing what the children want to do. She has
16 prevented it in every instance. She prevented
17 them from taking their depositions in England,
18 which was convenient, at the expense of the husband
19 and father. She went to court and placed them
20 in a wardship when this Court had the continuing
21 jurisdiction. She refused their depositions to
22 be taken in England. She refused to allow them
23 to come to the United States so that the depositions
24 could be taken here, so she has left this Court
25 with no evidence to really know what is best for

1 the children, other than what the plaintiff and
2 what Mrs. Middleton have presented to the Court.

3 MR. BUTLER: What can I say?

4 THE COURT: Then, she writes me this
5 letter, which is not proper procedure, and tells
6 me she did not have money to defend the case, when
7 the whole defense was going to be paid by Mr. Middle-
8 ton, the whole cost for the Court to obtain evidence
9 was being borne by him.

10 MR. BUTLER: When she went to England?

11 THE COURT: Right.

12 MR. BUTLER: I must confess consternation
13 over that series of events with regard to discovery
14 and with regard to what the English wardship meant.

15 THE COURT: It is restraining them from
16 taking the depositions. She went to court and
17 got an injunction.

18 MR. BUTLER: There was some hearing on
19 that matter about --

20 THE COURT: To support the protective
21 order, and that court is of an inferior dignity
22 to this court. I have a great deal of respect
23 for the English courts, but I cannot allow an inferior
24 court to substitute its jurisdiction for my juris-
25 diction.

1 MR. BUTLER: That is the part that confuses
2 me, because I do not understand the wardship concept
3 as was explained to me.

4 THE COURT: The wardship concept, if
5 you read the letter or the petition that was filed
6 by her attorney -- obviously, it is based on the
7 fact that she does not have the resources to defend
8 herself in this suit here, and so she went there
9 to protect herself and give the wardship and custody
10 to the court so the court would stand as a bulwark
11 between her husband, this court, and her.

12 MR. BUTLER: I think that was the upshot
13 of what she did, but there is some concept --

14 THE COURT: I don't want to be vindictive.
15 I want to be logical, but I cannot forget the fact
16 that she has prevented me from knowing what I need
17 to know and she has not given me the opportunity
18 to obtain that evidence and so the only evidence
19 that I have to the contrary would be what Mr. Middle-
20 ton says -- that the children want to live here
21 with him, which initiated and brought about the
22 proceedings here.

23 MR. BUTLER: Well, speaking as an attorney --

24 THE COURT: I have some concern about
25 that.

1 MR. BUTLER: -- and looking at the home
2 study, this could not have helped our case in any
3 respects.

4 The best explanation I can give on behalf
5 of her is that she was in fear of what would happen
6 if she comes here with the children, and you explain
7 that --

8 THE COURT: This Court granted her the
9 custody of the children in the beginning. I do
10 not know why she would have any fear of this Court.

11 MR. BUTLER: I have explained to her
12 these concepts, and what happened back in August
13 or September has made her gun shy, let's put it
14 that way.

15 THE COURT: It is contumacious.

16 MR. BUTLER: That has turned into contuma-
17 cious conduct on her part.

18 THE COURT: Very contumacious.

19 MR. BUTLER: I cannot deny that legally.
20 We agree when we involve ourselves in litigation
21 to follow the rules and go by the rules of the
22 game and the rules of the court and the laws of
23 Virginia. My --

24 THE COURT: See if you can answer these
25 questions to my satisfaction.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

20

1 Obviously, the sole question today is
2 what is in the best interest of the children?
3 That is under Virginia law, and I think that is
4 the law in England also. And, obviously our law
5 is similar and has the same standards to follow
6 that they do in England. And, what is the effect
7 of her refusing to allow visitation? Under Virginia
8 law, do you feel that would be grounds for me changing
9 the custody?

10 MR. BUTLER: Not as a punitive measure.

11 THE COURT: I do not mean punitive, but
12 in the best interest of the children. Obviously,
13 a child needs to have the love and affection and
14 attention and association with the father as well
15 as the mother, and under the situation that exists
16 here, it is under strained conditions because one
17 lives in England and one lives in the United States.
18 But, originally they were in the United States
19 when the divorce was entered, and this court had
20 jurisdiction and has continuing jurisdiction, and
21 it is my problem as to what is the best interest
22 of the children. And if she refuses to allow the
23 father to have visitation with his children, I
24 am of the opinion that he should have custody if
25 she would do that.

1 MR. BUTLER: If she demonstrates on her
2 part a lack of concern for the children's welfare
3 and they are not allowed to maintain a relationship
4 with their father -- if that is the effect of what
5 she is doing, she herself is unilaterally denying
6 one party access to the child. Well, in fairness
7 to the children and in fairness and justice, if
8 one party is going to be denied access to the children
9 due to the conduct of one who is contumacious,
10 it is going to be her who is going to be denied
11 access to the children. But --

12 THE COURT: So, that tips the scales
13 in favor of Mr. Middleton.

14 MR. BUTLER: If that is her state of
15 mind that she wanted to do.

16 THE COURT: And that is what the evidence
17 is. I do not have any other evidence to the contrary.
18 He even agreed for her to come to the United States
19 and have her deposition taken here, which is unusual.

20 MR. BUTLER: That is in a procedural
21 area, both the visitation and deposition, so that
22 is partly a denying.

23 THE COURT: I am confident she was aware
24 of this Court's order denying her this right to
25 take the children out of this State or the United

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

22

1 States.

2 MR. BUTLER: I am not.

3 THE COURT: In your brief, you mentioned
4 that.

5 MR. BUTLER: I am not at all, because
6 all the evidence was that they had to speak to
7 somebody and could not identify who it was and
8 left for Florida.. Then they left there for Canada.

9 THE COURT: What are the good points
10 of the home study made in England to go to the
11 point of what is in the best interest of the children?

12 MR. BUTLER: Let's go back to the previous
13 question concerning the effect of her denying visita-
14 tion. Okay, that has taken place since this litiga-
15 tion started, and I cannot help but go back and
16 remark that this started by Mr. Middleton's refusal
17 to let the children return, which is the same thing
18 as snatching the children, except it is more con-
19 venient for the person holding the children. This
20 started this whole unfortunate turn of events.
21 Prior to that time --

22 THE COURT: Let me make one remark there.
23 He initiated proceedings for the change of custody,
24 and it was convenient for this forum to have the
25 children present so the Court could determine their

1 wishes. I disagree with the English court that
2 says the court should not inquire of the children
3 what their wishes are, because that has been the
4 whole basis of the custody relationship in this
5 case, is what the children wanted.

6 MR. BUTLER: That is right. But, the
7 sequence of events was he filed a petition and
8 then the children were supposed to return and they
9 didn't. He held them. He did not have any court
10 order. He did not have a court order saying he
11 was under petition to be here and pending the hearing
12 the children were to stay until the evidence can
13 be heard. He did that and it was an action that
14 was a violation of the custody order and you know
15 that and I am not going into it.

16 THE COURT: I understand that.

17 MR. BUTLER: That is when she started
18 messing around with visitation.

19 And getting to the home study that you
20 asked about, the situation before the Court is
21 essentially a sad one for the two children concerned,
22 (reading) they love both of their parents and feel
23 that their ongoing relationship with their father
24 owes much to their mother who has done her best
25 over the years to encourage their transatlantic

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

24

1 focus. And I do not think that can be denied.

2 He claims she misrepresented the arrange-
3 ments of their visitation one time and that sort
4 of thing, but the home study points out from investi-
5 gating her and discussions with the children that
6 up to this point she has done everything she could
7 to encourage a relationship with the father. It's
8 a very difficult oceanic barrier but he has been
9 having them spend some substantial time with him.
10 They have a shorter vacation than we have, and
11 I believe he has seen them at Christmas an occasion
12 or so and that has never bothered her until this
13 whole thing started.

14 I think the home study is important in
15 one regard, because there is absolutely no record
16 of Mr. Middleton's unfitness. I have not been
17 instructed to pursue that and that is not a question
18 before the Court either, because I think we have
19 to listen to the evidence and from his home study
20 he is a fine father to the children and that is
21 why I am miffed at the allegations that have been
22 made and strategy in making these allegations about
23 her involvement with a multitude of men, taking
24 the children to Portugal and fixing them up with
25 dates with men in their twenties. That shocked

1 me that he could make an allegation like that after,
2 you know, what I have heard and seen of Mr. Middleton
3 and seeing the home study concerning his character
4 and standing in the community.

5 This home study belies all of that.
6 It is candid, it is done independently, and it
7 is acknowledging this relationship with Mike Davis
8 or Davies or whatever his name is. She is obviously
9 having a relationship with this man who lives in
10 another part of the area and spends time in the
11 home and stays there when the children are there.
12 There is no denying that. That was admitted in
13 the Request for Admissions. It's not just a technical
14 admission because we left out a semicolon or did
15 not put a comma in, but she told the Court, yes,
16 Mike Davis is my boyfriend.

17 The Brown case -- of course it's the
18 twentieth century and this is a throwback to the
19 nineteenth century, where still Virginia holds
20 these standards, and I am not critical of that.
21 You set an example for the children, but the Brown
22 case also says, Judge, that there has to be some
23 evidence that this had a harmful effect on the
24 children. In the Brown case, there was such evidence
25 that the children, you know, were unsettled and

1 hyperactive and all this sort of stuff and somehow
2 the evidence tied it into the relationship with
3 this man, which is more sordid than what we have
4 here, I think.

5 But, that is what worries me -- the home
6 study belies all of that stuff. The home study
7 shows the children are well settled and doing well.
8 Mrs. Middleton's own evidence was that the children
9 were having social successes and success in school
10 and they are thriving there. It would be speculative
11 to say what they would be doing here. They would
12 probably be doing the same thing, because they
13 are products of both parents. They have been under
14 the sole custody of Mrs. Middleton for a number
15 of years and one can draw the conclusion that she
16 has been a good and dutiful mother during that
17 period of time. The children have continued to
18 thrive with a relationship with their father on
19 a visitation basis.

20 The children have spoken to the investi-
21 gator in England expressing their desire and desires
22 to live with their mother and see their father
23 just like it has always been. I am worried as
24 to how it is going to be, and I know the Court
25 is concerned about that.

1 I want Sheila Middleton to say to you
2 she is sorry for what she has done and the way
3 she has handled the Court's order here and what
4 she intends to do is abide by this Court's order
5 because she feels by itself it is in the best interest
6 of the children. And I want her to say this to
7 the Court and me not making representations,
8 because it is not evidence, but I think the home
9 study is the only thing that speaks for her and
10 I think the Court must be cognizant of the fact
11 that this reflects favorably on Sheila Middleton
12 in her conduct as a mother and as a former wife
13 and her relationship with her ex-husband with regard
14 to the exercise of visitation up until this whole
15 mess started. And I want the Court to feel like
16 things can get back on an even keel. I don't want
17 the Court in view of what has happened to -- I
18 can re-explain why she has --

19 THE COURT: I will tell you what I am
20 going to do. I am going to continue the disposition
21 of this case and my rendering a decision for two
22 weeks for you to furnish me a statement from Sheila
23 Middleton as to what her intentions are about future
24 visitations.

25 MR. BUTLER: Let me -- maybe this will

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

28

1 help. Do you know when the children get out of
2 school this year?

3 MR. MIDDLETON: It will be between July
4 14 and July 21.

5 MR. BUTLER: They are out -- they do
6 not get off for vacations until then?

7 MR. MIDDLETON: Correct.

8 THE COURT: And I think I will say right
9 now what I will do is I am continuing the whole
10 matter for final disposition, and I am ordering
11 that he have visitation this summer with them in
12 the United States at his expense during those times
13 that they would be out of school in England and
14 be returned in time for them to continue their
15 schooling in England.

16 MR. BUTLER: I think that is what I was
17 getting at when I asked him when they get out of
18 school. That is the only way I can offer the Court
19 a showing of good faith on her part.

20 THE COURT: I would like to have something
21 from her to that effect.

22 MR. BUTLER: That she intends to do that
23 and then to abide by the future orders of the Court,
24 whatever the disposition of the Court.

25 THE COURT: I would like to know what

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

29

1 that would be. All right.

2 Would you prepare the proper order on
3 that?

4 MR. HALL: Yes, I will, Your Honor.

5 And that is for the Court to continue
6 it for final decision, and pending that action
7 I would urge the Court, in making its final decision,
8 that you order that the father be granted custody
9 and that she be granted visitation of about a month
10 in the summer and that the child support be terminated
11 as of the time he gets physical custody, and
12 I have prepared a proposed order on those lines
13 which --

14 THE COURT: You can keep that for a while.
15 I think we are at another stage now.

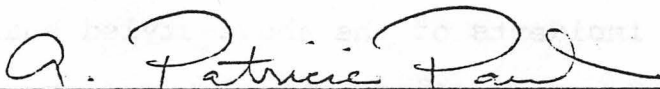
16
17 HEARING CONCLUDED.
18
19
20
21
22
23
24
25

CERTIFICATE OF COURT REPORTER

I, G. Patricia Paul, hereby certify that I was the Court Reporter in the Circuit Court of the County of Chesterfield, Virginia, on the 2nd day of June, 1982, at the proceedings herein.

I further certify that the foregoing transcript is an accurate record, to the best of my ability, pertaining to the matters set forth herein.

Given under my hand this 30th day of June, 1982.



G. PATRICIA PAUL

NOV 23 1982

822080

RICHMOND, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

BRIAN C. MIDDLETON,

-vs-

CHANCERY NO. 3305-77

SHEILA JOAN MIDDLETON

COPY

The complete TRANSCRIPT of the testimony and other incidents of the above-styled hearing when held, on August 23, 1982, in Chambers, before Honorable Ernest P. Gates, Judge.

APPEARANCES:

B. Vandenburg Hall, Esquire, Suite 400, 4085 Chain Bridge Road, Fairfax, Virginia, 22030, counsel for the plaintiff.

Morano & Butler, 526 North Boulevard, Richmond, Virginia, 23230; by: Donald K. Butler, Esquire, counsel for the defendant.

filed:
10-4-92
JPM

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

2.

Hearing on
August 23, 1982

I N D E X

DIRECT

Brian C. Middleton	11
Angela Middleton	23

Taken by Heidi L. Jeffreys

Typed by DC

490

1 MR. HALL: As I was indicating, the Court
2 properly found that this Court has jurisdiction;
3 that this was the more convenient Court for the
4 reasons indicated; and, in addition, that the
5 witnesses we've presented clearly showed that the
6 children wanted to be here and were very happy
7 here, were in a very good environment in the home
8 of the father, and near schools.

9 The Court, I think, has seen her be very
10 contemptuous of this Court, not just as to the
11 September 2nd Order but also as to the Order of
12 November, '81 which ordered that she be here and
13 show why she was not in contempt of Court. She
14 not only didn't show to show why she was not in
15 contempt, but she's not provided any evidence what-
16 soever to indicate by any other fashion, by deposi-
17 tion or otherwise, why she was not in contempt of
18 Court, so she's in contempt both in the sense of
19 not obeying the September 2nd Order and in the sense
20 of not obeying the Order which required her to be
21 here on December 8th to show why she was not in
22 contempt of Court. She's in contempt for denial
23 of Christmas visitation for the December-early
24 January of '81-'82. She's in contempt for not
25 coming here herself, at least.

1 In regard to giving a deposition on
2 December 23, she was in contempt of this Court for
3 failure to show up for a deposition, as I see it,
4 at least to the Rules of the Court, if not of an
5 Order of the Court on November 14th, '81. She's
6 in contempt for constantly acting like she's the
7 poor, put upon person, but then she won't do any-
8 thing to in any way put forward facts concerning
9 her case.

10 It's an attitude of contempt, and that
11 attitude is reflected in a recent tape recording
12 of a conversation that the father had with the
13 mother which shows, at least in part--and, she
14 makes different statements. She would make one
15 statement--and, this is the subject of the latest
16 Request for Admissions--but he could testify about
17 it; I'll just proffer it initially. She states
18 at one point that she will follow this Court's
19 Order just like she stated in her Affidavit that
20 she would do everything possible to try to see to
21 it that he got visitation for this summer. That's
22 the Affidavit of June 11, '82, but then another
23 time in the conversation that was taped on June
24 27, '82 she states in effect that she's not going
25 to follow this Court's Order, that this Court is

1 just a Judge and she's the mother of these children,
2 so she's going to follow her own instincts.

3 She's somewhat conflicting in regard to
4 the June 27th ruling. She proceeds in England
5 without any notice to the father. There's never
6 been anything served upon him to indicate when
7 she's going to Court or what she's doing in Court,
8 what Motion she's filing, what Order she asking
9 for, she doesn't bother giving him any notice.

10 So, I think under the concept of the Oehl
11 case she's not following due process that we here
12 in the States should recognize as such and there-
13 fore recognize the English Court's opinions. Its
14 decisions simply don't have the--they haven't
15 followed due process in England by giving notice
16 to the father so that under our rules here, under
17 the Oehl case in 220 Virginia while we would have
18 to follow the English Court's Order, had she given
19 him notice and he appeared personally in England
20 in the English proceedings, that's not the case
21 here. We are under no constraints whatsoever in
22 this Court to follow whatever Order the English
23 Court has entered where he has had no notice,
24 been given no due process whatsoever, no opportunity
25 as we have given her to take a deposition here and

1 present our side of the case in Virginia in a depo-
2 sition that could be flown and mailed to the
3 English Court for it to read. There has been no
4 similar according of due process that we have given
5 her by her activities in England, for whatever
6 reason they have chosen.

7 And, here most recently the Court did
8 order, after a hearing, that it would give the
9 father visitation beginning July 23rd of '82 and
10 ending August 29th, clearly stating that he would
11 have to return the children to England but that
12 she would have to send the children over here.
13 She's again thumbed her nose at this Court. She's
14 refused to do anything to send the children here.
15 We are prepared to send the tickets over there so
16 that the father would bear the expense per the
17 Court Order sending the children over here. I
18 contacted her counsel and was initially told that
19 she would obey the Court's Order and have the
20 children sent over here. Just about the 10th or
21 12th of July of this year I was told that she was
22 not going to send the children over here and, so,
23 of course, the father did not go to the expense of
24 buying the tickets, having been told that at the
25 last minute Sheila Middleton would not be sending

1 the children over here, and all we have heard
2 since is a negative response, in effect, that she
3 was not going to send the children, so again she
4 is in contempt of Court.

5 It's almost too numerous to bother men-
6 tioning each one of them. It's just a continual
7 pattern of contempt of this Court, no question
8 about that, and case after case has indicated that
9 that is clearly not the right atmosphere to raise
10 children in.

11 In addition, it is clearly wrong, as my
12 brief indicates, to deny the children access to
13 their father, whether it be at Christmas time or
14 in the summertime; that she is acting totally con-
15 trary to the Court's Orders and contrary to their
16 interest, in a general sense. Even if there were
17 no Orders, she should not be denying visitation.

18 The best case that I know of on that point
19 is the Hughes case which says that children need
20 both parents all the time and not some of the time,
21 essentially, and that's part of my brief.

22 I think that's enough of a summary or
23 kind of an opening statement. We would ask that
24 the Court enter an Order, and I have a proposed
25 Order here, which is the original of a copy which I

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

8.

1 forwarded to the Court and, I believe, to opposing
2 counsel earlier which recites some of these facts,
3 and perhaps the Order could be improved by adding
4 to it some of the things that have happened since
5 I drafted that Order, but aside from that I would
6 ask that the Court enter an Order granting the
7 father custody at this time and specifically
8 stating that child support would cease at this
9 time.

10 I would proffer to the Court that his
11 intention would be to take that Order to England
12 and ask the High Court of England, The Family
13 Division, to enter an Order similar to that and
14 order specifically that she turn the children over
15 to him and send them over here to his custody.
16 He does intend to follow through. We are making
17 a very serious effort here, and I think based upon
18 our research that the English Court will grant
19 comity or effectively full faith and credit to
20 Your Honor's Order granting him custody and that
21 it would do so rather post haste.

22 I think that we certainly in our pro-
23 ceedings here in Virginia have bent over backwards,
24 more than so, to give her due process, and our
25 courts--if the roles were reversed, our courts would

1 give the English Court comity and grant an Order
2 here in Virginia similar to an English Court Order,
3 if the conditions in the Oehl case were met, giving
4 her custody here in Virginia should she be here in
5 Virginia or the father be there with custody or
6 he be here and she be there with the children,
7 providing the conditions of that case were met
8 which were basically notice and due process con-
9 ditions.

10 So, I would also ask that the Court now
11 enter an Order which it has taken under advisement
12 a couple of times holding her in contempt for the
13 numerous contempts that she has exhibited, including
14 the most recent one that was taken under advisement
15 on December 8th as far as her contempt of the
16 September 2nd Order. It was taken under advisement
17 again on December 29th, and I think the time has
18 come to deal with that matter.

19 Mr. Butler has agreed that we could at
20 least have the Rule to show cause that I have filed
21 here today heard today. After we discussed it, I
22 gave him notice on the telephone to the essence of
23 it; that is, that we would be speaking to holding
24 her in contempt for her denial of the summertime
25 visitation which was ordered by this Court by its

1 Order that was signed on July 23rd, and he agreed
2 that we could have that matter heard today.

3 THE COURT: All right, sir. Mr. Butler,
4 do you wish to respond or make opening statements?

5 MR. BUTLER: Are you going to put on some
6 evidence today, Mr. Hall?

7 MR. HALL: Yes, I think it would be very
8 appropriate.

9 MR. BUTLER: I would prefer to save it for
10 closing.

11 THE COURT: That would be fine.

12 MR. HALL: Call Mr. Butler first.

13 MR. BUTLER: You mean Mr. Middleton, I
14 hope.

15 MR. HALL: I'm sorry.

16
17 NOTE: At this point the witnesses in the
18 case are sworn by the Court, whereupon the hearing
19 is resumed as follows:

20
21
22 BRIAN C. MIDDLETON, the plaintiff,
23 testifying in his own behalf, having been first duly sworn,
24 testifies as follows:
25

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Middleton - Direct

11.

