

SUPREME COURT OF THE UNITED STATES

In the Matter of:

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No. 86-1052

VOLKSWAGENWERK AKTIENDESELLSCHAFT, :

Petitioner, :

v. :

HERWIG J. SCHLUNK, ADMINISTRATOR :

OF ESTATES OF FRANZ J. SCHLUNK :

AND SYLVIA SCHLUNK, DECEASED :

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4 Petitioner, :

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OF ESTATES OF FRANZ J. SCHLUNK

7 AND SYLVIA SCHLUNK, DECEASED :

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9 Washington, D.C.

10 Monday, March 21, 1988

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States at
13 11:03 a.m.

14 APPEARANCES:

15 HERBERT RUBIN, New York, New York; on behalf of the
16 Petitioner.

17 JACK SAMUEL RING, Chicago, Illinois; on behalf of
18 the Respondent.

19 JEFFREY P. MINEAR, Washington, D.C.; amicus curiae,
20 supporting Respondent.

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P R O C E E D I N G S

(11:03 a.m.)

CHIEF JUSTICE REHNQUIST: Mr. Rubin, you may proceed whenever you are ready.

ORAL ARGUMENT BY HERBERT RUBIN, ESQ.

ON BEHALF OF PETITIONER

MR. RUBIN: Mr. Chief Justice, and may it please the Court:

This case arises by certiorari to the Appellate Court of Illinois. It presents, we believe, the gravest issue regarding the continued viability of a highly successful, a real success story among treaties, the Hague Convention on Service of Process, which to date has been recognized and acknowledged to be a simple, effective device to end and remove what was a minefield for litigants, Americans abroad as well as foreign litigants in the United States.

What has happened here by the decision in this, in the court below, is that there is a suggestion which has been created, a somewhat cynical suggestion, that service on a foreign involuntary agent has been ruled out, but service on an involuntary agent in the United States is perfectly all right and not within the treaty.

Respectfully, we believe that this is a somewhat parochial and provincial approach which is

1 inappropriate in the area of contract law which involves the
2 world community.

3 QUESTION: Counsel, suppose that the CEO of
4 Volkswagen Germany were in Illinois for a business meeting
5 for a day and he were served, what result? Would you have
6 to comply with the treaty?

7 MR. RUBIN: I think, Your Honor, that you would
8 have to comply with the treaty. I don't believe that the
9 treaty contemplates that -- and I don't believe that the
10 intention of the contracting parties was that there should
11 be a kind of a hit-or-miss situation with respect to the
12 service of process.

13 Service of process is, I think, the quintessential
14 element in the commencement, in the conduct, of a lawsuit
15 which cries out for formality, for a sense of very definite
16 precise kinds of procedures so that a party who is being
17 hailed into court is informed that this is the start of a
18 lawsuit, that this is the time when you have to begin to
19 respond, and that any kind of actions that have to be
20 taken are being taken, and that the idea that the president
21 is running through an airport and some papers pushed on
22 him should trigger that. We respectfully submit that that
23 was not within the contemplation of the contracting parties.

24 QUESTION: What is the language in the treaty
25 that you rely on in order to support your conclusion that

1 the documents would necessarily have to be transmitted
2 abroad as a practical matter? Because they don't have to be
3 transmitted as a legal matter.

4 MR. RUBIN: We respectfully submit that in
5 presenting the proposition to the Senate, Mr. Carney, who
6 was the representative of the State Department who presented
7 it, indicated in the broadest terms how this treaty was to
8 be administered and what it's purpose was.

9 He said that for the purpose, for the service
10 of judicial documents abroad, that is, in cases where an
11 action is commenced by a Plaintiff in one country against
12 a Defendant who is in another country; now the juxtaposition
13 is very clear: you have a case where you have a Plaintiff
14 in one country and a Defendant who is in another country.

15 QUESTION: But that's not what the treaty says.
16 The treaty says where there is occasion to transmit a
17 judicial or extrajudicial documents for service abroad.

18 MR. RUBIN: That's right and that, too, is
19 stated in the broadest and most embracing fashion. It says
20 in all cases where there is an occasion to transmit a
21 document for service abroad.