DIRECT EXAMINATION

BY MR. HALL:

Q State your full name to the Court, please.

A Brian C. Middleton.

Q And, your address, please.

A 4463 Eden Mae Court, Annandale, Virginia.

Q That's in Fairfax County, Virginia?

A Fairfax County.

Q All right. And, you have lived there about how long?

A In Northern Virginia, about four years.

Q Okay. And, you are still working for the same employer?

A Yes, I still work for United Virginia Bank.

Q You are Senior Vice President there?

A Yes.

Q And, would you indicate to the Court what, generally, was the conversation that you had with your former wife, Sheila Middleton, on June 27th, 1982.

A Yes. I called her as a result of getting notice from Mr. Hall's office on the Friday, preceding Friday, that Sheila Middleton was going to get the releases

Middleton - Direct

12.

1 from the English Court, so I was calling her to make arrange-
2 ments with her about having the children here. That was my
3 reason for calling.

4 Q What did she indicate in terms of her
5 making some effort to obtain an English Court Order that
6 would allow the children to come over here for the period
7 of July 23, '82 to August 29, '82?

8 A She said she would obtain the releases.

9 Q Okay. What did she say in terms of her
10 attitude towards obeying this Court's Order?

11 A When I stated the fact to her that the
12 Court in Virginia, Judge Gates, had jurisdiction over the
13 custody of the children, she stated "I accept that".

14 Q Did she indicate whether or not she would
15 follow this Court's Order in terms of following its visitation
16 Order for the summer of '82?

17 A She said she would as long as--well, let
18 me go back.

19 Her concern was the return of the child-
20 ren, that she wanted assurances that the children would be
21 returned, and I informed her that Judge Gates' Order included
22 for a round trip ticket and the return of the children, and
23 her response to that was if the Judge, meaning Judge Gates,
24 would tell her that and give her the assurances then every-
25 thing would be okay.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

13.

1 Q Meaning that she would or would not send
2 the children back?

3 A She said she would send the children if
4 she got absolute assurance from Judge Gates that the children
5 would be returned.

6 Q And, by that she meant by notice that a
7 Court Order had been entered to that effect?

8 A No, I took it that actually the Judge
9 would call her and make those promises, is the way it came
10 across over the phone, because we talked about Court Orders
11 and she didn't place much credence in that.

12 Q Well, did she indicate that she would
13 follow a Court Order or not in that regard?

14 A (pause)

15 Q Did she make any conflicting indications?

16 A No, she didn't make any conflicting
17 statements about not following the Order. The vein of her
18 conversation was that she would get the necessary releases
19 from the English Court, and she promised faithfully that she
20 would send them.

21 Q Have you ever been told by your children
22 in conversations that they do not want to come to the U.S.?

23 A No. Both children stated first that they
24 wanted to come here for a vacation for the summer.

25 On the second point about whether they

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

14.

1 still want to stay here, Angela had a conversation with
2 Nichole specifically about that, so you will have to ask
3 her.

4 When I talked to Claire about her coming
5 here, she stated to me that she is now confused about where
6 she wants to live. In fact, she said "I don't know whether
7 I want to stay now", and we had a long conversation about
8 that, so--

9 Q Was her mother there in the room with her
10 when she had that conversation?

11 A Oh, yes. It took them no more than one
12 second to get to the phone when she put it down, so obviously
13 she was in the same room.

14 Q All right.

15 A So, Claire has gone from what she is
16 stating now is she is confused and she really doesn't know
17 where she wants to live.

18 She denied categorically that she ever
19 wrote a letter to the Court, and I questioned very care-
20 fully on that, and for a long time I questioned on that one
21 issue, and she absolutely denies that she ever wrote a letter
22 when I asked her.

23 I haven't seen the letter. I've never
24 been privy to that, so I don't know whether the letter is
25 written in her hand or what. If I saw the letter, I could

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

15.

1 tell.

2
3 THE COURT: It's in the file.

4 MR. HALL: Your Honor, there is a letter
5 in the file. I saw it this morning.

6 THE COURT: Is it in the second file
7 or which one?

8 MR. HALL: It's in where the transcripts
9 of the hearings are, near those.

10 THE COURT: Okay.

11 MR. HALL: It may be inside of the tran-
12 script. Here it is.

13 THE COURT: Okay. You can let him read
14 it.

15 MR. BUTLER: Let the record indicate he's
16 been shown the letter.

17
18 A (continuing) That looks to be her
19 writing.

20
21 THE COURT: It's her handwriting?

22 THE WITNESS: Yeah, that's her handwriting,
23 but she just got very upset when I talked to her
24 about it and just denied categorically she ever
25 wrote it when I asked her.

Middleton - Direct

16.

1 Q (continuing) Okay. Is the home that
2 you are living in now the same home that you testified to
3 in your transcript about--

4 A Yes. My circumstances haven't changed
5 at all regarding home life, the schools they would attend,
6 the same children who were their friends a year ago are still
7 there, are still coming to the door asking where she is.
8 Every time I go over to the pool there is a crowd of children
9 wanting to know when they are coming, when are they going
10 to be here, so that hasn't changed.

11 Q Okay. Did the children come this July?

12 A No.

13 Q Have they come at all this summer?

14 A No.

15 Q Have you even been invited to come over
16 there to see them?

17 A No.

18 Q What has happened in terms of the telephone
19 calls themselves that you have been making generally to your
20 children? How would you describe them just generally?

21 A I would describe them as very hindered.
22 They are afraid to talk openly with me.

23
24 MR. BUTLER: Judge, I object. I can't
25 let the hearsay go on but so long. Now he is not

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

17.

1 only testifying as to hearsay but he's also charac-
2 terizing not what is being said but what he thinks
3 really is being meant by what is being said and what
4 his impressions are of their attitude and tone,
5 and I don't think that that's admissible under any
6 concept of evidence.

7 THE COURT: I agree with you. I sustain
8 the objection.

9
10 A (continuing) If I may clarify, in the
11 transcript of the telephone conversation of June 27 you will
12 see in both instances that now the children can't hear on the
13 telephone until I spoke into the telephone and told whoever
14 else was on the line to get off it, and then the children
15 have no problem in hearing.

16 That happened both in my conversation with
17 the girls, and it happened in Angela's conversation with the
18 girls.

19 In the conversation with Sheila you will
20 see there is no trouble at all, and that is on the transcript,
21 and I base my other statement based on that.

22 Q Do you have a copy of the tape and of the
23 transcript of that telephone conversation?

24 A I do. I have a copy of the--I have the
25 original tape, and I have copies of the transcript of that

Middleton - Direct

18.

1 tape with me.

2 Q Will you show me the transcript.

3
4 MR. HALL: These are identical copies.
5 I would like to move the introduction of this.

6 THE COURT: Any objection?

7 MR. BUTLER: I don't want to take a whole
8 lot of time, Judge, but, yes, certainly I object.
9 This is not admissible into evidence, a transcript
10 of a phone conversation that was taped probably
11 without the knowledge of the people on the other
12 end.

13 THE COURT: Why is that inadmissible?

14 MR. BUTLER: It's hearsay.

15 THE COURT: Well, if she is a party to
16 the proceedings--

17 MR. BUTLER: Well, without questioning
18 the genuineness of it, as to the children it would
19 be, and they are not under oath.

20 THE COURT: Well, the children would be,
21 that's exactly right, but not Mrs. Middleton, the
22 former Mrs. Middleton. As to Sheila Middleton,
23 it wouldn't be hearsay. She is a party to the
24 proceedings and it's an admission.

25 MR. BUTLER: That's correct. My only

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Middleton - Direct

19.

1 concern is the genuineness of it, and I would like
2 to voir dire him on that.

3 THE COURT: All right, sir, you may do
4 that.

5
6
7 BY MR. BUTLER:

8
9 Q This was taped on June 27th, 1982 when
10 you placed a call there. Is that correct?

11 A Correct.

12 Q And, the people you spoke to didn't know
13 this was being taped, did they?

14 A No.

15 Q And, subsequently you had this tape
16 transcribed by someone.

17 A Yes.

18 Q I believe Mrs. Saffa, your secretary.

19 A Yes.

20 Q And, you do still have the tape?

21 A Yes.

22 Q Approximately how long is it?

23 A About 40 minutes.

24 Q Are there any parts of the tape that are
25 inaudible?

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

20.

1 A Yes. The tape has got--you see, there
2 is a side A and a side B. I was so involved in the conver-
3 sation that the tape ran out during my conversation with
4 Sheila and with Nichole.

5 When Angela spoke--came to the telephone
6 to speak to the girls--she noticed the tape had run out and
7 reversed the tape so that it's not a full 100 percent of the
8 conversation.

9 Q So, in the transcript where Angela is
10 indicated as speaking--

11 A Which is the beginning of side B--that
12 is the point.

13 Q Okay. The tape is back on, obviously,
14 "end of side A tape", but it's not the end of the conversa-
15 tion and there is some conversation that took place during
16 that time that is not in the transcript?

17 A Correct.

18 Q Approximately how long?

19 A Probably about 10, 15 minutes.

20 Q What subjects were being discussed during
21 that 10 or 15 minutes?

22 A My conversation was with Nichole, primari-
23 ly. You will see that there is no recorded conversation of
24 me talking to Nichole, and it was me talking to Nichole asking
25 her about coming here this summer.

Middleton - Direct

21.

1 Q Could it have been 17 minutes? That's
2 the gap in the Watergate tape.

3 That's all I have, subject to hearing
4 the tape for my own satisfaction.

5
6 THE COURT: Yes, for the accuracy of it.

7 MR. BUTLER: I'm satisfied as to the
8 accuracy of it with the understanding that there
9 is a gap in there.

10 MR. HALL: We have no objection to your
11 hearing the tape.

12 MR. BUTLER: Well, for the sake of--

13 MR. HALL: It's here.

14 MR. BUTLER: Pardon?

15 MR. HALL: It's here.

16 MR. BUTLER: That's up to the Judge. As
17 far as I'm concerned, I am not asking to hear the
18 tape.

19 MR. HALL: I would move its admission,
20 at least the part that's relating to Sheila.

21 THE COURT: I think the part relating to
22 Sheila Middleton is admissible. I don't believe
23 the other parts would be admissible.

24 MR. BUTLER: I would ask that those pages
25 of the transcript where the children are speaking

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Middleton - Direct

22.

1 be removed so that they are not part of the record
2 in any way.

3 THE COURT: Well, they will not be part
4 of the record.

5 All right. Anything else?

6 MR. HALL: No further questions of this
7 witness.

8 THE COURT: All right. Do you wish to
9 examine him, Mr. Butler?

10 MR. BUTLER: No, sir.

11 THE COURT: All right.

12
13 WITNESS STOOD ASIDE.

14
15
16 MR. HALL: I would like to call Mrs.
17 Middleton, if I may.

18
19
20 ANGELA MIDDLETON, a witness called at the
21 instance of the plaintiff, having been first duly sworn,
22 testifies as follows:
23
24

25 DIRECT EXAMINATION

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

23.

1 BY MR. HALL:

2
3 Q Would you just state your name and
4 address, please.

5 A Angela Middleton, 4463 Eden Mae Court,
6 Annandale, Virginia.

7 Q Just generally, would you indicate whether
8 or not the children did come in July of '82 to visit with
9 you and your husband.

10
11 MR. BUTLER: We will stipulate that,
12 Judge, that they did not come.

13 THE COURT: Yes.

14
15 Q (continuing) Has there been any sub-
16 stantial change in your household since you and other wit-
17 nesses testified here last fall?

18 A No.

19 Q In other words, you are still in the same
20 home, the same locality, essentially the same job?

21 A Yes.

22 Q And, you also work for United Virginia
23 Bank?

24 A That's right.

25 Q What are the ages of the children at this

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

24.

1 time?

2 A Nichole is 10 and Claire is 12.

3 Q Okay. Would they both be 11 and 13,
4 respectively, next month?

5 A Yes.

6
7 MR. HALL: I have no further questions.

8 THE COURT: All right, sir. Mr. B

9 MR. BUTLER: No questions.

10 THE COURT: All right, sir.

11
12 WITNESS STOOD ASIDE.

13
14
15 MR. HALL: Your Honor, that would conclude
16 our evidence for today. I would like to conclude
17 the case and I would ask the Court to enter an
18 Order granting the father custody. If the Court
19 has had a chance to read my brief, I will just--

20 THE COURT: Yes, I read the brief.

21 MR. HALL: I think the brief clearly
22 states this is a very, very clear case where the
23 father should get custody in the best interest of
24 the children.

25 She is not only in violation of many,

1 many Court Orders, which is treated in the brief
2 as being a ground for switching custody, but in
3 the best interest of the children, not only because
4 of contempt of Court but in violation of the
5 natural right and a Court ordered right of visita-
6 tion, is also a ground for switching custody.

7 Having Mr. Davies there on numerous
8 occasions, having sex with him with the children
9 there, is another ground for switching custody
10 from her as the custodial parent to the father.

11 And, there is no indication in the
12 record of his doing anything along the lines of
13 the things that she has done. In addition, he
14 offers a very, very warm and stable home, the same
15 home for four years, the same job for many more
16 years, essentially, although there has been some--
17 he is working for the same company, but there is
18 an improvement in his job status. He is now
19 Senior Vice President of United Virginia Bank. He
20 offers a very warm and stable home.

21 I think it would be very consitent with
22 the White v. White case in Virginia, and I think
23 the Clark case, to give him custody. I think he's
24 also shown himself to be a very interested father.
25 A lot of fathers would simply give up faced with

1 all the difficulties that he's had in seeing the
2 children, but yet he has gone year after year,
3 in the early years going to England to see the
4 children, and later when they were able to travel
5 bringing them here at his expense always, arranging
6 for them to have friends here. They have obviously
7 very close friends here in Virginia. Despite the
8 thousands of miles of distance here he's been able
9 to overcome those problems. He offers a home that
10 is certainly adequate in size--I believe it's
11 three bedrooms--there is a swimming pool nearby,
12 there are playgrounds nearby, there are excellent
13 schools nearby, it's in one of the nicest communi-
14 ties, really, in the world. There are more than
15 adequate colleges and museums and other facilities
16 in the Washington area, the zoo, many, many things
17 which would contribute to these childrens' up-
18 bringing and their education and opportunities
19 being offered to them here that far surpass any-
20 thing that they would have in Northern England
21 where they are, and the father is very familiar
22 with that area because he was raised there, he is
23 quite familiar with it and has so testified.

24 So, I think all things considered it is
25 clearly in the best interest of these children to

1 be awarded the custody of their father. There
2 simply is not a situation here where things are
3 about equal and therefore custody should be left
4 with the mother.

5 The legislature here very recently has
6 passed an amendment to Section 20-107 which says
7 that any preference or inference in favor of the
8 mother or any parent in a custody case no longer
9 applies. Now, I know that that legislation was
10 not effective as to pending matters, but it still
11 is an expression of the will of the legislature
12 and therefore the Commonwealth, and I think it's
13 something worth mentioning for that reason. The
14 Governor has signed it; it is now law.

15 In general, even if we don't have that,
16 we can fall back upon 31-15, our section number of
17 that nature, stating there should be no preference
18 in favor of the mother or the father in a custody
19 matter. That certainly is the import of the several
20 U. S. Supreme Court cases, *Frontiero*, *Reed v. Reed*,
21 and one other--I believe it's *Weinberger v. Weisen-*
22 *berger*, or something of that variety--which has made
23 it clear that there shall be no preference based on
24 a sexual preference, that such sexual preference
25 would have to be considered as a violation of our

1 due process and equal protection clauses of the
2 Fourteenth Amendment of the U. S. Constitution.

3 So, for all of those reasons there clearly
4 should not be any preference in favor of the mother.
5 In any event, things are clearly unequal, and that
6 inequality shows that the father offers the better
7 home than the mother does, and it is better for
8 the children to be with their father at this time.

9 THE COURT: Mr. Butler.

10 MR. BUTLER: Judge, procedurally let me
11 make one thing clear. The record, I think, vouches
12 for it, but we have not abandoned the jurisdictional
13 question. What happened at some point was under
14 the Uniform Child Custody Jurisdiction Act. it
15 appeared that the proper objection we had was not
16 to the Court's jurisdiction, as we initially objected,
17 but to the fact that under that act there were ce-
18 tain standards by which a Court having continuing
19 jurisdiction should defer to another court because
20 it is a more convenient forum, and we still main-
21 tain that objection for this Court not deferring
22 to the courts in England because they are more con-
23 venient under the standards set forth in the
24 Uniform Child Custody Jurisdiction Act, but you
25 have ruled that you have taken jurisdiction, and

1 in so doing I know and I fully appreciate that you
2 put yourself in a very difficult position, because
3 I don't think the question here is the best interest
4 of the children, but I think you are having to
5 struggle with the best interest of the children
6 versus the best interest of the Court and the law
7 of this State and this country, and I fully appreciate your dilemma.

9 I believe the evidence is in conflict
10 because of the home studies that were done and as
11 to the childrens' preferences, as to the childrens'
12 adjustment to their situation in England where
13 they, apparently, are thriving and are very successful and happy, and on the other hand Mr.
14 Middleton's testimony before Your Honor, and his
15 witnesses, as to the material things that they can
16 present for the children and have available here
17 in Virginia, but Mrs. Middleton has done some things
18 that are a slap in the face to the Court from the
19 standpoint of not complying with certain orders.

21 Whether she could have done so or not,
22 we have not been in the position to present evidence
23 of that where it regards expenses, where it regards
24 problems with the Court in England.

25 With respect to the English Court, I

1 would like to file today an opinion from my co-
2 counsel there as to how this system works and the
3 fact that she would have to go through the English
4 Courts to seek leave to do some things which in
5 this country you don't have to do. If both
6 parents, for example, agree to do something, you
7 know, the Court is in the position of saying
8 "Well, who is going to complain as long as the
9 childrens' best interests are not contrary to
10 that?" So, what the English system is is that the
11 Court steps in locus partitus and the Court makes
12 those decisions. Well, what has happened is Mrs.
13 Middleton has sought the help of the English
14 Court while this Court was still maintaining its
15 jurisdiction and gotten herself into that quagmire.
16 We don't deny that, but that's the way it was be-
17 cause she was taking a position consistent with
18 her legal position; that is, that the English
19 Court should have the say so in this matter.

20 So, she got herself into a tarbaby situa-
21 tion over there and has not been able to do some
22 of the things that this Court has asked her to do,
23 and I would like to offer that. This is an
24 opinion--and, I'll have to refer to co-counsel's
25 letter--it's Mrs. 518 Moir, whose signature you may

1 not be able to read, who has written the opinion on
2 behalf of the Barrister in this case, and this was
3 forwarded to me by Mr. Golder, who is co-counsel
4 in England who I have been corresponding with by
5 letter and by telephone.

6 This letter explains what the English
7 system is, basically, and what Mrs. Middleton would
8 have to do to be able to let the children come here,
9 to let them be deposed, et cetera. We have told
10 you that all along, and this is nothing new to you,
11 I realize, but I just wanted to have a formal
12 opinion for the record.

13 THE COURT: That's not much different from
14 what ours is.

15 MR. BUTLER: Well, the impression I get,
16 though, is they have to go to the Court and ask
17 if anything can be done with the children such as
18 letting them leave the country.

19 THE COURT: Did she go to the Court and
20 ask that the children be allowed to visit this
21 summer?

22 MR. BUTLER: No. I don't know why,
23 though.

24 THE COURT: Well, she's done everything
25 she possibly could do to keep from letting this

1 Court make a decision based on the evidence, and
2 the only evidence I have is the evidence that's
3 been presented by Mr. Middleton and whatever evi-
4 dence has come through from other sources, that
5 really I wanted to have her testify, I wanted the
6 children to testify, and I needed to have their
7 wishes and feelings about the change of custody,
8 and I was very sympathetic to her case if she
9 would present it, but she doesn't present it, she
10 doesn't give me an opportunity to make a decision
11 about that, so I have to take what he says to be
12 true.

13 MR. BUTLER: I believe there is other
14 evidence in the form of the home study which you
15 asked for and ordered that is contrary to some
16 of the testimony that Mr. Middleton has offered.

17 THE COURT: Yes, I have considered the
18 home study that was made by the English Court, but
19 I do have some difficulty with the Court in England
20 taking jurisdiction of the Court's case here, that
21 we have jurisdiction, and I determined I did have
22 jurisdiction, and the Court there is an inferior
23 Court to this Court, and it looks like to me what
24 she has done is done everything she could do to
25 throw up a road block so that this Court can't

1 proceed.

2 We made it convenient for her to give her
3 deposition in England; counsel for Mr. Middleton
4 was there available to take her deposition. She
5 wouldn't allow her deposition to be taken, she
6 went to Court and had an injunction restraining him
7 from taking her deposition. She hasn't done any-
8 thing, she's just been very contemptuous of this
9 Court in every respect.

10 MR. BUTLER: That's all I have to offer,
11 not having, as the Court observed, the opportunity
12 to present evidence in her behalf.

13 THE COURT: Well, the Court makes the
14 finding of facts as specified by Mr. Hall, and I
15 think the Order should specify those and should
16 embody all of those facts that you have recited
17 today, and they are the facts of the case. They
18 are the only facts that I have. That's the only
19 evidence I have, and the Court makes the decision--
20 I determine that it's in the best interests of these
21 children that the custody be granted to the father,
22 and I'm going to hold her in contempt of Court.
23 As you indicated in your proposed Order, she's had
24 every opportunity to purge herself of contempt by
25 presenting her case to this Court, which she has

1 refused to do. She's indicated to the Court in the
2 Affidavit that she would comply with the Court's
3 Order, that she would send the children this summer,
4 and to me that's one of the determining factors of
5 any decision as to the best interests of the
6 children, that they be in the custody of a person
7 or a parent who has respect for Court Orders from
8 a Court that has jurisdiction.

9 I think she is contemptuous of this Court,
10 and a person who has that attitude I don't think
11 is the proper person to have the custody of these
12 children.

13 MR. BUTLER: Let me ask the Court about
14 one finding of fact that was stated by Mr. Hall.

15 He talks about her having the knowledge
16 of your Order of September 2nd, 1981.

17 THE COURT: I determined that she did
18 have knowledge.

19 MR. BUTLER: I just wanted the Court to
20 understand that the only evidence was a telephone
21 conversation with an unidentified individual.

22 THE COURT: I understand. It was her
23 agent.

24 MR. BUTLER: That was what the individual
25 said.

1 THE COURT: That's true.

2 MR. BUTLER: All of that is hearsay, and
3 I don't think there is any--

4 THE COURT: Well, I think her conduct
5 and her attitude and what has transpired subsequent
6 to that indicates that she had knowledge of it.

7 MR. BUTLER: Well, but, the time sequence
8 --

9 THE COURT: Even if I don't think that,
10 I still think that everything that has happened
11 since then has been contemptuous.

12 MR. BUTLER: It's hard for me to argue
13 against that, but with that September 2nd Order,
14 as you will recall, it was late in the afternoon,
15 the children had already been picked up, and they
16 were on their way to wherever they were going--
17 in fact, it was Canada and not Florida--and the
18 only evidence that she knew of the Order was not
19 from any statements that she made at any time.

20 THE COURT: I know it was the person he
21 talked to on the phone--

22 MR. BUTLER: Right.

23 THE COURT: --who was with her.

24 MR. BUTLER: Who said he or she was with
25 her.

1 THE COURT: All right. I think she had
2 knowledge of it.

3 Will you embody that in your Order?

4 MR. HALL: Yes, Your Honor.

5 THE COURT: And, I think I should issue
6 the rule, as you said here. Do you want to enter
7 that as of today?

8 MR. HALL: Yes, Your Honor.

9 MR. BUTLER: Let me ask you one thing
10 about that, Judge.

11 What does the Court feel about the
12 prospects of her coming and appearing to show
13 cause? I mean, is there any need for her to be
14 given that opportunity to show cause?

15 THE COURT: I thought that's what this
16 rule did. Well, she wouldn't come, would she?
17 What it is--the rule is to show cause today for
18 her to be here today, and that's what I understood
19 you agreed to.

20 MR. BUTLER: Right. I'm sorry.

21 THE COURT: She's not going to come,
22 anyway. She is not going to do anything we want
23 her to do.

24 MR. BUTLER: It was my understanding he
25 was asking her to come later.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

37.

1 THE COURT: Well, reading the report of
2 the English Court, the investigating officer, I
3 disagree with his findings that this man was staying
4 there every fortnight on a regular basis and she
5 admitted that she had sexual relations with him. It is
6 not what should be done by a parent who has the
7 custody of the children. I think all the facts
8 indicate that she's not a proper person to have
9 the custody of the children.

10 MR. BUTLER: On that point I disagree with
11 respect to the citation of the Brown case in support
12 of it, because Brown says not just that we still
13 hold that that's immoral, which the case does, but
14 it goes further and says it must be shown that this
15 has an adverse effect upon the children.

16 There is just no inference to that case
17 that you can draw from these facts; that is, that
18 it's contrary to the best interests. In this case
19 the inference was the children were doing fine and
20 no relationship with Mike Davies had any adverse
21 affect upon them.

22 MR. HALL: I disagree with that inter-
23 pretation of the Brown case. I don't think the
24 Brown case says you have to find that at all. In
25 fact, the Brown case has one statement in it which

1 is a quote from the Beck case out of the Southern
2 Reporter--I don't know which state it was; I think
3 it was Louisiana--to the effect that the Court
4 would necessarily find or assume that the children
5 are being harmed by being exposed especially
6 repeatedly to the custodial parent having sex with
7 a member of the opposite sex in the home where the
8 children are staying at the same time.

9 THE COURT: All right. Now--

10 MR. BUTLER: I think the Doe case would
11 show it's a harmful effect if they have sex with
12 a person of the same sex.

13 MR. HALL: Well, I don't see any need to
14 argue that in this case.

15 THE COURT: I don't think that's involved
16 in this case.

17 What I have done is this: On this rule
18 to show cause, as I understand the procedure, you
19 have agreed that this can be heard today.

20 MR. BUTLER: Right.

21 THE COURT: And, that prior notice was
22 given to you of the date of the hearing.

23 MR. BUTLER: All right. So, you are
24 inserting the date of the 23rd of August?

25 THE COURT: I am entering it as of that

1 date, but I have included "seen and agreed to;
2 prior notice was given to counsel of the date of
3 this hearing", and if you agree that that's right,
4 then you sign it.

5
6 NOTE: At this point counsel for the
7 defendant signs the above-referred to Order,
8 whereupon the hearing is resumed as follows:
9

10 THE COURT: All right. And, you can
11 prepare the proper Order. I think a \$100.00 fine
12 and 10 days in jail is a normal contemptuous
13 citation against her for not only the September
14 hearing but every other contempt that she's been
15 involved in, too.

16 MR. HALL: All right, Your Honor. Am I
17 understanding correctly that you would hold her
18 in contempt for the various ones we have talked
19 about but the total fine would be \$100.00 and the
20 total jail time would be 10 days?

21 THE COURT: That's right. And, I have
22 provided, also, that she can purge herself of
23 contempt by having the children sent here in
24 accordance with this Court Order. If she complies
25 with it now I won't punish her. I will agree to

1 suspend it if she would comply with the conditions
2 of this Order.

3 All right. Anything else, gentlemen?

4 MR. HALL: Yes, Your Honor. I would ask
5 that you decide on a date by which she must turn
6 the children over to the father and where.

7 I think we need to be--

8 THE COURT: When does school start?

9 MRS. MIDDLETON: The 30th of August.

10 THE COURT: The 30th of August? I think
11 she ought to turn them over by the 29th of August.

12 MR. HALL: Where would you suggest?

13 THE COURT: That she put them on a plane
14 and send them to Mr. Middleton and he receive them
15 at Washington-Douglas.

16 MR. HALL: I proffered he would pay for
17 the transportation costs.

18 THE COURT: And, he pays for the trans-
19 portation. All right.

20 MR. HALL: Thank you.

21 MR. BUTLER: Will this be a Final Order?

22 THE COURT: I think so. It won't be
23 final for ya'll, but it will be final for me. And,
24 if you can draft that and get it back down here as
25 soon as you can--

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

41.

1 MR. HALL: Yes, Your Honor. I will try
2 to get it here by tomorrow.

3 THE COURT: That will be fine. And,
4 you note your objection.

5 MR. BUTLER: Yes, sir. And, I will
6 contact my counsel in England to advise them of
7 the Court's Order from the bench today.

8 THE COURT: And, it's effective as of
9 today.

10 MR. BUTLER: Yes, sir.

11 THE COURT: All right. Thank you very
12 much, gentlemen.

13
14
15 HEARING CONCLUDED.

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF COURT REPORTER

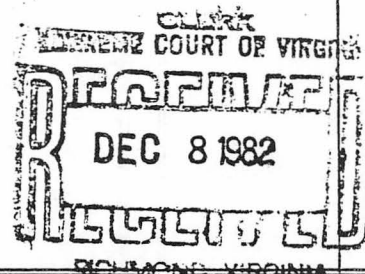
I, Heidi L. Jeffreys, hereby certify that I was the court reporter at the time of the hearing here, on August 23, 1982, in the Circuit Court of the County of Chesterfield.

I further certify that the foregoing TRANSCRIPT is a true and accurate record of the testimony and other incidents of the hearing herein.

Given under my hand this 30th day of August 1982.

Heidi L. Jeffreys, RPR, CP
s/original signed

HEIDI L. JEFFREYS, RPR, CP



1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

3
4 * * * * *

5 BRIAN C. MIDDLETON *

6 -VS- *

In Chancery No. 3305-77 .

7 SHEILA JOAN MIDDLETON *

8 * * * * *

9
10 TRANSCRIPT of the hearing in the above-styled
11 matter when heard before the Honorable Ernest P. Gates,
12 Judge, on October 4, 1982.

13
14
15
16
17
18
19
20
21
22 APPEARANCES

23 Donald K. Butler, Esquire, of Morano & Butler, 526 N. Boulevard,
24 Richmond, Virginia, 23220, counsel for the defendant;

25 The plaintiff, Brian C. Middleton appeared pro se.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

2.

1 NOTE: Court is convened in chambers at
2 9:04 o'clock a.m., as follows:

3
4 IN CHAMBERS

5 THE COURT: All right.

6 MR. BUTLER: Your Honor, I reserved this.
7 extra time simply because I could not get Mr.
8 Hall to agree to signing the order to make the
9 transcripts a part of the record in this case. He
10 has the originals of the transcripts. I have the
11 copies of five transcripts of hearings. These are
12 dated--

13 THE COURT: Pursuant to hearings in this
14 case?

15 MR. BUTLER: Yes, sir. I would like to
16 make these signed copies. I went and got them
17 signed by the court reporters, as part of the
18 record in this case.

19 THE COURT: Well, Mr. Hall is not going
20 to be here this morning?

21 MR. MIDDLETON: No, Your Honor. I would
22 like your permission to represent myself.

23 THE COURT: Yes, sir.

24 MR. MIDDLETON: All right. I would also
25 like your permission to have this hearing made a

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

3.

IN CHAMBERS

part of the record.

THE COURT: All right. You want this made a part of the record also?

MR. MIDDLETON: Yes, sir.

Your Honor, I would ask the Court to grant relief to the plaintiff in this case in that we now have further gross contempt of this Court's order shown on the part of the defendant since our hearing on August 23rd which gave me custody of the children, which went into effect on August 24th, and ordered that the children be placed on a plane by August 29th.

The defendant has now cut off all contact with the children, as far as I'm concerned. I cannot reach them at all. I've been without contact of the children since June 23rd.

What I would ask is your permission, Your Honor--I wanted to have your permission to hear this motion prior to hearing the motion to release the transcripts.

THE COURT: All right. Well, as far as the transcripts, I think they should become a part of the record, and I so order.

MR. BUTLER: All right, Your Honor.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

4.

1 Could I ask--I see there are some trans-
2 cripts in your file. Could you tell me which ones
3 they are so I could just supplement those with the
4 other three?

5 THE COURT: Well, the transcripts of the
6 telephone conversation--that is part of the report,
7 and that was made an exhibit--

8 MR. BUTLER: Right.

9 THE COURT: Now, the other ones that I have--
10 the ones that you are talking about it looks like
11 there are--December 31, which is the transcript of
12 matters on December 29, and then I have a transcript
13 of a hearing on December the 8th, 1981.

14 MR. BUTLER: Which was filed on January
15 6th of '82?

16 THE COURT: That is correct.

17 MR. BUTLER: So could I then add to that
18 the transcripts of the hearings on September 22nd,
19 1981--

20 THE COURT: All right.

21 MR. BUTLER: With the notation--I believe
22 the transcript says the hearing was before Judge
23 Murphey. I'm sure that they've all been before you.

24 MR. MIDDLETON: That was correct.

25 THE COURT: Do you want me to change that?

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

5.

IN CHAMBERS

MR. BUTLER: Yes, sir.

Okay. Then there are transcripts of proceedings on June the 2nd, 1982, and August 23rd, 1982.

THE COURT: I'm going to file them as of today, but the order will be that they will be a part of the record in this case.

MR. BUTLER: I will send an order which I will send to Mr. Hall for endorsement.

THE COURT: You don't have to send it for endorsement.

All right. Okay--is that all?

MR. BUTLER: Yes, sir.

THE COURT: Now, as far as his motion, you don't object to that, do you?

MR. BUTLER: No, sir.

THE COURT: All right, so--fine. Do you want to endorse that, please?

NOTE: At this point Mr. Butler endorses the order tendered by the plaintiff.

THE COURT: Will you communicate that to your client, please?

IN CHAMBERS

MR. BUTLER: Yes, sir, I will send a copy to her.

THE COURT: Well, I think that's indicative of her attitude about the courts in the United States, if she refuses to do that.

All right. Thank you very much. Anything else you want to say?

MR. MIDDLETON: Yes, Your Honor. I was-- what I was asking for here--this order would restore some telephone contact with my children--

THE COURT: I've already entered that. That's been entered without any objection. You know that Mr. Butler is very cooperative in many ways.

MR. MIDDLETON: Thank you, very much.

THE COURT: All right. Then that concludes it.

NOTE: The hearing is concluded at 9:10 o'clock a.m.

RECEIVED AND FILED

* * * * *
HEARING CONCLUDED

OCT 22 1982

536

LEWIS H. VADEN, CLERK
BR

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

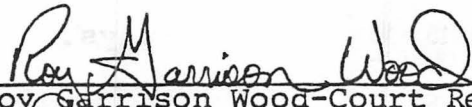
7.

CERTIFICATE OF COURT REPORTER

I, Roy Garrison Wood, hereby certify that I was the court reporter at the Circuit Court of the County of Chesterfield, on October 4, 1982, at the time of the hearing herein.

Further, that the foregoing transcription is, to the best of my ability a true and correct record of the proceedings of said hearing.

Given under my hand this 15 day of October, 1982.


Roy Garrison Wood-Court Reporter

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

3
4
5 - - - - -
6 BRIAN C. MIDDLETON,

7 Plaintiff

8 -VS-

9 SHEILA J. MIDDLETON,

10 Defendant
11 - - - - -

12
13
14 Transcript of the hearing in the above, when
15 heard on September 22, 1981, before the Honorable Ernest P.
16 Gates, Judge, in Chambers.
17
18
19
20
21
22
23
24
25

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

2.

APPEARANCES:

B. Vandenburg Hall, Esquire
4085 Chain Bridge Road - Suite 400
Fairfax, Virginia 22030
Counsel for the Plaintiff

MORANO & BUTLER
526 N. Boulevard
Richmond, Virginia 23220
By: Donald K. Butler, Esquire
Counsel for the Defendant

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

3.

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
Brian C. Middleton	20	45	
Arthur Carlson	50	--	--
Murriel Saffa	58	63	--
Leonard Kroll	64	71	--
Angela Middleton	72	84	87

1 NOTE: The hearing is called at 9:05
2 a.m.

3 THE COURT: This is for a petition for
4 change of custody; is that correct?

5 MR. HALL: Yes, Your Honor. We do
6 have some witnesses in the hallway.

7 MR. BUTLER: Judge, I guess--

8 THE COURT: Do you represent the wife?

9 MR. BUTLER: Yes, sir.

10 MR. HALL: I represent the father. We
11 are seeking a change of custody. If I may briefly
12 give you the facts in the case.

13 The facts are that the divorce was
14 granted here in the County. And, in that divorce,
15 she was granted custody at that time.

16 THE COURT: Yes.

17 MR. HALL: He figured that the children
18 were young then and did give her custody. That
19 agreement was upheld.

20 The children, though, have repeatedly
21 each year been over here. He has been there to
22 visit with them, and has maintained a lot of
23 contact with them by phone calls and so forth to
24 England.

25 Mr. Middleton happens to be one who came

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

5.

1 here from England in 1967. He first worked with
2 Allied Chemical, and then went to work for United
3 Virginia Bank here in the area. When a man, who is
4 his predecessor, died in the Northern Virginia Area,
5 he was asked by the bank to go up there, and is now
6 Vice President dealing with the Operations Section
7 with a substantial number of people working under
8 him, I think 150, a bunch. He is a responsible
9 citizen, and he has remarried. His children get
10 along very well, I think, with his second wife.

11 The children repeatedly each time they
12 have been here have asked him to basically let
13 them stay here. And, he feels in view of their
14 interest, first of all, and their desire is expressed
15 many, many times -- and we have witnesses here who
16 can relate to the Court that that is a fact.

17 He had an agreement with his wife that
18 once they were ten years of age, their wish would
19 control. If they wished to stay here, that would
20 be fine. She, now, at the age of 15, is avoiding
21 it.

22 They were here this summer for the summer
23 visitation. During that period of time, they were
24 very adamant in wanting to stay. He wants them to
25 have the advantage of being U. S. Citizens, which

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

6.

1 they are.

2 He is originally from England, as is his
3 first wife. But, they are entitled to the advantages
4 of being a U. S. Citizen, particularly with regards
5 to the school systems which are much better here
6 than they are in England. He will relate that to
7 the Court.

8 Further, the children are much happier
9 with him. Furthermore, as can be seen by the
10 Request for Admissions, which documents what will
11 be his testimony, based upon an investigation and
12 her admission, she has had one lover after another;
13 not just discretely, but in her home. Mike Davis,
14 for example. I cannot give you all the names of
15 these people coming into the home known to the
16 children. She has even been appearing nude in
17 front of the children with lovers around. She has
18 had numerous people at her home where she has had
19 sexual relations with them with the knowledge of
20 the children, and it is not in their best interest
21 for them to be continued in that kind of atmosphere.
22 She has also gone to the home of at least one, we
23 think two, of her boyfriends and has taken the
24 children with her and had sexual intercourse with
25 the boyfriends there.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

7.

1 She has admitted recently that the
2 children want to come back, and the children have
3 said they wanted to come back, even after being
4 snatched by her and taken to England. But, mama
5 won't let them.

6 We believe that the mother snatched them
7 in order to deprive the Court of their testimony.
8 Their testimony would be very clear, unequivocal
9 that they wanted to remain in Virginia with their
10 father. Their testimony unfortunately is not here,
11 but we do have witnesses here who can relate to
12 the Court that they said, the children said -- and
13 these are children with some maturity -- they said
14 that they wanted to remain with their father. They
15 went on to have a discussion with their mother,
16 when she arrived to snatch them with someone else,
17 we think a private eye and, also, her uncle.
18 Her uncle apparently is very wealthy; she is not.
19 But, they came in and snatched the children at
20 about 1:00 o'clock, I think, in the afternoon one
21 day in late August or early September. I don't
22 remember the exact date.

23 MR. MIDDLETON: The 2nd of September.

24 MR. HALL: At that time, the children
25 made it very clear they wanted to remain here.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

8.

1 When talking with their mother, they wouldn't get
2 in the car and go anywhere until she promised, as
3 she did, that she would return them to their father.
4 Instead, she got them in the car and just took off.
5 We heard later from her that they flew to Philadel-
6 phia and, then -- went to Philadelphia and flew
7 from there to the Buffalo area and drove across the
8 border into Canada, and flew from Canada back to
9 England. They are now back in England and unavail-
10 able for testimony in this proceeding. They have
11 not chosen to be here. The other side has appeared.
12 And, I might also advise that the testimony would
13 be that their agent repeatedly called Mr. Middleton,
14 who did tell them about Your Honor's order enjoining
15 her from leaving the State of Virginia or from
16 leaving the U. S. with the children. She was aware
17 of that before she left, and she is clearly in
18 contempt. Her own agent had knowledge and was
19 calling Mr. Middleton. We are not certain where
20 the agent was, actually the private investigator
21 or uncle. But, in any event, he was representing
22 her and representing to her that the children were
23 still in the U. S. at the time the order was entered,
24 at that time she knew of the order. So, we have
25 filed an additional motion, that is, a petition for

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

9.

1 a rule to show cause and ask Your Honor that she
2 be held in contempt for violation of Your Honor's
3 order.

4 The jurisdictional point I think is
5 covered very, very simply. There is, as we all
6 know, Section 20-107 of the Code, which sets forth.
7 very clearly that it is the duty of the Court to
8 determine custody at the time of the granting of
9 a divorce or annulment. The Andrews case and
10 Forbes case have gone further and enunciated the
11 rule we have abided by for quite some period which
12 says, and I quote, "20-107 which empowers the Court
13 to alter or change the custody of the children,
14 faced in the light of subsequent events. Relief
15 under this statute remains within the Court's juris-
16 diction throughout the infancy of the child involved."
17 That is Andrews versus Geyer, 200 Va., and it was
18 quoted almost verbatim, and the case of Forbes versus
19 Hanes, 204 Va. That case, I have shepardized it
20 as recently as this morning, and it has not been over-
21 turned. Furthermore, 20-107 is basically
22 unchanged.

23 So, that section, coupled with the case
24 law, clearly gives this Court jurisdiction. Further-
25 more, the section upon which opposing counsel relies--

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

10.

1 He has filed a general appearance objecting to
2 jurisdiction. So, she is clearly before the Court.

3 The section in the new UCCJA upon which
4 opposing counsel relies, he, himself, I don't think
5 is entitled to say that that is not, that that
6 overrules Section 20-107. It simply does not.
7 There is nothing there that indicates that.

8 Furthermore, he has not even complied
9 with the statute he is relying on. He has not
10 filed an affidavit. And, I might relate to the
11 Court that because of the wording of Section 20-132,
12 both parties shall file an affidavit simply giving
13 the addresses of the children in the previous five
14 years and relating what other cases of custody the
15 children have been involved in anywhere in any
16 jurisdiction. The language of that statute is very
17 clear; the affidavit shall be filed and the failure
18 to do so has been ruled in one case where the case
19 should be dismissed. There is no Supreme Court
20 decision on that opinion that I am aware of. That
21 has been the way the matter has been defined, because
22 of the clear wording of that statute which would,
23 in fact, dismiss their plea.

24 Furthermore, she is before this Court
25

1 without clean hands because of her snatching of the
2 children after knowing that the Court order had
3 been entered, and I think purposely in order to
4 deprive this Court of the testimony of these
5 children.