22 QUESTION: Even if the company does it
23 voluntarily, not as a legal requirement?

24 MR. RUBIN: Your Honor, please, I believe that
25 the intention was clear among the contracting parties. And,

1 indeed, it was understood by each of the courts that've had
2 occasion to rule on it.

3 QUESTION: Well, then are you saying that it's
4 irrelevant that the document has to be transmitted abroad?

5 MR. RUBIN: It is not irrelevant at all.

6 QUESTION: Well, then we have to focus on the
7 language of the treaty in that clause, don't we?

8 MR. RUBIN: The expectation, Your Honor --

9 QUESTION: All right. Then, in the example I
10 give, why is there any necessity to transmit the document
11 abroad?

12 MR. RUBIN: There is the necessity to transmit
13 it abroad, Your Honor, because the party that's being
14 hailed into court has a right to know precisely what the
15 contentions are against it.

16 QUESTION: It knows. The president, in the
17 hypothetical case receives the document in Illinois.

18 MR. RUBIN: Well, the president is receiving it,
19 Your Honor, on the fly. He is not someone who at that
20 point is prepared to address that issue. And the
21 contemplation of the treaty was that there should be the
22 formality. That's instinct in every aspect of this treaty.

23 QUESTION: Mr. Rubin, what if Volkswagen
24 Germany had an office -- that's the next question -- in the
25 state?

1 MR. RUBIN: I think, Your Honor, that if it had
2 an office in the state it would have qualified in the state.
3 It would have designated a representative to receive
4 service --

5 QUESTION: No, this is a state that doesn't have
6 such a thing.

7 MR. RUBIN: If it had an office in the state --

8 QUESTION: Just has an office in the state.
9 That's all. It hasn't designated anybody as an agent, but
10 it has an office there.

11 MR. RUBIN: I think in that respect, also, you
12 have a question as to what kind of an office this is. If
13 this is an office where you have a freight forwarder
14 sitting there, it's not the kind of a situation --

15 QUESTION: No, this is a big office. This is an
16 office that engages in the full line of the business that
17 the parent company does in Germany.

18 MR. RUBIN: Well, that's not the situation,
19 obviously, Your Honor.

20 If the corporation has proceeded into the state
21 and set up a structure under which it is conducting --
22 it has essentially removed itself into the state -- this
23 would be the type of case, for example, we had in
24 Perkins v. Benquet or the type of case where perhaps you
25 had in the Scophony case, where you now have moved the

1 corporation into the state, you would have a different
2 situation.

3 QUESTION: It's not moved there. There still is
4 a German corporation. They do a lot of business in Germany,
5 most of their business in Germany, but they have a
6 full-fledged office in the state.

7 MR. RUBIN: Your Honor, the expectation and
8 intention still is that the address of the company is in
9 Wolfsburg, Germany, and it's anticipated that service would
10 take place at its office.

11 QUESTION: Where it's incorporated, is that it?
12 It has to be at its head office?

13 MR. RUBIN: At its home. Where it is. That's
14 where it is.

15 QUESTION: And you find that in the language of
16 the treaty where there is an occasion to make service
17 abroad?

18 MR. RUBIN: I think, Your Honor, I find it in
19 terms of the recital by the -- in the Senate document --
20 saying that where the action is commenced by a Plaintiff
21 in one country against a Defendant who is in another
22 country. This continues to be -- it is certainly, there is
23 no suggestion in this case -- that Volkswagen was in the
24 United States with offices itself. The only suggestion
25 here is that somehow or other it has created an involuntary

1 agent.

2 QUESTION: Well, that's a dramatic departure then
3 from the way process is ordinarily served on corporations
4 outside of the treaty where, you know, you have to serve
5 some human individual every time when you are serving a
6 corporation. And, certainly, and you say then that the
7 treaty just has dramatically changed that.

8 MR. RUBIN: I say, Your Honor, that the treaty
9 contemplates that there be a very, very significant
10 formality in terms of service. And, in fact, what has been
11 created here has been a very efficient, a very simple, a
12 very mechanical device, which was the contemplation of the
13 parties.