6 Her Answer says, in effect, that what we
7 have said about the children's wish is all wrong.
8 We have witnesses who would testify to the contrary,
9 as to what the children have said; not only the
10 father, but unrelated witnesses who are friends
11 and neighbors. Furthermore, the children have many
12 friends that they have gotten accustomed to here in
13 Virginia. They have clearly found it a desirable
14 place and have made it very, very clear to many
15 people that this is the place that they desire to
16 remain in.

17 So, I think that because of their wishes,
18 because the father offers such a beautiful home for
19 them, bought his own home-- He is earning a very
20 substantial salary. He is respected in the community
21 because of his position as a Vice President of a
22 multi-million dollar bank. He is a responsible
23 person with a good education, a BA and MBA. By
24 contrast, his former wife has a very modest job,
25 is living a life where most courts would consider

1 her unfit to have custody of the children. I
2 understand through the pleadings here filed that
3 she has filed something in England and shows the
4 children are wards of the Court. The fact is,
5 we had no notice of that whatsoever. This gentle-
6 man did not appear in any way in England. He had
7 no notice of any hearing as to when it would be,
8 such as that. We have given them various ways of
9 service. She obviously was served. That is what
10 prompted her snatching.

11 In that case whatever happens in England
12 is not entitled to any full faith and credit here,
13 because no notice was served upon him. He did not
14 know of any date of a hearing. I don't think under
15 the recent Oehl case that that case is entitled to
16 any respect at all here, certainly not full faith
17 and credit.

18 Thank you.

19 THE COURT: Did you wish to respond?

20 MR. BUTLER: I have got to.

21 About the only thing he said as fact,
22 Judge, is that my client is of modest means and
23 that Mr. Middleton is just the opposite. But, none-
24 theless, she has been trying, has been getting
25 \$200.00 a month child support since the separation.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

13.

1 The other allegations, of course, are
2 meaty allegations of her moral conduct and that sort
3 of thing, which, according to my client, are untrue.
4 Of course, I can see why they make the allegations
5 because of what they are trying to accomplish here.

6 What we come down to is the matter of
7 judicial points that Mr. Hall pointed out.

8 Judge, the affidavit that he refers to,
9 I believe, is required to confer jurisdictions, and
10 we did not want to do that. So, we did not file an
11 affidavit.

12 We responded to the affidavit because one
13 of the allegations made by Mr. Middleton was that
14 the children are residents of the United States.

15 Well, that gets us down to the aspect of
16 unclean hands.

17 Judge, the arrangement here has been since
18 the separation and divorce for Mr. Middleton to have
19 visitation. As I remember, he visited in England.
20 He has, of course, relatives there. Then, there
21 was an arrangement for the children to spend five
22 weeks with him during the summer. They only get
23 six weeks' vacation in England. So, it gives a few
24 days on either end for the children to adjust for
25 getting ready for school. He had them for the entire

1 vacation. He had them for vacation this year,
2 when my client received notice of proceedings here
3 and then it became apparent that the children were
4 not going to be returned prior to this Court hearing
5 today, because school started, I believe, on the
6 2nd or 1st of September in England and the children
7 had not been returned. He was refusing to return
8 them to her, as it was prearranged.

9 She had custody by order of this Court.
10 So, he is the one-- You can call it child snatching
11 or whatever you want to. What he did is, he simply
12 got the children here and refused to give them up.
13 I guess snatching is not the right word, because he
14 did not take the children from her; he just refused
15 to return them. The same thing.

16 The jurisdictional point here is set
17 forth in the Uniform Child Custody Jurisdiction Act,
18 and I set it forth with reference to the sections
19 in my pleading of jurisdiction.

20 Judge, there are so many points in there
21 that indicates why this Court wouldn't have juris-
22 diction, that it is almost a classic case.

23 Now, Mr. Hall has Shepardized the cases
24 concerning continuous jurisdiction, and I am sure
25 his thorough research has eliminated the possibility

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

15.

1 that there was a Virginia case on the point.
2 There is a Maryland case. When the Uniform Child
3 Custody Jurisdiction Act came into their body of
4 law, they, like Virginia, had the concept of
5 continuing jurisdiction of the courts awarding
6 divorce and awarding custody of the children.
7 They addressed that point, and they said looking
8 at the Uniform Child Custody Jurisdiction Act,
9 that is a specific act, an enabling statute that
10 has got specific guidelines. To that extent, it
11 is inconsistent with the continuing jurisdiction,
12 the Court's concept of continuing jurisdiction.
13 The Uniform Child Custody Jurisdiction Act is
14 designed to avoid all this kind of stuff, takes
15 precedence over it.

16 Howard versus Gish, which the Court is
17 especially aware of. The decision rendered on
18 June 13, 1977, 373 Atlantic 2nd, 1280.

19 Maybe this is going to be a case of
20 first impression here. But, I think when we use
21 our knowledge of how the law works, understand
22 that the specific act takes precedence over a broad
23 concept that we previously had, because before that,
24 it was difficult to determine who in the world had
25 jurisdiction when the children are in different

1 counties, much less different cities, different
2 countries. These children have resided in England
3 since the separation.

4 They make allegations of moral conduct
5 and the people she has been involved with, about
6 her ability to care for the children and the way
7 they are getting along over there. All that
8 evidence, for a convenience, all that we have is
9 right there in England.

10 In addition to that, the law provides
11 under the Uniform Child Custody Jurisdiction Act
12 that when a person has, we can call it, the concept
13 of clean hands -- they, obviously, don't use that
14 terminology -- that is something to be taken into
15 account, too.

16 What Mr. Middleton has sought to do and
17 what he thought he was going to accomplish was to
18 keep the children here knowing that Mrs. Middleton
19 is of limited means and that she would be stuck in
20 England, not able to defend the case or much less
21 to get relief, that she would not be here represented
22 and they would come before you today and you would
23 only hear one side of the story and enter a custody
24 order and that would be it. It just didn't work
25 that easily for him.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

17.

1 What has happened here is that she has
2 used self-help to do what your lawful order said.
3 She had custody, and he refused to give them back.
4 So, she came and got them.

5 I don't know anything about the order
6 you entered on the 2nd of September. I don't have
7 a copy. I don't know what evidence was presented
8 to you, what circumstances, or what. I don't know
9 where they were at the time the order was entered.
10 So, I cannot respond to that.

11 But, under all the concepts of the Uniform
12 Child Custody Jurisdiction Act, the English Court
13 -- in Oehl in 221 Va., I believe under that case
14 we recognize England as one of the countries whose
15 body of law is substantially in accord with ours and
16 the Uniform Child Custody Jurisdiction Act and also
17 applies to foreign countries. Of course, in quali-
18 fying that, it is not going to apply necessarily
19 to Iran, that as long as that country's law is like
20 ours, it is going to get comity and use the princi-
21 ples of the Uniform Act.

22 When the Court refers to the jurisdiction
23 of the Court, the order is an ex parte order, and
24 then it-- I don't have certified copies. Counsel
25 in England sent others by photographic copies. He

1 is making them wards of the Court.

2 Judge, I would be doing a lot of guessing
3 to tell you exactly, but there are provisions here
4 for him to be served with the papers.

5 But, the jurisdiction, how about the
6 children, who has jurisdiction over them, I think
7 that lies in the English Court.

8 THE COURT: Do you have a copy of that
9 Maryland case for me?

10 MR. BUTLER: Yes, sir.

11 THE COURT: Are you aware of the Maryland
12 case?

13 MR. HALL: No, sir. I think we need to
14 know the exact case, the exact statute and the
15 previous cases. I wonder if the statute law has
16 changed, unlike 20-107 which has not changed.

17 Secondly, I would like to point out that
18 the children were here when this action was filed,
19 and the mother could easily while over here snatch-
20 ing them have appeared before the Court and argued
21 before Your Honor before she took the children back
22 to England.

23 THE COURT: Obviously, the law was super-
24 ceded before the Uniform Child Custody Jurisdiction
25 Act, and I didn't have the opportunity to examine

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

19.

1 the implications of that act on this particular
2 case. So, we will have to go into that in more
3 detail before I make a decision as to the jurisdic-
4 tion of the Court.

5 Taking that under advisement, I will then
6 proceed to hear evidence, and we will see where we
7 are.

8 MR. HALL: All right.

9 MR. BUTLER: All right.

10 THE COURT: I would like for both of you
11 to brief this point on the jurisdiction.

12 MR. BUTLER: All right.

13 MR. HALL: I will be happy to.

14 THE COURT: You may present your evidence.

15 MR. HALL: In Chambers?

16 THE COURT: Yes, sir.

17 MR. HALL: I would call, first, Mr.
18 Middleton.

B. Middleton - Direct

BRIAN C. MIDDLETON, the Plaintiff, called
in his own behalf, having first been duly sworn, testifies and
states as follows:

5 BY MR. HALL:

11 Q Would you relate to the Court, first,
12 when did you come to the United States to be here?

21 I remained working for them in Richmond
22 until April of 1978, when the Regional Operations Manager in
23 Northern Virginia died of a heart attack, and I was transferred
24 up there. That is my present vocation up there.

25 Q While you were working for Allied Chemical,

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

21.

1 where did you live, which county?

2 A In Chesterfield County.

3 Q During that period of time, was your
4 former wife and your children, were they with you?

5 A Yes, sir. My ex-wife came to the United
6 States with me and our first child, Clare, was born here in
7 1969, and Nichole was born in 1971.

8 Q Did there come a time when she left?

9 A Yes. Every year since we came to the
10 United States, she would go back to England for vacation, and
11 those vacations started to stretch to two, three, four months.
12 In 1974, she eventually deserted me.

13 MR. BUTLER: Judge, are we going into
14 the divorce here?

15 THE COURT: I don't think it is necessary.
16 I think that is all a matter of record.

17 MR. HALL: I didn't know how much you
18 wanted in the way of background.

19 THE COURT: All right.

20
21 BY MR. HALL: (Continuing)

22 Q Would you relate, then, what was the
23 agreement between the two of you relating to custody at the
24 time of your divorce here in Chesterfield?

25 A At the time of the divorce, the children

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

22.

1 were still quite young, and we agreed that they would be better
2 off with their mother until two things happened; one, the girls
3 got older, and the second thing was that my job changed that
4 allowed me to remain home. My job entailed a lot of travel
5 initially. We felt it was better that they remain with the
6 mother.

7 Q How old are the children now?

8 A Clare is 12 years old and Nichole is 10
9 years old.

10 Q How would you describe them in terms of
11 maturity and intelligence?

12 A They are both very mature and sensible
13 children that know their own minds.

14 Q Would you indicate to the Court your
15 working hours now and when you would be available at home?

16 A I have a very stable 9:00 to 5:00 job
17 now that requires very minimal travel. The travel is just one
18 day, never overnight.

19 Q Would you give what you do with United
20 Virginia Bank?

21 A My title is Vice President of the
22 Northern Regional Operations. That job entails running the
23 back room operations which is a computer and bookkeeping function
24 for our bank up in Northern Virginia.

25 Q Do you have employees working for you

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

23.

1 under your supervision?

2 A Yes. It is roughly about 156 people at
3 the moment.

4 Q What is your compensation for a year?

5 A \$36,300.00.

6 Q Where do you live in terms of the kind
7 of home you are in and the neighborhood?

8 A I live in a town house in Annandale.
9 The town house was built in 1979. It is a very nice community,
10 neighborhood. It has a pool, lots of children around the girls'
11 own ages. That was one of the factors that prompted us to buy
12 in that neighborhood, was the event that the children would
13 hopefully wish to come and stay with us.

14 Q Is that in Fairfax County?

15 A That is in Fairfax County.

16 Q Would you indicate to the Court when it
17 was that you were remarried?

18 A I remarried in May of 1979.

19 Q Is your wife employed?

20 A Yes. My wife also works for United
21 Virginia Bank. She is a Loan Operations Officer that--

22 Q What is her income, approximately?

23 A I want to say about \$18,000.00, but I
24 am not too sure. We do not discuss those things.

25 Q Does she have any children by a prior

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

24.

1 marriage? Do you have any children by your second marriage?

2 A No. My wife was married previously, but
3 had no children of that marriage.

4 Q Do you have any children by your second
5 marriage?

6 A No.

7 Q Has your former wife remarried?

8 A No, to my knowledge.

9 Q Would you relate to the Court what you
10 did in terms of visiting with your children after she left and
11 went back to England.

12 A When she left in 1974, I made numerous
13 visits over there to try to reconcile and have her come back
14 here. I was reviewing my passport, and it says I was there
15 in 1974, twice in 1975, 1976, 1977, and 1978. I used to try
16 to spend two weeks at Christmas with them in England.

17 Q Who is "them"? Your children?

18 A With the children, yes.

19 My wife lives in the same hometown. So,
20 I would go to stay with my mother and visit the children during
21 my vacation. That was all the vacation I had. I used to spend
22 all my vacation going over there.

23 Q At your expense?

24 A Yes.

25 Q Does your former wife allow the children

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

25.

1 to see their grandmother, your mother?

2 A No. They haven't seen my mother for
3 over two years.

4 Q Where does your mother live in relation
5 to the residence of your former wife and children?

6 A Less than three miles.

7 Q Would you indicate to the Court how often
8 you have had the children come to the U. S. since she left?

9 A Yes. Once Nichole reached the age of
10 six, the airlines would allow her to fly escorted. So, at
11 that point, I used to bring both over here. They came over
12 here in 1978 for the summer. They came over for a wedding of
13 a friend of theirs that they knew in 1979, in the spring of
14 1979.

15 Q Who was that?

16 A This was one of Angela's work friends
17 that they knew very closely, and they were getting married.
18 They indicated they would like to come for the wedding.

19 MR. BUTLER: Is Angela his wife?

20 THE WITNESS: Yes.

21 A (Continuing) The name of the person is
22 Laura.

23 Q This was the wedding of someone else;
24 not yourself, but someone else?

25 A Someone else, yes.

B. Middleton - Direct

26.

1 Q How did they know that person?

2 A They met them at various functions, and
3 we had people over and they--

4 Q Do they have any children now?

5 A No.

6 Q What other times have you brought your
7 children here?

8 A 1978, twice in '79, the summer of 1980,
9 and, of course, the summer of this year, '81.

10 Q Just relate to the Court generally how
11 long would they stay each time they came over?

12 A In '78, it was almost a full six weeks.
13 In '79, I think the spring, was three weeks, and the summer
14 was five to six weeks.

15 Q So, you paid for them to come twice in
16 1979?

17 A Yes. In 1980, I was only allowed to
18 have them one month. And, this year, in 1981, my ex-wife lied
19 to me about when the schools got out, and I brought them over
20 on the 25th of July rather than when the children got out, which
21 was July 17. The date she told me that they get out was August
22 1. So, the dates the schools have been getting out has been
23 gradually shortening over a period of years.

24 Q Would you relate to the Court, beginning
25 with 1978, the kind of things you would do with your children

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

27.

1 when they were here.

2 A I basically tried to provide a home
3 environment for them, whether it be here, and tried to play
4 down somewhat all the atmosphere, tried to give more of a
5 family life here and do things together as a family rather
6 than traveling throughout the United States, etcetera.

7 Q Take 1979, for example. What did you
8 do with the children that year?

9 A In 1979, the only time we actually left
10 the home was to go to Nags Head for a week. At the town house,
11 there is a pool and a lot of facilities, and they really enjoyed
12 being around the pool and being with the other children.

13 So, outside of the normal day trips into
14 Washington and to the zoo, and a lot of day trips like that--

15 Q Since you purchased your home with your
16 wife, what are some of the things you have done since that time?
17 When did you buy your home?

18 A We moved in in April of 1979. It was
19 almost a full year delay in being built. Eventually, I think
20 it was April of '79.

21 Q What are some of the things you have done
22 with your children since then?

23 A Mainly try to spend as much time with
24 them as possible. Every time my ex-wife would allow them to
25 come here, I always have been more than willing to pay their

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

28.

1 way to get them here. Increasingly, I found it more and more
2 difficult to get that visitation.

3 Q Why was that?

4 A She -- if I can state an opinion, my
5 belief is that when the children go home, they were both so
6 enthused and so complimentary about the United States.

7 MR. BUTLER: I object to that. Obviously,
8 he is going to tell us--

9 THE COURT: I sustain the objection.
10

11 BY MR. HALL: (Continuing)

12 Q Would you indicate what type of people
13 and who did your children meet, particularly in the more recent
14 years, 1980 and 1981. Who did they play with while here?

15 A Oh, within my neighborhood, which is
16 adult, they probably know just about every adult in that court,
17 and they know up, over ten or fifteen children that are very
18 good friends with them.

19 Q Could you relate to the Court some of
20 the things that they have done with those children and adults?

21 A With the adults, they -- every year, they
22 have always wanted a party where we invited the neighbors, a
23 barbecue, with the children. They have always had early birth-
24 day -- their birthdays are in September, but we have fairly big
25 parties and invite all the friends.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

29.

1 Q Aside from the birthdays and other
2 parties, what other things have you done with the children?

3 A They were on swimming teams together
4 with the local children. One year there was a swimming team,
5 and they went over for that every day. They played with the
6 children. One of the children who is here today, Arty, has
7 corresponded with Clare and kept up an ongoing friendship with
8 them.

9 Q How old is Arty?

10 A Arty is 12.

11 Q What is his last name?

12 A Carlson.

13 Q Would you indicate where they would go
14 swimming in relation to your home?

15 A To the town house pool, which is less
16 than 100 yards away from the home, in full view of the home.

17 Q Would you describe that pool?

18 A It is a very nice facility. It is a
19 middle-sized pool with a clubroom attached to it.

20 Q Relatively how much time do the children
21 tend to spend with the other children their age when they were
22 here with you in 1980 and 1981?

23 A At least three to four weeks of that
24 time would be spent with the children. We only went away the
25 one week to Nags Head every year, and we always visited my

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

30.

1 wife's, Angela, folks in Pennsylvania. So, that was always
2 a weekend trip.

3 Q Could you describe the relationship they
4 have developed with the children in your neighborhood here in
5 Virginia?

6 A They are very much a part of the neighbor-
7 hood. The children, when the girls are away, continually are
8 knocking on my door and asking me when they are coming back.
9 They come and want their addresses so they can write to them.
10 They bring over presents for me to send to the children.

11 Q Approximately how many children are in
12 your neighborhood that they have become friendly with?

13 A I believe at least ten.

14 Q What are the ages of the ones that your
15 children have been playing with, the names?

16 A They range between 8 and 13 years old.

17 Q Could you give the names of any of them?

18 A Arty, Bruce Ericson, Jackie. Arty can
19 supply the exact names and the addresses. I think I have
20 written them all down. They all live in the same neighborhood,
21 in the court.

22 Q Within how many yards and how many feet
23 of your house would that be?

24 A Oh, a couple of hundred yards at the
25 most.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

31.

1 Q Have they had any association with any
2 adults, other than what you have already related here, in
3 your home in Virginia?

4 A Yes. They are friends with a number of
5 my neighbors. At least six of the neighbors around us, they
6 are friends with, they go to their house, talk to them in the
7 street, and particularly my next-door neighbor that they are
8 very fond of.

9 Q You indicated that your mother still
10 lives in the town where your ex-wife lives?

11 A Yes.

12 Q How familiar are you with the town where
13 your ex-wife now lives?

14 A I lived in that town for 27 years. So,
15 I am very familiar with it.

16 Q Have you become at all familiar with the
17 educational system near your home in Fairfax County?

18 A Only by talking to the principal and
19 reading various publications. I have no personal experience
20 of Fairfax County's education system.

21 Q What section of England does your former
22 wife live in now?

23 A The town is called Norton, and it lies
24 in the northeastern part of the country.

25 Q Can you describe the area generally in

B. Middleton - Direct

32

1 terms of wealth, the educational system, and so on?

2 A The northeastern part of England has
3 notoriously been a very underdeveloped and high unemployment
4 area. I would describe it something like as maybe the areas
5 of West Virginia that I have seen. It is a very industrial
6 town. Although there are some pretty parts, but the actual
7 area is very heavy industry.

8 I left the country because of the lack
9 of employment. There is tremendous unemployment in that part
10 of the country and always has been since I was a boy.

11 Q Could you relate your experience, from
12 your experience there-- First of all, what amount of schooling
13 did you obtain in that part of England?

14 A I went to school there, and the type of
15 school is called a grammer school. But, I suppose my prime
16 education was taken through an extension college of the Univer-
17 sity of Manchester where I got a bachelor's degree in Science.

18 Q You say you obtained your master's degree
19 here at the University of Richmond?

20 A Yes. That was my prime aim to come to
21 Virginia, because I wanted to take opportunity of the MBA
22 Program that I had heard of in Englnd that had very good
23 remarks. So, I went to the University of Richmond to get a
24 MBA.

25 Q Could you relate to the Court how you

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

33.

1 would compare, from your experience and reputation of the
2 educational system, the educational system that your children
3 would have if they remained in England for the next several
4 years as opposed to what they would have if they were with
5 you?

6 A My belief is, based on my own experience,
7 that the education they would get in Virginia, in particularly
8 Fairfax, would be far superior and would give them a lot more
9 opportunity.

10 MR. BUTLER: I object to his opinion to
11 comparing the educational systems. He obviously
12 has not been qualified as counsel, and I don't
13 think anything he can tell us about his own back-
14 ground is going to qualify him.

15 MR. HALL: I think he certainly is
16 qualified by his background to talk about the
17 English system. I asked as to the reputation of the
18 Virginia system, plus based upon his experience, to
19 give an opinion. I think as a parent he is entitled
20 to give that opinion.

21 THE COURT: Well, I don't think he is
22 familiar enough with the Fairfax system to give an
23 opinion as to that system. I believe you have to
24 ask somebody to do that.

25 I sustain the objection.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

34.

1 MR. HALL: All right, Your Honor.

2

3 BY MR. HALL: (Continuing)

4 Q Would you indicate why you think as you
5 do about the English system of education in the area where
6 they would go to school.