14 QUESTION: But I just don't understand the
15 principle that you're urging on us as the determinant for
16 when the treaty applies and when it doesn't. You say: well,
17 if the corporation is in Illinois. But we know that
18 corporations are physically present only through their
19 agents. You seem to assume there has to be a large
20 manufacturing plant there and that that would do it.
21 This is just an unprincipled rationale that you're urging
22 upon us.

23 MR. RUBIN: Respectfully, Your Honor, what
24 we're saying is that the principle is that a formal document
25 should be, was anticipated by the contracting parties to be,

1 directed with a degree of formality, so that there could be
2 certainty, so that they could put the simplicity or there
3 can be an assurance, and that's what was achieved by the
4 parties. Indeed, that's the indication which is set forth
5 expressly by the five contracting parties who are the major
6 commercial nations in the world outside of the United States.
7 You have, of course, the United Kingdom, Japan, France,
8 Belgium, and Germany, which have expressly indicated that a
9 service on an agent outside of the nation is simply not
10 contemplated here.

11 QUESTION: Unless it's an agent appointed for the
12 service of process?

13 MR. RUBIN: That's right.

14 QUESTION: But in that situation, the papers
15 still go abroad.

16 MR. RUBIN: But there, again, the treaty
17 expressly provides that there can be a voluntary submission.
18 And this was the contemplation of the treaty. The treaty
19 says that if a party voluntarily submits, it's one thing.
20 But there is no voluntariness here.

21 QUESTION: Well, let's assume that there's an
22 office in the state, that the foreign corporation
23 voluntarily set it up. They haven't qualified to do
24 business but they should have.

25 MR. RUBIN: Your Honor, if there is a voluntary

1 submission, if there's a voluntary acceptance, certainly
2 that is within the shared anticipation, the expectation, of
3 the parties. But the shared expectation here is to the
4 contrary.

5 QUESTION: So you suggest that if a foreign
6 corporation sets up an office in a state or in such a way
7 that it should have qualified but did not, that that office
8 could be served? It did it voluntarily. It set it up.
9 And here's an office. They're doing business. They should
10 have qualified and appointed an agent. They did not.

11 MR. RUBIN: To the extent that there's a
12 voluntary submission to the acceptance of process, that
13 would be the case. And I should point out to you, too,
14 that this is not a case where the Petitioner is seeking
15 to avoid amenability to litigation in this state.

16 This is not a case of jurisdiction. There's no
17 question here of avoiding in any way of being sued and
18 responding to the issues and having a full course hearing
19 on whatever are the basic elements to be decided
20 substantively.

21 QUESTION: Well, I take it you agree on my
22 example that the foreign corporation could be served
23 through its office in the United States.

24 MR. RUBIN: Well --

25 QUESTION: Is that right or not?

1 MR. RUBIN: I'm not sure, Your Honor, that I'm
2 in a position to concede that as the intention. We're
3 talking now about a contract among parties and, to the
4 extent that it has now been expressed formally and, I think,
5 authoritatively in the notes verbal which have been filed
6 and the amicus brief which has been filed, this is the law
7 and this is the understanding of the contracting parties.

8 I'm certainly not in the position to make a
9 concession which is contrary to their, I think,
10 authoritative expression of what their expectation has been.
11 And they give reasons for it, as well.

12 QUESTION: Mr. Rubin, that brings up an issue.
13 You've quoted from the Senate debate on the treaty. What
14 is the situation if we think the treaty is clear, that the
15 language is clear, and let's even say all the other parties
16 have interpreted it that way. So, we think what the
17 treaty really means is X. But we find in the Senate
18 ratification debates, that the executive has simply
19 misrepresented the treaty, and the Senate thinks the treaty
20 means Y, what are we bound by?

21 MR. RUBIN: I think, Your Honor, you're bound,
22 you're interpreting, you're construing a contract. This
23 is a world contract in which the United States made
24 representations to the other contracting parties. The
25 suggestion is made here that the United States, perhaps, got

1 even the better of the bargain because it was giving up very
2 little and getting very much. Indeed, it got quite a bit
3 of protection for its citizens, the businesses which do
4 business abroad and are sued abroad. And in terms of
5 construing what the shared intention was, what the shared
6 expectation is, I think that we have to understand that the
7 interpretation given by these other contracting parties
8 has certainly some persuasive effect. And I think that was
9 articulated by this Court in the Air France case.

10 QUESTION: Are you going to answer my question?
11 Do we give the treaty what we think was its meaning despite
12 what we know Congress thought it meant, or the opposite?

13 MR. RUBIN: I believe the Court has to give the
14 meaning that the Court believes, because this is a federal
15 question. The Court is going to construe the treaty in
16 the way in which it believes that the contracting parties
17 intended.

18 Respectfully, also, Justice Scalia, I believe
19 that there's been a patent overstatement as to what the
20 impact was going to be on American law. Again, looking
21 to the Senate document, it is very clear that the statement
22 was made that this will not make major changes in American
23 procedures with respect to judicial assistance. And
24 that's all that was said. That judicial assistance is not
25 going to be significantly changed.

1 We had in place already, by that time, I think in
2 1963, the new Federal Rules of Civil Procedure, Rule 4(i).
3 We had correspondingly the Public Law 88-619, I believe it
4 was, which became part of the U.S. Code. And that spelled
5 out a scheme, a mechanics, for the system of judicial
6 assistance. And Mr. Amram says in summary there is no
7 change being affected here from our system of judicial
8 assistance.

9 But then what was it that the other contracting
10 nations intended and what did they carry out and what is in
11 existence? I think, if I may just take a moment to indicate
12 how this works. We say it's simple. We say it's efficient.
13 We say it's uniform. And it's striking, the way in which
14 it works. And there's -- all that has to be done is that if
15 Plaintiff takes his summons and complaint, if required by
16 the foreign country, as it does in Germany -- it's
17 translated, there are standardized forms which have to be
18 prepared which are transmitted, it's sent by ordinary mail
19 to the central authority -- and from that point on, free
20 of charge, without worry, without care, the central
21 authority takes it and puts it in whatever channels are
22 necessary and affects the service, and you get this
23 certificate --

24 QUESTION: And your rule is that this applies
25 to any foreign corporation that has not appointed an agent

1 for service of process within the state.

2 MR. RUBIN: Respectfully, I believe that that's
3 what the treaty intended and that is, it was the huge
4 mischief and evil which was sought to be overcome here is,
5 indeed, overcome by this very, very simple procedure.

6 QUESTION: Let me ask you one more question.

7 Suppose Volkswagen is physically present in, say,
8 the state of New York, with a major corporate office and
9 a manufacturing plant, too. And then the state of Illinois,
10 through service of process, serves Volkswagen in New York.
11 What result?

12 MR. RUBIN: Your Honor, again, on the basis of
13 the formal position taken in the note verbal and the
14 amicus brief, I think that the result would be that there
15 would have to be service abroad unless Volkswagen was
16 actually here.

17 But that isn't the case. We're talking now
18 about a treaty which is going to have the universal
19 application. We're talking about a treaty that relates,
20 for example, to a case where there's an attempt to serve
21 an adjuster of an insurance company where you have small
22 companies that are going to be faced with papers which are
23 pushed at them, and then they have to cope with them.
24 We're talking also, Your Honor, about a situation where,
25 expressly, the United States and all of the other parties

1 indicated they intended to eliminate the involuntary agent.

2 The notification au parquet, the Solicitor General
3 concedes, was a major object to be removed. This was the
4 involuntary agent abroad. He concedes that the Secretary of
5 State's service, which has been so common here in the
6 United States, is removed now and that such service has to
7 be performed pursuant to the treaty requirements. How is
8 the service here any different --

9 QUESTION: You're wrong about that, too.

10 MR. RUBIN: -- this is an involuntary agent which
11 is created by law. And the court below merely makes the
12 general statement, which I think is very difficult to
13 understand -- that it makes no difference how the agent is
14 created. It makes all the difference in the world how the
15 agent is created. If this is an involuntary agent, this
16 involuntary agent which says that a subsidiary is an
17 involuntary agent is no different from a Secretary of State
18 or no different from the au parquet involuntary agent,
19 except that it's even worse. Because in those cases,
20 there is at least some kind of statutory official duty
21 on the part of those agents to forward the papers. Here,
22 there is no official statutory duty. It's a kind of an
23 inference, a guess, or a conjecture.