7 A I personally was never happy with the
8 education I received in England.

9 Q Why?

10 A I felt it was very narrow and very
11 confining. It did not cover the breadth of subjects that I
12 found when I came to the United States. I had to take a
13 substantial amount of courses in such things as economics and
14 such things as marketing for me to even get into, entered in
15 the University of Richmond programs. I had approximately three
16 years of college graduate work to do before I could even get
17 entered into the system. Yet, I, quote, had a degree in
18 England.

19 Q What about the school system prior to
20 your going to college in England? I am talking about our
21 equivalent to junior high and high school.

22 A I can only relate my personal experience
23 of the quality of the education I got.

24 Q Was that in the town where your children
25 are now living?

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

35.

1 A Yes.

2 Q Would you relate your opinion of that
3 and say why your opinion is as it is?

4 A Again, I think the education that they
5 will be getting--

6 MR. BUTLER: I think he is going to
7 answer what the education is they are going to
8 get. I believe your question was, what was his
9 experience with his education.

10

11 BY MR. HALL: (Continuing)

12 Q Relate your personal experience.

13 A My personal experience was that, as I
14 said before, it was very deficient in a lot of subject matters,
15 that it was very narrow, just simply three hours with very
16 little scope outside of that.

17 Q Would you relate to the Court what your
18 children said to you in regard to their likes and dislikes that
19 they found here in the U.S. while with you?

20 MR. BUTLER: Judge, I object on the basis
21 that it is hearsay. The children are not here, and
22 it is particularly important when you have children
23 that the Court or trier of the facts be able to
24 observe their maturity. So, we are going very much
25 into hearsay, to which I object.

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

36.

1 THE COURT: Well, it is hearsay. I don't
2 see how you can overcome that, unless they are here
3 to testify.

4 MR. HALL: I had mentioned a Court ruling
5 that they were the parties in a custody proceeding,
6 and as such, he made relevant what they have said,
7 because it could be hearsay just like he could
8 relate what his former wife has said. I have to
9 say that there are some judges who ruled to the
10 contrary on that point.

11 THE COURT: I am sure there are.

12 MR. HALL: I had many a Court in Virginia
13 at different levels--

14 THE COURT: In this courtroom, I don't
15 rule that way.

16 MR. HALL: All right, Your Honor. I
17 think it is particularly--

18 THE COURT: I know Judge Jennings never
19 ruled that way.

20 MR. HALL: I cannot answer for Judge
21 Jennings. I have never had this particular type
22 of thing before him. This thing in particular
23 appalls me. She snatched the children away for
24 the purpose of denying the Court their testimony.

25 THE COURT: I am aware of that. But, I

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

37.

1 have got to weigh the different arguments on the
2 point.

3 MR. HALL: All right, Your Honor.

4
5 BY MR. HALL: (Continuing)

6 Q Would you indicate to the Court the
7 children's reactions, as you saw it, what you observed to their
8 being in Virginia with you in the summers of '80 and '81?

9 A They always appeared to me to be delighted
10 to be here and to be very happy and relaxed.

11 Q What was the reaction that you saw when
12 it came time to return them in '80?

13 A Emotionally, it was very difficult
14 because the children were crying and pleading to remain with
15 me.

16 Q What was their reaction in general, when
17 it came time towards the end of the summer, when you were
18 considering sending them back to their mother the summer of
19 '81?

20 A This summer, they had been here approxi-
21 mately 10 days or so. And, we were discussing our complications,
22 and they indicated to me--

23 MR. BUTLER: I object. I object to the
24 res gestae emotional thing he described happened
25 in 1980. I object to the statement. Obviously,

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

38

1 it is not res gestae, and I would take exception.

2 THE COURT: I sustain the objection.

3

4 BY MR. HALL: (Continuing)

5 Q Would you indicate what you saw, what
6 that emotional reaction was; not what they said, but what you
7 saw when the subject of their returning towards the end of the
8 summer came up?

9 A They were very upset and crying.

10 Q What was their reaction when, if you
11 did, indicate to them that you would seek to get a court
12 ruling to say they could stay here?

13 A They appeared to me to be very happy.

14 Q Have you talked to your former wife in
15 the last several years concerning her social life as it
16 involved the children?

17 A Yes.

18 Q What has she related to you concerning
19 that?

20 A She has always denied it.

21 Q Have you had an opportunity to talk
22 to her recently and in a phone conversation in which you
23 recorded the conversation?

24 A Yes, I did. I talked to her on the
25 Sunday after the children were snatched.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

39.

1 Q Do you have any recollection of that
2 conversation?

3 A Yes.

4 Q Did you discuss with her, then, what
5 your concerns were concerning her social life and the
6 children?

7 A Yes.

8 Q What did you say to her?

9 A I told her it was wrong.

10 Q What do you mean by, "it was wrong"?

11 A I told her it was wrong for her to have
12 men staying over in the house with the children present and
13 taking the children to stay over at the person called Mike
14 Davis' home.

15 Q What was her response to that?

16 A She said there was nothing wrong with
17 that.

18 Q She denied doing that with Mike Davis
19 in that conversation?

20 A No, she did not deny that.

21 Q What has been indicated to you by her
22 concerning where she would be keeping the children in the
23 future in England?

24 A She has told me she is going to remain
25 at her present address, she is not going to be moving.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

40.

1 Q Has she talked to you at all about
2 separating the two children in England?

3 A No.

4 Q Have you talked to her about that?

5 A Yes.

6 Q What did you say to her?

7 A I asked her why she was going to send
8 Clare to live with an aunt because I found out that Clare had
9 been registered at a school with the aunt's address. This
10 came from Clare, because she was concerned and was confused
11 that she was going to be living with an aunt.

12 Q What was your former wife's response
13 when you expressed that concern to her?

14 A Your Honor, she didn't know. She did
15 not specifically answer me on that.

16 Q Would you indicate what, if anything,
17 you have observed in the children which caused you some
18 concern because of your former wife's social life, if I may?

19 A There were two major things. One of
20 them is, they lie tremendously when they first come here.
21 They would lie about insignificant things and they would lie
22 about very significant things to me. Their moral values --
23 I don't know how to state this -- gave me reason for concern
24 in particularly the elder girl, Clare. I don't know whether
25 I am going to say hearsay, but her values were attached to

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

41.

1 men equals money and you don't do things unless you are going
2 to get paid for it and they are going to support you or give
3 you presents, etcetera.

4 Q Would you describe the education back-
5 ground of your former wife?

6 A She left school at 15.

7 Q Has she gone back to school since?

8 A I think she took -- I don't think. She
9 took a two-year school, working part time, to be a nursery
10 assistant between the ages, I think, of 17 and 18, 19.

11 Q What kind of occupation has she had
12 for the last two or three years?

13 A She is a nursery assistant. That involves
14 helping teachers in a nursery school.

15 Q What has she told you is her earnings?

16 A She never has.

17 Q Do you know?

18 A No, only what I read.

19 Q Would you generally describe where they
20 live, that is, your children and former wife, if they are in
21 fact living with her at this time?

22 A Yes. They live in a very nice apartment
23 complex that is two stories. It is a three-bedroom apartment
24 with a bathroom, separate bedrooms for the children, living
25 room. It was built in, I want to say, something like 1976,

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

42.

1 because I was the one who went over there and actually got the
2 apartment for her. Before that, for two years, she had been
3 living with her mother in very cramped quarters, and I was
4 upset about that. I spent a vacation in hunting for and
5 getting her her present apartment.

6 Q In relation to the \$200.00 a month that
7 you have been sending her--

8 A That is not correct, by the way. The
9 decree called for \$200.00. I have been sending, on my own
10 will, \$250.00, and that is in addition to my purchases since
11 she has been back in England. I purchased two cars for her,
12 plus I have been sending extra money at Christmas and buying
13 all the children's clothes.

14 Q Taking all that into account, all of
15 your support, how much of that-- Let me phrase that a little
16 differently.

17 What percentage of her total needs for
18 herself and the children is the support you are giving to her?

19 A The money I send her pays for her
20 apartment, utilities, and the children's food.

21 Q Are you familiar with the current prices
22 in that area?

23 A Very. You cannot compare them to the
24 United States.

25 Q Mentioning that, they are much higher

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

43.

1 or lower?

2 A Much lower.

3 Q What are your job prospects in terms of
4 job potential and advancement for your own?

5 A I fully anticipate retirement at the
6 United Virginia Bank.

7 Q What are some of your concerns as to
8 the children, if they would remain with their mother?

9 A My main concern is the repeated boyfriends,
10 who change periodically, coming into the house. I am afraid
11 about the girls' moral behavior. I am starting to be afraid
12 about boyfriends, as to Clare in particular is maturing, of
13 some sexual contact being made with her. It has given me
14 reason to be afraid.

15 Q Have you had a private eye in England?

16 A Yes. I hired one, I think it was in
17 late May.

18 Q Has he been working on, checking into
19 her social life over there?

20 A Yes.

21 Q Has he had any discussion with her?

22 A Yes. He had a discussion with her
23 recently when the papers were filed for this case.

24 Q When you discussed the children possibly
25 remaining here in the States and the educational system here

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Direct

44

1 to them, what was their emotional reaction as you observed it?

2 MR. BUTLER: I think he already
3 testified to that, Judge.

4 THE COURT: He has.

5
6 BY MR. HALL: (Continuing)

7 Q The children are American citizens?

8 A Yes, by birth.

9 Q Would you relate to the Court your wife's
10 attitude towards the children in terms of what she actually
11 has done with them and her attitude towards taking care of
12 them?

13 A Her physical care gives me reason for
14 concern.

15 Q I am talking about your present wife.

16 A My present wife? My present wife has
17 lots of hobbies. She is very good at needlework, very good
18 at knitting, and the children have a keen interest in that.
19 Her relationship with the children is very good. They appear
20 to be very happy with her.

21 Q What is her attitude, as you have
22 observed it, concerning taking care of them generally?

23 A She is very willing to take care of
24 them, if that's what I want.

25 Q How do you view your marriage in terms

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

B. Middleton - Direct

45.

1 of its being stable or shakey or what, your present marriage?

2 A I view my present marriage to be very
3 stable.

4 Q Do you want custody?

5 A Very much so, because it is what I
6 believe the children want very dearly, and they have repeatedly
7 and repeatedly and repeatedly--

8 MR. BUTLER: Objection.

9 MR. HALL: I have no further questions,
10 Your Honor.

11 THE COURT: You may examine.

12
13 CROSS-EXAMINATION

14 BY MR. BUTLER:

15 Q If you have custody, will your present
16 wife stop working so she can be home with the children?

17 A No.

18 If I may elaborate. We both hold very
19 responsible positions and we have great latitude in setting
20 our hours of starting and finishing. Therefore, we would be
21 able to overlap and take care of them very well.

22 Q Well, I have a responsible job, too,
23 and find that to be just the opposite.

24 Tell me how you are going to do that.

25 A I think you have got to recognize the

B. Middleton - Cross

46.

1 way I am going to do it is the way that 90 percent of the
2 parents in Fairfax County -- not only Fairfax -- both parents
3 work. For most people, when the children get out of school
4 at 3:00 o'clock, they go to one of the neighbor's, unless the
5 parent gets home. My wife fully expects to get home every day
6 at 4:00 o'clock. My job would allow me to go both ways.

7 We never got, really, a chance to work
8 out those details 100 percent, but that is no problem. It
9 is no problem for other parents.

10 Q She works for a bank and she would be
11 able to get home by 4:00?

12 A She works for United Virginia Bank, the
13 same bank. Yes.

14 Q She gets home presently at 4:00 now?

15 A No, because she can set her own hours.
16 We are allowed to set flexible time, if you wish.

17 Q What does Mrs. Middleton do? She teaches
18 at a school or is an aide at a school, or a teacher's aide,
19 whatever you call it?

20 A Yes.

21 Q That is the same school the children are
22 going to?

23 A Not recently. They moved out of the
24 infant and moved over to another school. It used to be, but
25 will no longer be.

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Cross

47.

1 Q You do not believe there is any possi-
2 bility they are going to be separated, the two children, and
3 have one move in with an aunt, do you?

4 A Yes.

5 Q It wasn't explained to you what the
6 purpose of that was? I believe you more or less intimated
7 that it was to get her into a different school?

8 A That is not necessary to do so. We
9 have talked to the School Board, and she has not filed at all
10 for any exceptions, which are allowed under their system.
11 The plain fact is, she has registered the child at the address
12 of the aunt, and there is no exception on record at the school
13 that it was an address of convenience.

14 Q But all you know is that she has
15 registered-- Clare, is it?

16 A Clare, the eldest girl.

17 Q --at a school using the address of an
18 aunt?

19 A Yes.

20 Q But, as far as you know, Clare doesn't
21 live with the aunt?

22 A Clare was very confused about where indeed
23 she was going to be living.

24 Q But, as far as you know, she was not
25 living with an aunt and didn't intend to; is that right?

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

B. Middleton - Cross

48.

1 A I don't know.

2 Q What are the children's activities in
3 England? Are you aware of what they do there?

4 A Yes.

5 Q They belong to a swim club, right?

6 A Yes.

7 Q They belong, as they do here?

8 A Yes.

9 Q They participate in gymnastics, ice skating?

10 A Yes.

11 Q Track, drama?

12 A Right. These are all activities which

13 I aim to see that-- I was the one that encouraged them and
14 taught them to swim, sent them to swimming classes and sent
15 them skating. All their activities are offshoots of the
16 activities in the United States.

17 Q Academically, Clare is doing pretty well?
18 She is first in her class?

19 A Yes, doing very well.

20 Q And Nichole?

21 A She is doing very well.

22 Q She skipped a grade, didn't she?

23 A No.

24 Q You have seen the children at least
25 once a year for extended periods of time since the separation,

B. Middleton - Cross

49.

1 right?

2 A Right.

3 Q Extended which you say has gradually
4 been cut back. But, it has been for several weeks at a time?

5 A When I visited England, it was between
6 two and three weeks.

7 Q Because of your limited vacation?

8 A Yes, at that time.

9 Q Have you had an opportunity to have them
10 over more often than that, but couldn't bear the expense?

11 A No. I wanted to bring them over for
12 Christmas, but wasn't allowed to.

13 Q If they wanted to come over this
14 Christmas, would you pay for them to do that?

15 A Certainly, if I were allowed to.

16 Q Do you think Mrs. Middleton is in a
17 position to have them travel to the U.S. financially?

18 A I wouldn't know.

19 MR. BUTLER: That is all I have.

20 THE COURT: Is there any other evidence
21 you have?

22 MR. HALL: Yes, Your Honor.

23 THE COURT: Present it, please.

24 MR. HALL: The boy's name is Arty Carlson.
25

COURT REPORTERS

RICHMOND, VIRGINIA

PHONE 355-4335

50.

1

4

5

6

7

8

9

10

12

14

15

16

19

23

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Carlson - Direct

51.

1 A About 11 or 12, like.

2 Q About 11 or 12?

3 A Yes.

4 Q How did they get along with yourself and
5 the other kids?

6 A Well, they were -- everybody liked them
7 and respected them. They wouldn't tease them or anything.

8 Q Did Clare and Nichole participate in
9 other things or just content to stay in the house and watch
10 TV?

11 A Yes. They always come out and play with
12 everybody and just needed to play. We start playing a game,
13 and we go over to their house and get them, or something.

14 Q Would you indicate how long they were
15 here during the summer of 1980, if you can recall.

16 A Okay. Well, I think they got here
17 August 1 and they left about August 30, August 30th.

18 Q How did they seem to enjoy being over
19 here, being with you all and their father?

20 A Well, they always seemed happy and just
21 real active and stuff.

22 Q "Real active"? What do you mean? Can
23 you be more specific?

24 A Well, they would, even after some trip
25 or something they come back from, they would always come out

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Carlson - Direct

52.

1 and start playing with us. We play jumprope or something.

2 Q Did they seem to talk to any of the
3 adults in your neighborhood?

4 A Yeah.

5 Q Who in particular; do you recall anybody?

6 A Yeah, Jackie, Coleman's mother, Charles
7 Harrell's mother and father, and also Jackie's father, too,
8 my mother and father, this lady that lives next to Brian.

9 Q Were these times when you saw them
10 talking just hellos, or did they seem to sit down and take
11 time?

12 A Yes. They'd say hello or they stop by
13 and talk.

14 Q In terms of time when you were playing
15 together on a given day, would it be just for five minutes or
16 so, practically all day, or how long?

17 A About three or four hours. Sometimes
18 they only come out half an hour, because they have to eat or
19 something. But, they come back out a little later.

20 Q Were there ever any parties that you all
21 went to with them?

22 A Yes, her birthday party and a swimming
23 party. But, it was one she missed, she wasn't there. She
24 was invited.

25 Q From your own observations, what did

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Carlson - Direct

53.

1 their relationship seem to be like with their father?

2 A Well, he has always been nice to them.
3 They always enjoyed being with him.

4 Q From your own observations, did you see
5 them with their stepmother, Brian Middleton's wife?

6 A Yeah.

7 Q How much did you see them with her?

8 A A lot. But, I didn't see them because
9 they went to the stores a lot. They went shopping almost
10 every day.

11 Q When you did see them with Mrs. Middleton,
12 what did it appear to be, what kind of relationship did she
13 seem to have with the two children?

14 A They seemed happy with them. They would
15 be playing at the pool and they would come and say hi. And
16 then, when they got in the pool, they would come over and start
17 playing or do something with them.

18 Q Did you talk to them at all about the
19 time when they would have to go back to England in the summer.
20 before last, 1980?

21 A Yes, I think so, a couple of times.

22 Q Do you remember their attitude about
23 going back to England?

24 MR. BUTLER: Arty, I am going to object,
25 if you would give me a minute.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Carlson - Direct

54.

1 Judge, it is going to be hearsay.

2 THE COURT: I think it is hearsay.

3 I don't believe you can do it..

4 MR. HALL: Let me rephrase the question.

5

6 BY MR. HALL: (Continuing)

7 Q Don't say what they said; merely indicate,
8 if you can, what you observed concerning their attitude about
9 going back to England.

10 A Well, they didn't really -- they wanted
11 to go back sometimes. But, they seemed happy here more.

12 Q As to this summer, do you recall, not
13 what they said, but their attitude about wanting to stay here
14 and if the subject came up?

15 MR. BUTLER: I would like for the Court
16 Reporter to read the previous question. Maybe I
17 heard it wrong.

18 NOTE: At this point, the Court Reporter
19 read back as requested.

20 THE COURT: Did you understand it to be
21 the year before or not?

22 THE WITNESS: Yes, I did.

23

24 BY MR. HALL: (Continuing)

25 Q I am asking you now about the last couple

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Carlson - Direct

55.

1 of months in this year. What, from your own observations, did
2 you observe to be their attitude about staying here with their
3 father?

4 MR. HALL: I don't know what observations
5 of their attitudes means, other than anything that
6 would include hearsay, anything he would talk about
7 would be hearsay.

8 THE COURT: It is not limited to the
9 spoken word. It is gestures, observations. It is
10 just as much hearsay as it is spoken word. An
11 attitude or an observation that he observed would be
12 hearsay, too.

13 MR. HALL: It has to be based on something
14 he said?

15 THE COURT: Right.

16 MR. HALL: Note my exception. I think
17 it could be, Your Honor, based upon his observing
18 their smiles or frowns, and that would not be
19 hearsay. It would be an observation of their
20 attitude.

21 MR. BUTLER: So would nodding their heads.
22 It is still hearsay.

23 MR. HALL: Note my exception.
24
25

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Carlson - Direct

56.

1 BY MR. HALL: (Continuing)

2 Q Generally, this past year, other than
3 what you already said, would you indicate what kind of
4 relationship Nichole and Clare had with the other children in
5 the neighborhood?

6 MR. BUTLER: I think he has testified
7 to that, and I think it is clear that it is a
8 good relationship. There is no need of repeating
9 the testimony.

10 MR. HALL: I will accept that, if that
11 is your understanding.

12 THE COURT: Any other questions?

13 MR. HALL: No.

14 THE COURT: Do you have any questions?

15 MR. BUTLER: No, sir,

16 THE COURT: You may go outside.

17 -----
18 WITNESS STOOD ASIDE
19
20
21
22
23
24
25

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

57.

1 THE COURT: At this stage of the
2 proceedings, I have examined that Maryland case.
3 Maryland appears to have a statute that says just
4 about what our cases hold in the preface of it,
5 we believe that those three sections make the
6 State of Maryland as the jurisdiction and indicates
7 Maryland's adherence to the continuing jurisdic-
8 tional rule is to the extent of any inconsistencies
9 with the statute no longer controlling authorities,
10 which indicates that they had continuing jurisdic-
11 tion in Maryland, also. Then, under that, under
12 Section 186, the Court has jurisdiction when a
13 court of this State in its wisdom decides that the
14 individual court has jurisdiction to make, and he
15 said, "if this state is the home state of the child
16 at the time of the commencement of the suit."

17 Do you read that the same way? It is a
18 uniform statute?

19 MR. BUTLER: Yes, sir.

20 MR. HALL: There are differences in the
21 statute. I have a copy of the Maryland statute in
22 my office. I didn't bring it with me, but I can
23 certainly brief that point.

24 THE COURT: I just thought we were maybe
25 getting to a point where we were taking all of the

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

58.

1 evidence, and all of the evidence cannot be taken
2 today because obviously you asked for a Request
3 for Admissions which would require that this
4 hearing be continued. I want you to put on any
5 evidence that you think you have is material and
6 is admissible at this time, because you probably
7 do not want to bring these witnesses back.