24 And, as a matter of fact, that the Solicitor
25 General winds up in saying, is that three possible things

1 can happen. He says you don't have to send this paper over
2 to Germany, because maybe the subsidiary will merely send a
3 summary. Or maybe the people in Germany will come over to
4 the United States to look at it. Or maybe the people in
5 Germany will put everything into the lap of the lawyer and
6 hope that the lawyer is somehow going to be able to cope
7 with it. That, respectfully, is totally unrealistic.

8 The expectation of everybody here was that the
9 paper would be sent to Germany. That's what was indicated
10 by the Court in the Lamb case, that was what was indicated
11 by the District Court in the Alabama case, it's what was
12 indicated: that the German company would be apprised.

13 QUESTION: But that isn't the necessary reading
14 of that language at all, it seems to me. Where there is
15 occasion to transmit a judicial or extrajudicial document
16 for service abroad. Now, you can argue that simply doesn't
17 deal with the situation or it is possible under standard
18 rules to serve the person by an agent in this country.

19 MR. RUBIN: Your Honor, it certainly is possible.
20 But we're talking now, again, in terms of the contemplation,
21 the shared expectations of the contracting parties.

22 QUESTION: But we look for the shared
23 expectations and the contemplation of the parties at the
24 instrument that they adopted.

25 MR. RUBIN: Exactly.

1 QUESTION: And I just quoted you language from the
2 instrument that doesn't at all bear out what you say about
3 it.

4 MR. RUBIN: Your Honor, I think we have to
5 understand that, first of all, liberal construction is
6 impelled because you have a world contract. Secondly, it's
7 a remedial contract.

8 QUESTION: Well, just a minute, Mr. Rubin. I'm
9 about to ask you a question, if you'll slow down long
10 enough for me to ask it. Will you?

11 MR. RUBIN: I certainly will, Your Honor.

12 QUESTION: What is your authority for the
13 proposition that liberal construction is impelled in this
14 particular case?

15 MR. RUBIN: I think, Your Honor, that --

16 QUESTION: I mean, a case authority.

17 MR. RUBIN: The Air France case, for example.
18 I believe also that was indicated in the Aeorospatiale
19 case. And particularly where you have a remedial situation
20 which is being addressed --

21 QUESTION: What is a remedial situation?

22 MR. RUBIN: You have a totally chaotic situation
23 where courts are being burdened with a lot of ad hoc
24 issues that they have to decide whether somebody is --
25 whether this insurance adjuster or this freight forwarder

1 or this toolmaker -- an agent.

2 QUESTION: Well, are you suggesting there is
3 some situations where treaties are made, or laws are passed,
4 that not, quote, remedial, close quote?

5 MR. RUBIN: No, Your Honor, but I'm saying --

6 QUESTION: I mean, Congress doesn't act unless
7 they think there's something that needs a remedy, does it?

8 MR. RUBIN: I understand, Your Honor, but --

9 QUESTION: So why is one situation different
10 from another so that you would say one situation is a
11 remedial situation whereby inference, perhaps, another
12 situation is not a remedial situation?

13 MR. RUBIN: Well, I think because in this
14 particular case, all of the commentators indicated that
15 there was in existence at that time a chaotic situation
16 which had to be remedied, and that there was an expanding
17 area of transnational litigation, and the burdens on the
18 court were being very, very heavily tried, and therefore
19 this was the quintessential situation for remedy and the
20 remedy by this simple device and there's no counterbalancing
21 reason why it shouldn't be used.

22 QUESTION: May I ask you a question, Mr. Rubin?
23 One of the concerns was that it sometimes hard to identify
24 an involuntary agent. I think you have problems whether
25 a subsidiary should be treated as an agent or not.

1 But even if you apply the treaty procedure for
2 service of process purposes, aren't you still going to have
3 that kind of issue? For example, in this case maybe the
4 service would have been perfectly all right if you followed
5 the treaty procedure, but nevertheless the Defendant might
6 have contended that it has no representation within the
7 United States and therefore is not subject to jurisdiction
8 in Illinois.

9 MR. RUBIN: That's an entirely different question,
10 Your Honor.

11 QUESTION: I mean, isn't it very similar in
12 terms of what you have to litigate?

13 MR. RUBIN: No, I think it's totally different.
14 That's the Burger King case. That, respectfully, is the
15 Worldwide Volkswagen Woodson. That's International Shoe.
16 That's a different issue.

17 Here we are talking about the bright line
18 question: is there service of process or not.

19 QUESTION: Well, I understand that.

20 MR. RUBIN: And here it is so simply established
21 by a certificate which comes from the official. It costs
22 nothing.

23 QUESTION: Well, I understand that but why is it
24 so? I know you don't challenge jurisdiction over your
25 client, but why is it so clear that your client is doing

1 business in Illinois and subject to the jurisdiction of
2 Illinois courts?

3 MR. RUBIN: I don't think that it is clear.

4 QUESTION: But you don't challenge that?

5 MR. RUBIN: No, Your Honor, please, the question
6 of jurisdiction here is not on the basis of doing business.
7 The question of jurisdiction has to do with whether it's
8 fair to be hailed into this court. All of the tests which
9 have been enunciated: International Shoe, the Burger King,
10 and the Worldwide Volkswagen Woodson case --

11 QUESTION: But if that issue had been raised,
12 wouldn't it largely depend on whether the subsidiary was
13 really to be regarded as an agent?

14 MR. RUBIN: No, Your Honor.

15 QUESTION: It wouldn't?

16 MR. RUBIN: You have a separate entity. And this
17 Court has indicated there's no reason to trifle with the
18 existence of the separate entities where you have, which
19 merely spur and increase issues which are unnecessary
20 issues to face. There's no reason for raising that question
21 here where you have this very simple clear, bright line --

22 QUESTION: Well, let me just ask one thing to
23 be sure I have it right. You do concede, do you not,
24 that if proper service had been affected on the German
25 company, it would be subject to suit in Illinois?

1 MR. RUBIN: We don't challenge that, Your Honor.
2 There's no issue of that at all.

3 If I may, respectfully, I'd like to reserve
4 whatever further time I have for rebuttal.

5 CHIEF JUSTICE REHNQUIST: Very well, Mr. Rubin.
6 We'll hear now from you, Mr. Ring.

7 ORAL ARGUMENT OF JACK SAMUEL RING, ESQ.

8 ON BEHALF OF RESPONDENT

9 MR. RING: Mr. Chief Justice, and may it please
10 the Court:

11 It is the Respondent's position that the Hague
12 Convention for service abroad does not render invalid
13 service in a foreign corporation within the United States
14 when such service complies with due process.

15 The heart of the issue before this Court is the
16 interpretation of the Hague Convention on service abroad,
17 regarding service in a foreign corporation doing business
18 in Illinois, which it owned and so closely controlled.
19 It is, therefore, necessary to look first at the convention
20 which is clear with regard to its scope.

21 Article 1 of the convention states: the present
22 convention, and I quote, shall apply in all cases, in civil
23 or commercial matters, where there is occasion to transmit
24 a judicial or extrajudicial document for service abroad.

25 If the drafters of this convention had intended

1 the convention to be an exclusive method for service upon
2 foreign nationals, regardless of their presence and their
3 shores, then I believe Article 1 would have simply read:
4 the present convention shall apply in all cases, in civil
5 or commercial matters, involving foreign nationals.

6 Clearly, if the framers would not have intended
7 this treaty to apply to all foreign nationals, they would
8 never have used the clause: where there is occasion to
9 transmit a judicial document for service abroad.

10 QUESTION: May I interrupt you there?

11 MR. RING: Yes, Your Honor.

12 QUESTION: What language was this treaty --
13 what's the treaty language in?

14 MR. RING: The treaty, you mean the negotiating
15 treaty?

16 QUESTION: What is the official language for
17 interpretation?

18 MR. RING: French and English.

19 QUESTION: And the word, occasion. There could
20 be an occasion for a service of a document abroad,
21 couldn't there? What if you read the word to sort of mean
22 opportunity, an occasion on which it might be done, or
23 something like that?