8 MR. HALL: Yes, I would appreciate that.
9 They have come at their expense, I guess; at least,
10 their time.

11 THE COURT: Call your next witness.
12 I feel that we will not be able to conclude the
13 hearing today.

14 MR. HALL: Yes, I can appreciate that.
15 Murriel Saffa.

16
17
18 MURRIEL SAFFA, a witness called by counsel
19 for the plaintiff, having first been duly sworn, testifies and
20 states as follows:

21 DIRECT EXAMINATION

22 BY MR. HALL:

23 Q State your name.

24 A Murriel Saffa.

25 Q Your occupation?

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Saffa - Direct

59.

1 A Secretary.

2 Q Where do you work in relation to
3 Mr. Brian Middleton?

4 A I work at the United Virginia Bank with
5 Mr. Middleton.

6 Q Do you see him frequently as part of
7 your occupation?

8 A Uh-huh.

9 Q Would you indicate what his job is
10 there?

11 A He is the Manager of the Northern Region
12 of the United Virginia Bank.

13 Q What is his title?

14 A Vice President.

15 Q What generally does he do in such
16 capacity? What does he oversee?

17 A Well, let's see -- he makes all the
18 decisions for the whole Northern Region. Anything that goes
19 on in the Region, he makes the decision, and that is--

20 Q In what part of the bank?

21 A In the division over all the branches
22 and in the bookkeeping department operations, administration.

23 Q Would you indicate what his hours are
24 there?

25 A His hours are basically the same as mine,

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Saffa - Direct

60.

1 8:30 to 5:00, sometimes a lot longer. Sometimes he comes in
2 earlier, but basically 8:30 to 5:00, 9:00 to 5:00, along in
3 there.

4 Q Does the bank have a flex time arrange-
5 ment so that one can change his hours?

6 A Uh-huh.

7 Q Do you know whether his wife works
8 there?

9 A Yes.

10 Q Would she also be eligible to use
11 flexible time?

12 A Yes, as far as I know, she would.

13 Q Have you had occasion to see Brian
14 Middleton's daughters?

15 A Yes, quite a few times.

16 Q Would you describe what you observed
17 concerning their relationship with their father?

18 A Well, it is beautiful to see. They just
19 love him dearly. The minute he comes into the room, they just
20 converse, one takes one arm and one takes the other. They just
21 love him dearly.

22 And, I talked to them many times a day
23 on the phone and, you know, you can just tell how much they
24 love their daddy.

25 Q Have you ever talked to them about

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Saffa - Direct

61.

1 staying here in Virginia?

2 A Twice. One day on the phone, I talked
3 with Clare. When I found out they may be going to stay, Clare,
4 oh, she was just ecstatic.

5 MR. BUTLER: I object, Your Honor, to
6 the conversations they have had with the children:

7 THE COURT: Yes. You cannot testify to
8 what the children said. You can say what you
9 observed.

10
11 BY MR. HALL: (Continuing)

12 Q In observing the children, did you have
13 any occasion to determine anything about their intelligence
14 level?

15 A They are very intelligent. They are
16 very mature little girls, very sharp little girls.

17 Q Did you have any occasion to determine
18 anything concerning their maturity, judging by their actions
19 and their age?

20 A Yes. I felt that they are very mature
21 little girls, and I didn't, you know -- I have granddaughters,
22 too, and I sort of judged that they seemed to be more mature
23 than my little granddaughters.

24 Q How old are yours?

25 A Ten and thirteen.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Saffa - Direct

62.

1 I also thought Clare looked like a little
2 lady. She could sit and talk like you and I are talking now,
3 just like a little lady.

4 Q How did they appear in terms of their
5 dress, when you had occasion to see them?

6 A Beautiful. They always looked darling.
7 They always looked like they stepped out of a handbox, you
8 know.

9 Q Do you know anything about the neighbor-
10 hood where Mr. Middleton lives now?

11 A Uh-huh.

12 Q Would you describe that generally.

13 A It is a very, very lovely neighborhood,
14 very lovely homes. The people that I have met around in the
15 neighborhood, like going out to Mr. Middleton's house, are just
16 lovely people, a very nice neighborhood.

17 Q Is that in Fairfax County, Virginia?

18 A Yes.

19 Q In general, what is the business reputation
20 in terms of his veracity and otherwise of Mr. Brian Middleton
21 in the bank?

22 A You mean, with people that work with him?

23 Q Yes.

24 A Everyone respects him highly.

25 Q Do you have any familiarity with the

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Saffa - Direct

63.

1 school system in Fairfax County?

2 A I don't have it with the school system
3 in Fairfax County, because I live in Alexandria. But, I hear
4 that it is excellent.

5 MR. BUTLER: Objection.

6 THE COURT: Sustained.

7 A (Continuing) I just know from my
8 daughter who investigated Fairfax in comparison to Alexandria.

9 MR. BUTLER: You see, Mrs. Saffa, you
10 cannot go into that.

11 THE WITNESS: Okay.

12 A (Continuing) No, I don't know of that
13 myself. I never lived in Fairfax County.

14 MR. HALL: No further questions.

15 THE COURT: Do you have any questions?
16

17 CROSS-EXAMINATION

18 BY MR. BUTLER:

19 Q You work for Mr. Middleton?

20 A Yes.

21 Q He is your boss?

22 A Yes, sir.

23 MR. BUTLER: That is all I have, Judge.

24 THE COURT: Thank you very much for
25 coming.

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

64.

WITNESS STOOD ASIDE

MR. HALL: I did forget to ask the little boy who observed the snatching. It is fairly obvious the children are back in England. If you wanted some--

MR. BUTLER: I will stipulate that.

THE COURT: He will stipulate that.

MR. HALL: Lennie Kroll.

LEONARD KROLL, a witness called by counsel for the plaintiff, having first been duly sworn, testifies and states as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q Would you indicate your first name.

A Leonard.

Q Kroll?

A Kroll.

Q Where do you live in relation to Brian Middleton?

A Right next door.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Kroll - Direct

65.

1 Q Where is that?

2 A 4465 Edan Mae.

3 Q In Annandale?

4 A Right.

5 Q Did there come a time in any of the last
6 couple of summers that you have seen him with his children,
7 Nichole and Clare?

8 A Yes, a number of times, each time they
9 came over.

10 Q What did you observe concerning their
11 activities in the community, taking first the summer of 1980?

12 A You mean, how they reacted, or how they
13 behaved?

14 Q Yes.

15 A Quite happy, enjoyed the neighborhood
16 kids, and everybody in the neighborhood enjoyed them and liked
17 them, and they vice-versa.

18 Q What types of activities did you see
19 them engage in while here in 1980?

20 A Usually most of the time, it would be
21 at the swimming pool playing with the neighborhood kids. A
22 couple of times, I stopped over Brian's house while they were
23 there. They were doing crocheting or some small-type thing.

24 Q Did you observe them talking to any
25 adults?

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Kroll - Direct

66.

1 A Yes, just about any and all the neighbors
2 in our particular block, in our section.

3 Q About how many adults there do they talk
4 to?

5 A I guess about, at least a dozen. It is
6 the couples on our particular block and around the court.

7 Q Were any of these conversations of any
8 length of time or depth?

9 A It could have been varied. I didn't
10 really pay any attention at the time. I could talk to them
11 for half an hour or an hour, or a couple of minutes. I am sure
12 the same as anyone else down there.

13 Q Did you observe them playing with any
14 children in the neighborhood in addition to talking to the
15 adults?

16 A Quite a few times.

17 Q About how many children did they talk
18 to and play with?

19 A I would say, at least half a dozen.

20 Q Generally, what were the ages of those
21 children?

22 A Some about the same age, some younger.

23 Q Where did those children live in relation
24 to the Middleton's home, how far away?

25 A 1,500 feet

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Kroll - Direct

67.

1 Q What kind of activities did you see the
2 Middleton children engage in in 1980 with the neighborhood
3 children?

4 A Again, the swimming pool, kicking a ball
5 around, throwing the ball around, skipping, jumpropping, that
6 type of thing.

7 Q Would you relate what you observed
8 concerning the relationship of the children to their father
9 during 1980?

10 A About as best you can expect kids and
11 parents to react. I didn't see any problems. They enjoyed
12 being here, enjoyed being with Brian and Angela, his wife.

13 Q Did you observe them with Brian
14 Middleton's wife, too?

15 A Right.

16 Q What seemed to be her attitude towards
17 taking care of his children?

18 A To me, she didn't mind it at all, enjoyed
19 it immensely. The preparation prior to them arriving was two
20 to three weeks, maybe, in advance, as far as I noticed, and
21 just, you know, they expected the kids and wanted them to come
22 over.

23 Q Could you tell the Court whether you
24 observed about the same thing in 1981 as you just testified to
25 in 1980, or was it different?

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Kroll -- Direct

68.

1 A Each time, the same thing, the same
2 reactions, and so forth.

3 Q Without telling what the children said,
4 the Court has ruled that you cannot tell what the children
5 said because that would be hearsay, can you tell the Court
6 what you observed concerning attitudes about being with their
7 father, when they were with him?

8 A They, as far as I am concerned, enjoyed
9 being here. They were hesitant or tearful each time they left,
10 when their annual trips were finished. To me, the impression
11 I got, they wanted to stay.

12 MR. BUTLER: Objection. There is no
13 basis for his opinion that he testified to.

14 THE COURT: Sustained.

15 MR. HALL: There is a basis, Your Honor.

16 THE COURT: The basis of it would be,
17 it is all what his opinion would be. He cannot
18 testify to what his opinion is. He can only
19 testify to what he saw, the reactions, and I have
20 some concerns about that, even. But, he can tell
21 what he observed, and that is the only thing I can
22 hear.

23
24 BY MR. HALL: (Continuing)

25 Q What can you say that you did observe

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Kroll - Direct

69.

1 concerning the children's reactions about their liking or not
2 liking being here?

3 A I can relate the first incident that I
4 met them, I guess, in 1980. Upon getting ready to leave for
5 the airport, they stopped by to say goodbye, and the youngest
6 one, Nichole, put her arm around me, gave me a kiss. That is
7 the first time I met them, that summer. She gave me a kiss,
8 and the other one followed suit. You know, there were tears
9 in my wife's eyes, my eyes that they were leaving, and the
10 same with them.

11 So, based on that, on last year and this
12 year, to me, they wanted to stay and they enjoyed--

13 MR. BUTLER: I object to that.

14 THE COURT: You can just testify what
15 you observed. I have to draw a conclusion from
16 what you say.

17 THE WITNESS: Yes, sir.

18
19 BY MR. HALL: (Continuing)

20 Q What did you observe this year towards
21 the end of the summer as to what you actually saw in their
22 attitudes about staying here; not what they said, but what
23 you saw?

24 MR. BUTLER: I object to the form of
25 the question, what you saw would be their attitude.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

Kroll - Direct

70.

1 I, again, do not know what that means. I thought
2 he said it was a repeat this year of what it was
3 last year. I think he has already testified --
4 whether it would be admissible, I don't know --
5 that reaction of tearing in the eyes and hugs
6 goodbye, and that sort of thing. I object to the
7 form of the question, as to what is intended to
8 be elicited.

9 THE COURT: I sustain the objection.

10 MR. HALL: All right.

11 THE COURT: Any other questions?
12

13 BY MR. HALL: (Continuing)

14 Q Are you familiar with the school system
15 in Fairfax?

16 A Not that much, no, sir.

17 Q Do you have any children who go there?

18 A No.

19 Q Could you indicate to the Court, just
20 from your observation of Clare and Nichole, whether you thought
21 they were bright or not as children, in relation to their age?

22 A Bright?

23 Q Yes.

24 A Very.

25 Q How do you judge them to be in terms of

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

Kroll - Direct

71.

1 their maturity and in relation to their age?

2 A I would say, a little more so than the
3 average child at their age.

4 MR. HALL: No further questions.

5 THE COURT: Any questions?

6

7 CROSS-EXAMINATION

8 BY MR. BUTLER:

9 Q By age of the children, do you have any-
10 thing in mind on that, or just other children you have seen?

11 A I am talking about any other kid I have
12 seen about the same age.

13 Q Do you have any children?

14 A No.

15 Q Where are you employed?

16 A Department of the Navy.

17 MR. BUTLER: That is all I have.

18 THE COURT: Thank you very much.

19 -----

20 WITNESS STOOD ASIDE

21

22

23 MR. HALL: The last witness would be
24 his present wife.

25 THE COURT: All right.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

72.

1 ANGELA MIDDLETON, a witness called by
2 counsel for the plaintiff, having first been duly sworn,
3 testifies and states as follows:

4 DIRECT EXAMINATION

5 BY MR. HALL:

6 Q For the record, state your name.

7 A My name is Angela Middleton.

8 Q You are married to Brian?

9 A Yes.

10 Q Would you indicate to the Court just
11 generally what occurred when the children came here, his
12 children, Nichole and Clare, in the summer of 1980, what did
13 they do and who did they see?

14 A In 1980?

15 Q Yes, starting with that year.

16 A They attended various functions with us,
17 visiting my relatives, having my relatives visit us. They made
18 friends with various people in the neighborhood where we live.
19 We live in a new housing area and we belong to the pool. They
20 belong to the swimming team, and they just pretty much spent
21 a lot of time with different children. And, we have different
22 parties and get-togethers.

23 Q Describe briefly the home in which you
24 live.

25 A Three bedrooms. It is a town house,

A. Middleton - Direct

73.

1 three levels. It is a moderate income area.

2 Q Would you indicate what the neighborhood
3 is like; in other words, in terms of number of children and
4 the age groups of the children?

5 A In our court, there are, I guess, about
6 four children Clare's age, another three or so, I guess, she
7 got acquainted with that were like a year or so older or
8 younger. And, the same with Nichole. She made friends with
9 a lot of the children in the pool that lived in the neighborhood
10 that belonged to our same organization, pool. They made friends
11 with probably a dozen roughly around their age.

12 Q Would you indicate what they did with
13 those children, starting with the summer of 1980 and then
14 giving your testimony to 1981, if any different.

15 A Swimming was their main thing. In 1980,
16 we had got private lessons for them so they could learn how
17 to swim properly. I think it was 1980, that year or 1979.
18 Whichever one we got the proper swimming lessons for them in
19 is when they learned how to swim, and then they became very
20 involved with the swimming meets and so forth. They would be
21 at the pool -- I think they started about 10:00 with the swim-
22 ming and stayed there for several hours with active competition.

23 They were getting into roller skating
24 this year. We were planning on a roller skating party, which
25 Clare had wanted, and they did a lot of that with their friends.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

74

1 I am sorry -- just primarily what they
2 did with their friends?

3 Q Yes.

4 A We had get-togethers at the house where
5 they go out and play what is called rounders, which is baseball,
6 at the common green that is behind our yard.

7 We have two dogs, and they got into, you
8 know, walking the dogs. And, this was with one of those
9 children in the neighborhood that have dogs like us or other
10 animals.

11 By visiting the neighborhood children and
12 the neighbors, they got to be very good friends with the neighbors,
13 having different or common animals, and that type of thing.

14 Q From your own observations-- First of
15 all, I would ask about your education and your job. What is
16 your basic education beyond high school?

17 A I have had a couple of years of college.

18 Q What kind of occupation are you employed
19 in?

20 A I work for United Virginia Bank, and I am
21 a Loan Administration Officer, which means I manage the operations
22 of the Credit Department, loans administration.

23 Q What are your hours?

24 A My hours vary, because some mornings I
25 like to go in early and get off earlier in the afternoon, or if

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

75.

1 I have a meeting, my hours may vary from 7:00 to 3:00 or 9:00
2 to 5:00. It depends on what we have planned to do.

3 When the girls are here, we variate our
4 hours a lot, you know, so that one of us comes home at noon
5 and takes the children and do things with them, that way. So,
6 we can flex our hours quite a bit.

7 Q How much time was your husband able to
8 stay home with the children, when he had them during the summer
9 of 1980?

10 A 1980? He spent a good part of his time
11 with them. So, he could go home, call in to his secretary, and
12 make his calls to Richmond or Alexandria on the phone. So,
13 what he would do is maybe go in in the morning at 10:00, maybe
14 pick up some papers or have his secretary, or either I since
15 we work in the same building, to take his stuff back to the
16 secretary the next morning, and bring stuff home for tomorrow.

17 So, he was spending mainly, about the
18 bulk of his vacation time with them. He had taken two weeks
19 off during -- I think they stayed here four weeks in 1980 --
20 he had taken two straight weeks off. And, the two weeks before
21 that, he had spent the major portions of the day with them.

22 Q Can you indicate during 1981 how much
23 time he had taken off from work?

24 A Let's see -- probably, it was a day here
25 and there. Then, I knew for two solid weeks, he was off with

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

A, Middleton - Direct

76.

1 them. Then, there were a lot of days where he would come home
2 and get them at noon and bring them back with him or go off
3 and do things with them.

4 Q Do you have flexible time where you work?

5 A For me? Yes, because I am the Manager
6 of the Department.

7 Q If you had custody along with your
8 husband of the children, what arrangements would you make in
9 terms of your working hours and taking care of the children
10 between the time they got out of school and the time you would
11 get home?

12 A That really would not be a problem,
13 because I could go in early. We can change back and forth on
14 the days. Sometimes I could go in early and get home at the
15 time they would get off from school. On Mondays, I understand
16 they get off at noon -- and, we have already talked about this.
17 The girls had asked me could they come in the bank and go
18 shopping down at Old Town. I said that would be no problem,
19 I could get lunch and bring it back, and they could spend the
20 day with me. We had already talked about that with the girls.

21 So, we would be with them or have someone
22 with them, you know, from the time they get off from school.

23 Q Could you indicate what amount of time
24 did the kids in 1980 spend out talking with neighbors and their
25 children, on an average per day? How many hours a day were they

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

77.

1 out with other children or adults?

2 A Well, they had the swimming. So, they
3 would be with the other children the whole time swimming. So,
4 the swimming may have been, like, three hours, four hours.
5 Then, they would come in and we had a relaxing time, when they
6 had to eat and just put their feet up. So, I guess that would
7 be for about two hours. Then, they would go out again and play
8 with the children in the evening, and come in for dinner and
9 go back out. So, maybe six hours, seven.

10 Q Were you aware of them talking to any
11 adults in the neighborhood?

12 A Yes. They were very often with our
13 neighbors, most of our neighbors.

14 Q Were any of those conversations of any
15 length with adults in the neighborhood?

16 A Oh, yes. They would chatter on quite a
17 bit about them, talking about how much they liked it, and what
18 they liked about the neighborhood, since we moved into the new
19 house, comparing it to where we used to live, and so forth.

20 Since we were all new neighbors, I think
21 we got more closely united because we were all brand new in the
22 neighborhood.

23 So, they did talk a lot with our neighbors.

24 Q Would you indicate how many of the
25 neighbors they talked to in ~~some~~ **644** depth, adults?

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

78.

1 A Maybe ten. That might be--

2 Q How many of the children in the neighbor-
3 hood did they seem to be playing with?

4 A When you looked out the door, it looked
5 like there were a hundred. Maybe 15 or 20. There was a lot
6 of going in and out and so forth. I tried to keep track of
7 who they were and where they lived. That was about it. I
8 would say, probably, 15 or 20.

9 Q If your husband had custody of them,
10 would that create any problems with you in terms of the work
11 and responsibility involved?

12 A I realize it would be more work and
13 responsibility, but, no, they wouldn't be any problem. It
14 would be a period of adjustment, but I think any change, you
15 know, we could all work around it.

16 Q Where would they go to school, if they
17 were living with you and your husband?

18 A Annandale Terrace, where they walk to
19 school from where we live, and is, maybe a quarter of a mile
20 away. It is about a five-minute walk from there, because we
21 had been over to the school with them and walked to the school
22 when we registered them. It is not very far away.

23 Q What kind of school is that?

24 A When does school start?

25 Q What kind of school is that?

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

79.

1 A It is an elementary school that has
2 grades one through six, and--

3 Q A public school or private school?

4 A Public.

5 Q Just generally, what are the facilities
6 like?

7 A It is a neat little school that sprawls
8 out. It is not two stories; it is one story. They have a gym
9 and sports and the different programs.

10 Q Approximately, what are you earning from
11 your job at the bank?

12 A You mean, my income presently?

13 Q Per year?

14 A \$22,000.00.

15 Q What seems to be the attitude of the
16 children, as you observed it, towards your having any say-so
17 over them?

18 A I haven't had any problem in disciplining
19 them. They listen very carefully to what I have to say. They,
20 you know, do no backtalking, respect was shown towards me.
21 They were very loving, even if I disciplined them. If I said,
22 you cannot ride that bike because you might get hurt, they would
23 be upset, but would come and hug me, kiss me minutes later, that
24 type of thing. So, I don't have any problem with the discipline.

25 Q Don't say what they said, but only what

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

80.

1 you observed as to their attitudes about being with you and
2 Brian. What did you observe as to their attitudes in that
3 regard?

4 A They seemed very happy about it. They
5 were always laughing and chattering and talking about, in a
6 sense, that we were all very happy together. There didn't seem
7 to be any friction at all with me being there, you know, with
8 their father. They seemd to like it and accepted me right
9 from the first.

10 Q What did their attitudes seem to be
11 concerning playing with the neighborhood children?

12 A That they were overjoyed about it, and
13 they talked about, you know, planning things. Clare is very
14 much a planner and likes to think about organizing, and she
15 was talking about that, even while she was in England.

16 Q What seemed to be their attitude about
17 talking to the adults in the neighborhood that they chatted
18 with?

19 A They were relaxed, felt good about them,
20 like they were nice people. They used the word "kind" a lot
21 when they spoke about them.

22 Q Just generally, would you indicate what
23 kind of higher educational facilities are available in Northern
24 Virginia that the children would go to, either by commuting or
25 otherwise?

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

81.

1 A Than where they are now?

2 Q Well, indicate what higher institutions
3 of learning are available within 10 miles of where you live.

4 A We are in an ideal location. Ten miles
5 encompasses Washington D. C. But, we have the schools in
6 Fairfax County, which have been found to be very good, and we
7 have talked about what they could--

8 THE COURT: Let me interrupt.

9 I sat on an annexation case in Falls
10 Church, Fairfax County. I am very familiar with
11 the Fairfax County educational system.

12 I have heard a lot of testimony. I
13 think I can take judicial notice and say I am
14 familiar with, first, with the Chesterfield schools,
15 and second to Chesterfield, Fairfax has a very
16 good system.

17 MR. BUTLER: We will stipulate that.

18 THE COURT: You can stipulate that. We,
19 really, do not need to go into the Fairfax School
20 System.

21 MR. HALL: Just on the possibility that
22 this record might be read in the English Court, I
23 would like to hear the testimony concerning higher
24 educational opportunities and other opportunities
25 near their home.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

82.

1 THE COURT: You may do so.

2

3 BY MR. HALL: (Continuing)

4

5 Q Would you indicate the types of colleges
6 and universities that are within 10 miles of where you live in
7 Annandale?

8

9 A We live right in Annandale, and we have
10 Northern Virginia Community College, George Mason, which is in
11 that area -- just in Northern Virginia?

12

13 Q No. Would you also indicate what is
14 about 10 miles from Washington, D.C.?

15

16 A We have Georgetown, George Washington
17 University, the American University of Washington, which would
18 probably be a longer distance away.

19

20 Q How far are you in terms of driving
21 distance from where you live to the White House in Washington,
22 D. C., just to put a location on it?

23

24 A I guess it takes 20 minutes.

25

26 Q Driving time?

27

28 A Half an hour. It doesn't seem like it
29 is very long, when we drive in.

30

31 Q Would you relate just generally what
32 types of parks and museums are available within about 10 miles
33 from where you live?

34

35 A Oh, we have -- right in our community,

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Direct

83.

1 we have got some great little park areas. We have got
2 Wakefield Park, which is a huge development, has indoor pools
3 and everything, which is probably, maybe two miles away.
4 We have got several park areas right, you know -- their names,
5 I am sorry. The regional park areas that are within walking
6 distance, some they have developed recently. Tennis courts
7 and so forth are within walking distance. And then within
8 driving distance, we have got--

9 Q Would you relate something concerning
10 the facilities at the different parks, what they look like?

11 A Wakefield is relatively new. It has
12 tennis, racketball, indoor pools, baseball diamonds, just all
13 sorts of sports that you want to have there. And, a lot of
14 the children go on their bikes from where we live over there,
15 or they have a bridge to walk over to get to Wakefield from
16 there.

17 Q What type of museums are available in
18 Washington, D. C. within 10 miles?

19 A Even in Old Town, we have got some of the
20 old houses and places down there, which I have taken the girls
21 to, and different places in Old Town. Then, we have in
22 Washington, I am a member of the Smithsonian, and we go over
23 there a lot. And, the Cochrane Gallery. We went to the
24 Horsharn. In Washington, there are just a number of them.

25 We went over to the White House. We

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

A. Middleton - Direct

84.

1 visited the Capital. We have gone to the Air in Space Museum
2 and to the Smithsonian. We like to go there.

3 Q You have taken the children on these
4 trips?

5 A Yes.

6 Q When you say, "we"--

7 A I am sorry. I am talking about the
8 children.

9 MR. HALL: I have no further questions.

10 THE COURT: Any questions?

11 NOTE: At this point, there is an off-
12 the-record discussion.

13
14 CROSS-EXAMINATION

15 BY MR. BUTLER:

16 Q You have known Mr. Middleton how long?

17 A Since 1972.

18 Q Then, you were familiar that the children,
19 after his separation from Mrs. Middleton, lived with her in
20 England?

21 A Yes.

22 Q They came here, after he made a few
23 visits there. I believe you even went with him once. Did you
24 go to England with him?

25 A To visit his children. I have never been

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Cross

85.

1 with his children in--

2 Q You went to England with him once, and
3 he saw his children while you all were there?

4 A Oh, yes.

5 Q Up until the present time, the children
6 have continuously resided in England with their mother and in
7 her custody; is that correct?

8 A Uh-huh.

9 Q Are you familiar with when he filed the
10 petition in this Court?

11 A You mean--

12 Q For change of custody?

13 A Yes.

14 Q Which was in July of this year. I don't
15 want to confuse you. It is a matter of record here.

16 A No--

17 MR. HALL: I believe the record will
18 speak for itself.

19 A (Continuing) I thought it was August,
20 because it was after they were here.

21 Q They were here visiting, when he filed
22 the petition here in Chesterfield?

23 A Yes.

24 Q Weren't they to return to England to
25 start school on or about the 1st or 2nd of September? Wasn't

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

A. Middleton - Cross

86.

1 that the original idea?

2 A Yes.

3 Q Do you know about this proposal that he
4 made to Mrs. Sheila Middleton about him having Clare stay with
5 him -- I mean, having Clare stay with the mother and he having
6 Nichole?

7 A Yeah, I know how that came about.

8 Q When was that?

9 A That was, let's see -- that was, I think
10 it was in '79 or '80 that Nichole had ran away from home. It
11 was around the time when she was having trouble -- he would call
12 her and she said she was having a lot of trouble with Nichole.
13 Nichole was the one that kept running away from home, and she
14 was having a lot of trouble with her.

15 Q Did you observe the children since you
16 have known them, which has been for how long?

17 A Since -- I really got to know them, I
18 guess, in '78.

19 Q Were you all married in 1979?

20 A Yes.

21 Q From what you told him about their
22 relationship with the people in the neighborhood and the
23 children, they seem to be happy children?

24 A Yes.

25 MR. BUTLER: That is all I have, Judge.

CRANE - SNEAD & ASSOCIATES, INC.
COURT REPORTERS
908 N. THOMPSON STREET
RICHMOND, VIRGINIA
PHONE 355-4335

A. Middleton - Redirect

87

1 THE COURT: All right.

2

3 REDIRECT EXAMINATION

4 BY MR. HALL:

5 Q What is the last date that they were here
6 in Virginia with their father?

7 A That Wednesday that they were taken. Is
8 it September 2?

9 Q 1981?

10 A Yes.

11 MR. HALL: Thank you.

12 THE COURT: Thank you very much.

13

14 WITNESS STOOD ASIDE

15

16

17 THE COURT: Is that all?

18 MR. HALL: That is all.

19 I think we agreed to wait for the Court's
20 ruling on the matter of jurisdiction. I think we
21 ought to do that before going into anything further.

22 He filed a Request for Admissions. If
23 the Court doesn't have jurisdiction, then that
24 should not be answered. I think we should delay
25 everything until such time.

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

88.

1 MR. BUTLER: Do you want to give us a
2 schedule on the briefs?

3 THE COURT: Yes, sir. I will give you
4 ten days, and you can respond within five.

5 MR. HALL: All right, Your Honor.

6 THE COURT: Is that satisfactory?

7 MR. HALL: Yes, I think I can handle
8 that. I am a little busy, but I think I can handle
9 it.

10 Your Honor, it is obvious from the record
11 that has been developed that there are perhaps as
12 many as ten adults who could testify concerning
13 these children here. While I would have to proffer
14 that, I am sure much of it would be cumulative.
15 There is no doubt in my mind about that. I do
16 think that is an important factor, and if Your Honor
17 would like, I will make arrangements to have
18 depositions taken of at least some of those. I
19 think it would go to the jurisdiction question as
20 well as to the best interest of these children.

21 THE COURT: You take all the evidence
22 you think you should take that is necessary to
23 prove your jurisdiction.

24 MR. HALL: All right.

25 MR. BUTLER: I object to any depositions

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

89.

1 being done outside of the jurisdiction or
2 contiguous counties, since it involves expense to
3 my client.

4 THE COURT: Will she come here for
5 depositions?

6 MR. BUTLER: Will she come here for
7 depositions? I don't know.

8 THE COURT: I would say this: If that
9 rule applies, so she doesn't inconvenience herself,
10 I think it would be less of an inconvenience than for
11 her to have to come to Chesterfield, because she
12 could land at Dulles and wouldn't have to make the
13 trip down to Chesterfield. I think the appropriate
14 place for you to take these depositions would be
15 in Fairfax County.

16 MR. HALL: I will try to accommodate
17 counsel on the timing, so we can do as many as
18 possible on one day and handle it that way.

19 THE COURT: At this stage, I have some
20 question about the jurisdiction under the Uniform
21 Child Custody Jurisdiction Act. I thought about
22 that when they passed it to change our continuing
23 jurisdiction.

24 MR. HALL: Again, Your Honor, the
25 continuing jurisdictional ruling of the Supreme

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

90.

1 Court of Virginia is based upon Section 20-107.
2 That Section has not changed.

3 THE COURT: I understand that.

4 MR. HALL: As far as it relates to this
5 point, it has not changed, as far as adding
6 additional factors.

7 THE COURT: For spousal support.

8 When the Legislature considers the fact
9 it is inconsistent with that, then you say the
10 proper legislative -- that the later Act will
11 follow?

12 MR. HALL: In any event, I think it will
13 be a test of that Act.

14 THE COURT: I think we have covered
15 everything we can do today. So, I will see you
16 at some other time.

17 * * * * *

18 HEARING CONCLUDED AT
19 11:10 O'CLOCK A.M.

20

21

22

23

24

25

CRANE - SNEAD & ASSOCIATES, INC.

COURT REPORTERS

908 N. THOMPSON STREET

RICHMOND, VIRGINIA

PHONE 355-4335

91.

CERTIFICATE OF COURT REPORTER

I, Lynda H. Benton, hereby certify I was the
Court Reporter in the Circuit Court of the County of Chesterfield,
at the time of the hearing herein.

Further, that this transcript is, to the best of
my ability, a true and correct record of the incidents of
said hearing.

Given under my hand this 7th day of October, 1981.

Lynda H. Benton

LYNDA H. BENTON - COURT REPORTER

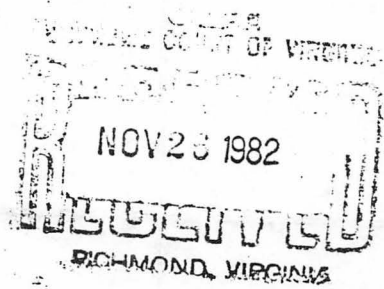
RECEIVED AND FILED

OCT 14 1981

LEWIS H. VADEN, CLERK

BR

822080



TRANSCRIPT OF TELEPHONE
CONVERSATION TO SHEILA MIDDLETON
ON JUNE 27, 1982
AT 2:00 PM EST, 7:00 PM U K

BRIAN C. MIDDLETON

COMPLAINANT

VS

SHEILA JOAN MIDDLETON

DEFENDANT

CHANCERY No. 3305-77

*filed: 8-23-82
WY
P*

1 Brian Their area code is 042 and the number is 559-075

2 Operator Let me try again

3 Brian Hello

4 Sheila Hello, Hello

5 Brian This is Brian

6 Sheila The kids are not here

7 Brian When do you expect them back?

8 Sheila About 8:00 o'clock. I think our Linda is bringing
9 one of them back. Nichole has been to the Holy
10 Island with our Linda and Tracy.

11 Brian Okay

12 Sheila And Claire has been with Paula, her friend at
13 Lyke Water Valley, out for the day, near
14 Scarborough. So I'm almost sure, I'm hoping, if you
15 say half past eight, to be sure

16 Brian Okay. Are the children coming this summer for the
17 holiday?

18 Sheila We haven't got it sorted out yet have we? Have
19 you sent me this month's money? June

- 20 Brian Yes

21 Sheila Have you? I haven't got it. When did you send it?

22 Brian Ah. I'll have to check. I'll tell you later. I
23 think it was the fourth. I think it was the fourth
24 of June it went

25 Sheila Pardon

1 Brian The fourth
2 Sheila The fourth of June?
3 Brian Uh Huh
4 Sheila Well, it hasn't come yet you see and I'm wondering
5 there has been a mail bag robbery somewhere in
6 the London area and I was wondering if it was somewhere
7 in that lot because nothing has come here for June
8 Brian That would be an awful big coincidence
9 Sheila I know, that is what I could not understand; that
10 would be a hell of a coincidence
11 Brian Yes
12 Sheila Too much of a coincidence, I would say, but I haven't
got it honestly
13 Brian Going back to my original question is I need to make -
14 ah - we already have reservations but the time is
15 running out for me to buy the tickets
16 Sheila Well, I understand that, I do really, Brian. I
17 know you think I'm a bitch and a cow and all that -
18 and I'm not
19 Brian Well what you are telling me is contrary to what your
20 Virginia attorney told me on Friday
21 Sheila I'm telling you this. If everything goes through al-
22 right, I can't let them go over to you thinking that
23 you would keep them again, can I?
24 Brian Well
25 Sheila If everything goes through okay, honest to God, Brian
26 I mean it, I'll send them

1 Brian What do you mean okay?

2 Sheila If you promise to send them back

3 Brian The children will be visiting me under a Judge's
4 order

5 Sheila I know

6 Brian And that judge's order will , that Judge's order
7 includes for me to buy them a return trip ticket

8 Sheila Yes

9 Brian Now I'm operating under the Judge here - now he
10 may decide something different and I can't promise
11 anything on that

12 Sheila Well, that is what I'm saying - I don't

13 Brian He will not - he is not going to abide by anything
14 that is going on over there. He has custody of the
15 children and you know that. Regardless of what you
16 are doing there - you can't escape the fact that
17 the Judge has jurisdiction

18 Sheila I know. I accept that

19 Brian Well?

20 Sheila You must understand this, Brian, last year I sent
21 them over to you in good faith

22 Brian Yes

23 Sheila And you kept them

24 Brian And the Judge, and the last time we went to court,
25 the Judge clearly stated that I did nothing wrong
26 in doing that. He endorsed it. He thought it was
27 very correct in what I did

1 Sheila Well, I don't understand how he could do that
2 when I have custody

3 Brian You have got a Virginia attorney, and the transcripts
4 of the hearings are available. And, he could send
5 you one and you will see that he said there was nothing
6 wrong in what I did. Now he is insisting that he
7 talks to the children. He blasted your attorney about
8 that. And told him straight he wants to talk to the
9 children. He does not want letters written to him
10 by the children. And, he believes that you are avoid-
11 ing him.

12 Sheila We have provided a social worker report who spoke
13 to the kids. I don't know him

14 Brian Well

15 Sheila And he wrote in his report what he thought and what
16 he found

17 Brian And that's okay and there was also a social worker's
18 report done from here. Now what he is asking

19 Sheila Illegible

20 Brian Well the thing is , see, he does not accept some
21 second hand report. He won't accept my word which
22 I have told him. Of course, you know I have already
23 told him that as far as I was concerned, the children
24 expressed the desire to live with me

25 Sheila I know

1 Brian And he won't take my word for it, okay. He won't
2 take my word for it and he won't take your word for
3 it and he won't take the social worker's word for it.
4 The only word he is giong to take is the girl's.
5 Otherwise, this thing is going to drag on and on and on

6 Sheila I know

7 Brian Now, don't you want the girls to talk?

8 Sheila It's not a case of wanting them to talk, Brian -
9 it is a case, honest to God - they don't want to
10 live anywhere else but here - but they don't want to
11 stop seeing you

12 Brian Well

13 Sheila When they get with you, they say the opposite. I
14 just don't understand it

15 Brian So you mean when they come here, you say that they
16 will want to live with me?

17 Sheila No. I'm just saying I don't know what they would say.
18 All I know is what they say to me. What they say to
19 me is - I want to stay here, mommy, but I don't want
20 not to see my daddy. And thats imagine - you think
21 I'm a hard calculating bitch, you have crucified me,
22 Brian. What you have thrown at me in this would
23 crack any female; because I know what you say I've
24 done and I know you have said I have said some awful
25 things about you, but I haven't. I have put on a
26 bloody pedestel to those kids

1 Brian Well I don't believe that statement at all

2 Sheila I know you don't believe it. I don't know why
3 because I'm telling you the truth

4 Brian Well, nothing is going to get settled, Sheila

5 Sheila But what you put me through

6 Brian Nothing is going to get settled in avoiding the
7 girls, because I can give you - your attorney can
8 give you a scenario and I'm determined. I'm damn
9 determined

10 Sheila Determined what?

11 Brian I'm determined that the girls will speak to the
12 Judge.

13 Sheila Ah

14 Brian You were given some extremely poor advice

15 Sheila They are being torn and you are doing this to them.
16 They are as happy as can be here

17 Brian Why? Well, why don't we get the whole thing resolved,
18 I mean

19 Sheila They are happy here

20 Brian We have gone almost a whole year. We have gone backwards
21 and forwards

22 Sheila But they have been here for eight years

23 Brian Well look, we have had

24 Sheila We are talking about eight years ago. I've had those
25 kids eight years, I've had them

1 Brian That has not

2 Sheila You want to suddenly walk in blindly and take them
3 off me

4 Brian No, the girls -

5 Sheila I'd be a poor mother if I didn't fight for my kids

6 Brian Is that the reason? Is that the reason?

7 Sheial I'd be some sort of - my _____ would never
8 forgive me, oh you can go on, just please yourself

9 Brian No, it is what they are asking

10 Sheila They are asking -

11 Brian You do believe me that they asked me, don't you?
12 You don't believe I made it up?

13 Sheila I don't understand what you have done it for. I
14 don't understand the things you've said about me

15 Brian Well

16 Sheila Because I swear on the bible I've never said any-
17 thing like that about you to those kids

18 Brian I've never said - hey, let's get this straight -
19 I've never repeated those things to the kids, they
20 repeated them to me

21 Sheila Oh, you are talking - fabricating -

22 Brian They repeated those to me - They repeated those to me

23 Sheila I've done none of those things in front of my children.
24 What kind of a person do you take me for?

25 Brian Well, your kids are saying the opposite, okay?

1 Sheila Don't - come off it - what are you, whiter than white?
2 Brian The kids are saying opposite
3 Sheila Eh
4 Brian Well, what I was calling for and it is obvious that
5 your Virginia attorney has not got the story right.
6 He called up on Friday and said you had been to the
7 Court and got a release order. Was that right? Has
8 the English court allowed them to -
9 Sheila We haven't been to the English court yet
10 Brian You haven't been?
11 Sheila No
12 Brian He said you had already been
13 Sheila All we have got is an affidavit sent by me and signed
14 by me
15 Brian Right, but on Friday, he said
16 Sheila To the American Judge saying that they can come this
17 summer
18 Brian Right, in that you said
19 Sheila They can come this summer
20 Brian In that you said - Well, I read that affidavit; it
21 also said that there was a custody order - you got
22 it from the court - that forbids the children from
23 leaving. Right?
24 Sheila And I've got to go through the court to get them
25 permission to leave now

1 Brian Well he said that that had already been given
2 Sheila When was this, on Friday?
3 Brian On Friday
4 Sheila Do you think I'd know about it if it happened?
5 Brian Well, are you going to get that release so they
6 can come?
7 Sheila I'll get the release so they can come, yes. If
8 I can get assurance that my kids will be sent
9 back at the end of it
10 Brian Well, there is a round trip ticket. I'm under
11 the judge here. Now what more -
12 Sheila Okay, Brian. But let the judge tell me that and
13 I'll believe him
14 Brian You mean that you want an absolute guarantee that
15 he'll give you custody
16 Sheila Last year I sent the kids to you and you didn't
17 send me kids home to me. I'm the mother
18 Brian And, he said that was okay
19 Sheila Well I don't care what he said - me - he is not
20 the mother of those children
21 Brian Don't you realize -
22 Sheila I've had them for eight solid years
23 Brian Don't you realize - Well, you see neither of us -
24 Sheila - beautiful rounded children
25 Brian Well, you see neither of us -

1 Sheila - nothing to do with your children or your children
2 Brian Unfortunately, neither of us has got custody of the
3 children
4 Sheila You're right, we haven't
5 Brian Neither one of has. There is only one person that
6 has custody of the children - and he's called
7 Judge Gates - that's the only person
8 Sheila I have written to you - if they will be returned
9 to me at the end
10 Brian But what happens if he changes custody? You see
11 he is going to talk to the children. He knows
12 when they are coming and he has already requested
13 that he talks to the children. Now I've got to
14 do what he says
15 Sheila And I've got to do what I'm told at this end as
16 well
17 Brian Well
18 Sheila - that the children stay with me until they are old
19 enough to make up their own minds
20 Brian Well you see he won't believe me and he won't believe
21 you about that
22 Sheila He should believe a social worker's report from the
23 British Court
24 Brian That social worker report had no more meaning than
25 me saying it

1 Sheila Why not. He came to visit the school
2 Brian Well we also can produce very good social worker
3 reports and there is an extremely complementary
4 one on me. So I mean, you have that one that has
5 been completed - either one - the English Court
6 report says the best place for the children to be
7 is in England and the American one says the best
8 place for the children is to be here. So he doesn't
9 believe either one of us. The only people he is
10 going to believe is -
11 Sheila - the children
12 Brian is the children. That is the only people he is
 going to believe
13 Sheila Ask the children where they want to be
14 Brian He wants to talk to them. He didn't tell me, he
15 said he wants to talk and he insisted that they
16 talk to him. And what he is getting extremely angry
17 about is a lot of maneuvering going on to prevent
18 him from talking to them. You see, over here they
19 have a private session. It's all private and no one
20 else can be there except the judge and the kids and
21 that's how they decide.
22 Sheila You see, I've got visions of your high powered American
23 lawyers. I've seen what they are like, Brian.
24 Brian Eh - my high powered american lawyer -
25 Sheila I'm not talking about yours in particular - I mean
26 mind in particular

1 Brian You've got two law firms working for you over here
2 Sheila Two - yes - Have you seen them?
3 Brian Yes
4 Sheila You're English, Brian. You might be American now
5 Brian Yes, I've seen them
6 Sheila My God, you must have lost an awful lot
7 Brian Yes, I've seen them
8 Sheila Because they're after one thing and it's to bleed you and
9 me dry
10 Brian You got it exactly - that exactly
11 Sheila They are going to torture us until the both of us have
12 nothing left
13 Brian That's right. I'm really glad you appreciate that
14 Sheila My little solicitor in Darlington. He is nothing
15 like them
16 Brian I know
17 Sheila Poor little buggar - I'm on legal aid over here
18 Brian Well, you are not on legal over here, clearly
19 Sheila No, I'm not on legal aid over there. You must be
20 joking; I've got half of my family mortgaged bloody
21 to death
22 Brian And don't you believe it's costing me comparable
23 amounts or even more
24 Sheila Brian, I didn't want this
25 Brian Well, we don't want it but you dragged it

1 Sheila I wanted them to come over and see you every summer.

2 I want them

3 Brian Well, so do I

4 Sheila But, I wanted them to go with you when they got older.

5 I wanted -

6 Brian What do you talk about, older

7 Sheila When they stop being children

8 Brian When is that?

9 Sheila When?

10 Brian When is that?

11 Sheila Nichole is only eleven

12 Brian But, what is the date - I mean, what is the age - I'm
13 confused. I don't know what age we are talking about.

14 It keeps changing

15 Sheila I never said to you ten years old, Brian

16 Brian Then what age is it now? That's what I'm confused about

17 Sheila Think. What age do you think they would become teen-
18 agers and to be able to say things - what they want out
19 of life!

20 Brian Well, teenagers start at thirteen

21 Sheila I know

22 Brian Which is Claire's birthday

23 Sheila Well about fourteen, I imagine - fifteen years old

24 Brian And you would pull Claire out of school at that
25 point. I wouldn't do that

1 Sheila When she gets her "O" levels I mean. I don't
2 mean fifteen

3 Brian Well, that's sixteen then

4 Sheila When she gets her "O" levels?

5 Brian And then her whole education is going to be dis-
6 rupted if she comes here

7 Sheila Why?

8 Brian

9 go to school until they are eighteen - Claire's at
10 least a year to two years behind

11 Sheila Behind! She'll never be behind

12 Brian She is. I'm afraid that true because - it's not
13 my reflection of the education - it's just that it
14 is different here and they take different subjects

15 Sheila But what you are forgetting and expecting me to do
16 is - I don't think you understand that - I'm the
17 mother of them

18 Brian I well understand and you also think you are for-
19 getting that I'm the father and I have rights

20 Sheila But I have had them for eight years. If you had
21 had them for eight years, I wouldn't --

22 Brian Then maybe it's time for me

23 Sheila I'd be cruel to you taking them from you if you'd
24 had them for eight years. I wouldn't do it to you
25 until they were older, I wouldn't

1 Brian We always agreed that the kids could chose where they
2 wanted to live, didn't we?
3 Sheila They are now children. You forget - you were not
4 listening - particularly Nichole - she is bloody
5 wonderful. I'm telling you, she'll tear you apart,
6 because she does me
7 Brian Well, I can only tell
8 Sheila - she practically wants to live there immediately
9 Brian Well, I can't distinguish from that
10 Sheila You can't because you haven't lived with the bugger
11 for eight years like I have
12 Brian I can only act as a father can act
13 Sheila Would you only act on some great emotion that she is
14 deliberately doing to you?
15 Brian Well, I think she is going to have to explain that to
16 the judge
17 Sheila She can't explain that to the judge
18 Brian Well, I mean
19 Sheila She is ten not bloody eighteen. She rises to the
20 occasion. She goes to Linda's. "I wish I lived in
21 Swainby - I want to live in Swainby" - You have no
22 idea
23 Brian The only way
24 Sheila She's a dramatic little bugger

1 Brian The only way it's going to be resolved is what I
2 tell you- that the only way it's going to be
3 resolved. In the meantime, you are quite right -
4 the damn lawyers are bleeding us all to death
5 Sheila They are. They'll crucify us. I'm telling you,
6 they are buggers. They are really
7 Brian But it's going to continue

END OF SIDE A TAPE

SIDE B

1 Angie You remember what I said in my letter to you, about
2 how we try to do what is best for you, huh?

3 Nichole - - - talking

4 Angie Put the phone up to your ear, dear

5 Nichole Pardon,

6 Angie We had good reception before, nobody had any trouble
7 listening to us. Is someone else listening on the
8 phone?

9 Nichole No

0 Angie Well put it up to your ear dear. Okay?

1 Nichole Yes

2 Angie Okay

3 Nichole Claire is coming

4 Angie Okay

5 Nichole - - - -

6 Angie Just a minute, Nichole - Nichole

7 Nichole What?

8 Angie You've upset your daddy. He's very concerned now. He
9 thinks you don't want to come and see him

10 Nichole I do

11 Angie You wouldn't answer him. You know your daddy has been
12 trying to do what's best for you and when last year when
13 you were all here and you said you wanted to stay with
14 us, remember the episode in the store where I told you
15 "Let us know definitely if you want to stay or not. This
is not back or forth", remember?

1 And you said "I want to stay here with you and daddy",
2 remember?
3 Nichole Yes
4 Angie Okay. Well your daddy and I have both put a lot of time
5 and a lot of money into it because that's what we felt
6 was better for you, and that's what you wanted. And
7 now he's - . You know your daddy loves you - huh, what?
8 Nichole I'm happy anywhere
9 Angie Your happy, what, honey? Well we want you to be happy
10 anywhere
11 Nichole Pardon
12 Angie Well we want you to be happy anywhere. We don't want
13 you to be unhappy
14 Nichole - crying - I love both countries
15 Angie Well sure. We are not telling you - don't like one place
16 and you don't like England. That has nothing to do
17 with it. I never told you to not like England. Did I?
18 Nichole No
19 Angie Never once. In fact we even talked about how pretty
20 things are and how things were lovely and old there.
21 Right?
22 Nichole Yes
23 Angie We always talked about how nice things are there. There's
24 no reason for you to dislike living there. Right?
25 Nichole Yes

1 Angie And I never told you anything bad about that place.
2 Did I?
3 Nichole No
4 Angie Okay. So I'm not telling you you have to dislike it
5 there. I don't want you to misunderstand what's going
6 on, because you were very clear about everything before
7 and now there seems to be some confusion. Now do you
-8 want to come and see your daddy this summer?
9 Nichole Yes
10 Angie Okay
11 Nichole Do you want to talk to Claire?
12 Claire Hi Dad
13 Brian Hi Claire, how are you doing?
14 Claire Alright, thanks
15 Brian Good. How have you been doing?
16 Claire Okay. What have you been doing?
17 Brian Oh. This and that. That's what I was calling for, okay?
18 Claire Pardon
19 Brian What I was calling for - put the phone up to your ear
20 and tell anyone else who is trying to listen in to not
21 do that, okay? Just put the phone up to your ear, then
22 we can hear. Are you there, Claire?
23 Claire Yes I'm here
24 Brian Good. Always seem to have problems when I'm talking to
25 my kids. They never can hear. It's probably because
the phone - sorry

1 Claire It's usually a bad line
2 Brian It's never a bad line, because no one else has the
3 trouble. I just spoke with your mother for half an
4 hour and we had no trouble at all in people hearing.
5 But it's as soon as you or Nichole gets on the line
6 we have a lot of trouble. And it's difficult to
7 listen to me when someone else is listening in on
8 the call. So if anyone is, just tell them to stop
9 it and put the phone up to your ear so I can talk to
10 you in private, okay?
11 Claire Okay, huh?
12 Brian What I called you to tell you is that we have already
13 made plane reservations for you on July 23rd for you
14 to come and visit
15 Claire Yes
16 Brian Is that all you have to say, yeah?
17 Claire No
18 Brian Isn't there a - oh, good?
19 Claire Oh, good
20 Brian Do you want to come?
21 Claire Oh, I don't know
22 Brian You don't know? Well, I'm going to be spending a lot of
23 money on this and I'd really like to know.
24 Claire Oh, hum
25 Brian I think you are bothered about a couple of things,
26 aren't you?

1 Claire Yes

2 Brian Yes, because you wrote a letter didn't you?

3 Claire I don't know

4 Brian Yes you do. You know full well you wrote a letter,
5 didn't you? Because I've read it.

6 Claire I can't remember

7 Brian Do you want me to send a copy of it?

8 Claire No. I don't know

9 Brian Well don't you remember - I mean this is a very important
10 thing we are talking about - and you wrote a letter to
11 the Judge, didn't you?

12 Claire I don't remember

13 Brian Oh, you remember, Claire. You wrote a letter to the
14 Judge saying that you wanted to stay with your mother.
15 Now that would be a very important letter to write,
16 wouldn't it? You remember okay, don't you?

17 Claire No, I don't

18 Brian Because I was going to ask you if that was true, but
19 obviously you don't remember even writing the letter.
20 Because what's upsetting about that letter was that it
21 said something different to what you told me when you
22 were here. Now you see when you were here, you told
23 me you wanted to stay. Right?

24 Claire Yes

25 Brian And I went through a lot of trouble for me and your Mom
26 because you said that. Now you know what's been going
27 on, don't you?

1 Claire Yes

2 Brian You are well aware about what's been going on?

3 Claire Yes

4 Brian And you probably remember writing that letter even

5 though you are lying right now and saying you don't

6 Claire I don't honestly

7 Brian Well, I would have thought you would have remembered

8 such an important letter. Because, someone, either

9 you did it on your own, or someone asked you to write

10 to the Judge to tell him you wanted to stay. Now

11 you see what's going on, and what's really confusing

12 right now is, I heard you tell me that you wanted to

13 stay and I've spent every dime I've got in hiring

14 lawyers so you could stay. And we are really into

15 a lot of expense and a lot of trouble. All of us.

16 And it's no wonder you can expect all of us to be a

17 little upset about this. But I did expect you to be

18 a little more enthusiastic about coming to America.

19 Claire I want to come. Yeah

20 Brian You want to come. That's what I wanted to hear.

21 That's what I wanted to hear.

22 Claire For how long?

23 Brian For a month, unless something happens in the meantime

24 Claire Okay

25 Brian Because you see, there is a Judge over here who you

26 wrote that letter to, that I know you remember, and he

27 wants to talk to you about it

1 Claire Uh

2 Brian Do you know I love you darling

3 Claire Yes, I love you too, dad

4 Brian Okay, well I really want you to come here

5 Claire I don't know whether to say yes or no

6 Brian To come to what? Yes or no to what, Claire?

7 Claire --- I don't know

8 Brian You don't know what? About the holiday or wanting to stay

9 here?

10 Claire About staying there

11 Brian Oh Okay. Well perhaps when you get here you can make up

12 your mind again and I hope this time no one will do any

13 silly thing like kidnapping you from the front of the house

14 Claire I don't think it was kidnapping

15 Brian Yes it was, darling. What was done was done illegally.

16 What they did darling was very wrong. That was very

17 wrong and don't let anyone else tell you otherwise, because

18 the judge wants to tell you that. The judge was quite

19 upset to hear that it had been said that I was doing things

20 that were wrong. I never done that for you, love. I've

21 just tried to do what's best for you. I'm naturally going

22 to be very upset if what you told me last year was comple-

23 tely untrue. Because I've been through a lot of trouble.

24 But I did it because I thought that was what you wanted.

25 That's why I did it. Everyone always wants to do best

for their kids or they think so

1 And I think you'll want to do that when you grow up
2 Claire On the 23rd of July?
3 Brian Right. Now if you really want to come, it can happen.
4 Now if you turn around to some judge there and say you
5 are scared of your dad and you don't want to come, then
6 something will get in the way and you won't come. But
7 I want you to know that those tickets will be in London
8 for you, and I wanted you to come. And you know who to
9 look to if you don't come.
10 Claire Am I coming back?
11 Brian The tickets are round trip. Now are you asking me to
12 promise? You may not change your mind about what you
13 said in your letter?
14 Claire Right. Will I be able to come back here?
15 Brian I think you will have to talk to the judge about that,
16 dear. Because if that's what you really want to do, okay;
17 all I want to hear from you is - I want to live here or
18 I want to live there. I won't be sat towering over you.
19 But what you told me when you were here is that you wanted
20 to stay. And I was trying to get it so you could stay.
21 Can I ask you one thing?
22 Claire Yes
23 Brian Didn't I tell you if you wanted to go back that the tickets
24 were there for you to go?
25 Claire Yes

1 Brian Didn't I really tell you that?
2 Claire Yes
3 Brian I mean I don't think I was forcing you to stay here,
4 was I?
5 Claire No
6 Brian Didn't I make the tickets available to you and say if you
7 want to go back, you can. Didn't I say that? And don't
8 you think I'll be the same way again? You see why are you
9 asking all these questions about - can I go back. That's
10 what I am bothered about. I never made you do anything.
11 So it is very easily answered about when you can come
12 back, right?
13 Claire Yes
14 Brian What's the answer?
15 Claire I don't know
16 Brian The answer is if I want to go back, I can come back, right?
17 Claire Yes
18 Brian That's the answer. I'm not going to tie you to the kitchen
19 chair, am I?
20 Claire No
21 Brian Did I tie you down to the kitchen chair before?
22 Claire No
23 Brian What did I say to you? If you want to go back, you can
24 go back, didn't I?
25 Claire Yeah

1 Brian Right. And don't let anyone else put anything different
2 in your head because I know I've been talked about very
3 bad; because you Claire are very cautious when you talk
4 to me on the phone. You're hearing a lot of bad things
5 about me.

6 Claire I know they are not true

7 Brian They're still being said, aren't they?

8 Claire No. Mam's never said anything bad about you

9 Brian How about the rest of them?

10 Claire I don't know

11 Brian I know when you came back from Uncle John's, you were
12 scared to death to talk to me, because I bet a lot of
13 bad things were said about me there

14 Claire My mam said she has never said anything bad about you
15 and that's why she doesn't mind

16 Brian Well you have been very funny on the phone for quite a
17 while

18 Claire Did you get your Father's Day card?

19 Brian No

20 Claire We sent it

21 Brian Nothing has come

22 Claire We posted it

23 Brian Well, it hasn't come, love

24 Claire Oh

25 Brian And I know you can address things properly

1 Claire It will be there because I posted it. Me and Nichole
2 Brian Yeah. Well, I'm going to say goodbye now, and I'm going
3 to tell you right now because I'm not going to speak to
4 you again before you come; is if you don't come, I'll
5 be very upset
6 Claire Well, oh. Do you want to speak to mam?
7 Brian No. I think we have spoken enough. Just put her on for
8 one second and I'll tell her where the tickets are going
9 to be
10 Claire Right - Oh love you
11 Brian Bye Bye, love
12 Sheila Hello
13 Brian If you find out anything - it does not really matter
14 anyway, because the tickets are going to be over there
15 and someone will be at the airport to meet you with them.
16 And those instructions will get through
17 Sheila I don't know what the hell is going on
18 Brian Well, so they are flying from Gatwich Airport on World
19 Airways is where
20 Sheila I'll ring up as soon as I can on Monday, Bill Goyers, to
21 see what's going on about this court, because I don't
22 know anything about that
23 Brian Like I said, I'm not going to accept any excuse. There's
24 really no excuse anyway. So if they don't come, I'll
25 really know

1 Sheila You are going to what?

2 Brian If they don't come it's because you don't want them to
3 come. And I'm afraid you are going to have to trust the
4 judge over here and the courts over here.

5 Sheila I don't trust any of them here or over there, Brian.

6 Brian Well, what's going to happen next - - -

7 Sheila I don't trust any of them; they are just after one bloody
8 thing and that's pounds, shillings and pence and dollars

9 Brian That's right

10 Sheila All of them. Both sides of the Atlantic

11 Brian Well

12 Sheila They are not normal human beings

13 Brian Well, I agree with you and I'm here anytime and you can
14 write to me and get this damn thing resolved. I really
15 mean it. We got to

16 Sheila I know that, Brian. And have said to you I have never
17 wanted them to not come over. But; I'm definitely not
18 going to let them live there while they tell me they want
19 to be here. ^{Brian} Well, you can never take them away.

20 Brian My right

21 Sheila I'm not going to take away your right

22 Brian You can never take away my rights

23 Sheila You can have them anytime you want for a holiday

24 Brian You can never take away my right -- well

25 Sheila Now, listen. I only know what they tell me. You only
26 know what the buggars tell you

1 Brian Well

2 Sheila And I don't understand, but I know one thing, that I
3 can't give them up until they say to me "Look, Mam, I
4 want to live with him" I'd put them on the next plane,
5 because I've had enough

6 Brian Well, so have I

7 Sheila I'm at the end of my bloody teather with it. At the
8 moment, I couldn't bloody care less as long as I know
9 they don't want me

10 Brian Well, why don't you -

11 Sheila But, if they want to be here or if they want to come over
12 here for the holidays, that's alright. But they tell me
13 they don't and start crying and bloody carrying on and
14 please don't. They daren't tell you they don't want to
15 hurt you; they are frightened to death in case you are going
16 to be hurt

17 Brian That isn't

18 Sheila --like a lump of rag because

19 Brian You are listening in on the phone call there and

20 Sheila I know you think I think you are horrible but I don't
21 and I never will and I don't give a buggar about what you
22 say about me, Brian. You have been a good father to those
23 kids and I've never said anything different

24 Brian Well

25 Sheila And that's the Gods honest truth

1 Brian Well, what's
2 Sheila And I've never said anything different
3 Brian I'm expecting them here ---
4 Sheila I've said it to the social worker, I said it to the judge
5 here, there is nothing wrong with the man as a father
6 for those kids
7 Sheila Except you don't want them to live with me. You don't
8 want them to live with me when they express that desire
9 and I'm afraid you can't --
10 Sheila They haven't expressed that desire to me
11 Brian You cannot do that, Sheila. You cannot do that
12 Sheila Anyway, I'm not arguing any more. You tell me one thing
13 and they tell me another
14 Brian You'll get the order in the mail within a week
15 Sheila I'll get the order in the mail. In the meantime, can I
16 have the check again, please because I have to pay this
17 rate bill somehow.
18 Brian I'll check with the bank and see if it has been paid, okay?
19 Sheila Well, please do, because it hasn't. You'll soon find out
20 it hasn't
21 Brian That's okay. Just don't start bringing in all your little
22 lawyers from this side jumping up and down
23 Sheila If it can be guaranteed, you can be fair. I'm not asking
24 an awful lot for money, you know that. You know my American,
25 that Donald Butler, or what ever the bloody hell they call
26 him, said I'm a bloody idiot for putting up with how much
27 you send me

1 I don't give a buggar as long as I get that. That's all
2 I want

3 Brian Because they are

4 Sheila They are pressurizing me and pressurizing me the same
5 as your buggar is pressurizing you. And its money and
6 their villas and their bloody swimming pools and their
7 shit they have got over there. They are. They will
8 bleed us both

9 Brian Well, he continues to appear in court. He continues to
10 cost me money

11 Sheila Of course, he is. Because that's what they are there for
12 to bleed you and I, simple bloody folks that don't really
13 understand. All we know you are fighting for the kids

14 Brian Well who is paying for it? Some must be paying for his
15 bills, otherwise he wouldn't keep coming there and dis-
16 rupting things

17 Sheila You know who is paying the bills. Shall I tell you who
18 is paying? My mother. You know why. Becasue she has
19 mortgaged her cottage, my inheritance and my sister's
20 inheritance has gone. Every bloody penny has gone, from
21 my cottage, from my mother when she dies has gone all of
22 it practically now. The whole bloody cabouse, because
23 two little darling children say to me they want to stay
24 with me. Do you think I would put all that in jeopardy
25 and all that bloody money wasted if I didn't think that
26 was what they wanted to do?

1 I would let you quite happily have them, Brian, if I
2 thought they wanted to be there; and didn't you just
3 want to have holiday times and they can go then, go
4 when they are older? It's not fun for me living with
5 the constant battle of things coming from America.
6 Anyway, we have been through this a thousand times.

7 Brian It's not going to get any better until they come

8 Sheila I'll talk to my solicitor and see what he has to say
9 about this other thing you have said

10 Brian Okay Goodbye

11 Sheila You have to look in your bank statement to prove I'm
12 not trying to fiddle you out of two hundred dollars

13 Brian I never did

14 Sheila Eh?

15 Brian You know

16 Sheila You believe I haven't cashed it. What can you do with
17 two hundred rotten dollars. It's twenty five good a
18 week. It barely bloody pays for piss all over here
19 now

20 Brian It's funny --

21 Sheila You know what twenty five pound a week can buy in America?
22 It's nothing

23 Brian You could always write. You could always write and let
24 me know way before time if you indeed haven't got it.
25 That check goes out

1 Sheila Well, I think it must be coming anytime now
2 Brian Well, you know when it comes and it goes out regularly
3 as clock work. And when something is wrong it's very simple
4 to do
5 Sheila I can't start writing to you for it. By the time you get
6 the letter it could have been here
7 Brian It only takes four days
8 Sheila Eh
9 Brian It only takes four days and if indeed you have got it -
10 Sheila Yeah, you see I have been hanging on till the end of
11 this month, then I was going to have to write and ask,
12 but up till now, it hasn't come. It might come tomorrow
13 morning. But it seems funny if you say you posted it
14 the fourth of June, why I haven't bloody got it yet
15 Brian That's true, like I say, it has been mailed
16 Sheila Anyway, I'll talk to my solicitor about this thing and
17 see if I can work out what it means
18 Brian Okay - Bye the Bye
19 Sheila Bye

20
21 END
22
23
24

I, Murielle S Saffa do hereby certify that this is a true transcript of the conversation between Brian C. Middleton and Sheila Joan Middleton on June 27, 1982, at 2:00 pm EST, 7:00 pm UK

Murielle S Saffa