24 MR. RING: I would say that there's an
25 opportunity to serve abroad. There is an opportunity to

1 serve here. If there is an opportunity to serve here --

2 QUESTION: Well, if you read occasion to mean
3 opportunity, then there sure was an opportunity here and
4 the treaty covers everything.

5 MR. RING: I read occasion to be necessity. You
6 have to look at the intent and purpose.

7 QUESTION: So you don't rely on plain language.
8 You think we have to look at history, too. Occasion means
9 necessity. That's how you read it. That's nice.

10 MR. RING: I read it as necessity because you
11 have to look at the negotiations, the legislative history,
12 the intent, the purpose that --

13 QUESTION: What's the French text?

14 MR. RING: The French text, I think, is it would
15 be a necessity. I don't think -- I'd say -- if it's an
16 opportunity --

17 QUESTION: What is the French text? What is the
18 French word? How does it read?

19 MR. RING: I don't understand French, but I --

20 QUESTION: But I do. Does anybody have it
21 there?

22 MR. RING: I would assume the French
23 interpretation might be the same as ours.

24 QUESTION: If it says necessite, you're in good
25 shape, aren't you?

1 MR. RING: Yeah, if it's -- it would be. I think
2 that's close enough to English that I could understand.

3 QUESTION: But if it says opportune -- where we
4 can find it. Is the French text in the papers before us?

5 MR. RING: I think the French text, it says
6 here --

7 QUESTION: Says where? Where are you reading?

8 MR. RING: I'm reading, Your Honor, from the
9 Solicitor General brief, who I believe has been able to get
10 the French text interpreted for us. And I think they
11 refer there --

12 QUESTION: What page? What page?

13 MR. RING: Page, Justice O'Connor, 14.

14 QUESTION: Well, I don't want the French text
15 interpreted. I assume the English text interprets the
16 French text.

17 MR. RING: Well, I hope so. I'm relying, Justice,
18 on matching the -- Solicitor General being able to interpret
19 the French. The negotiations, unfortunately, were in
20 French and --

21 QUESTION: Transmit -- it means must be
22 transmitted, doesn't it?

23 MR. RING: Must be transmitted? Only for the
24 purpose of making service when service cannot be made in
25 our shores. The intent of the convention, Your Honor, was

1 to provide a method, facilitate a method, for service abroad.
2 Not with regard to domestic service. We had no problem
3 with domestic service. It was our problem to find a method
4 to facilitate transmitting a document overseas.

5 The definition of service abroad is not defined
6 in the convention. However, it states that it means a
7 formal delivery of a document to a Defendant in a contracting
8 country.

9 Now, if you don't have to make a transmissal
10 of service overseas and you don't have to make it abroad,
11 then you don't have to use the convention. It is as clear
12 as that.

13 The purpose of the convention was to facilitate
14 a manner so that we could, in fact, serve Defendants
15 overseas who had no presence in our shores.

16 QUESTION: Was it to simplify? To the rules?
17 Was that the purpose?

18 MR. RING: Justice, correct, in serving overseas.
19 Because our difficulty was not --

20 QUESTION: I mean after forty minutes I've been
21 worried about how --

22 MR. RING: I didn't hear your question.

23 QUESTION: After forty minutes of argument, I
24 don't understand that it was simplified.

25 MR. RING: It wouldn't simplify it. No. You're

1 right, Justice. I'm sorry.

2 So the purpose, when you look at all of the --
3 I couldn't agree more with the Petitioner -- when you look
4 at the language of the legislatures, the Senate committees,
5 and the U.S. negotiators, it was never the intent of our
6 country to give up the domain of the several states laws.

7 It was never intended to deprive our states,
8 courts, and in federal courts, of their procedures and
9 practice. It was never the intent of the convention to
10 change our American law. It was never the intent of the
11 convention to change our internal law.

12 The purpose was, in fact, to permit American
13 litigants to serve abroad, to serve a person overseas,
14 a corporation, entity, or individual, who had no presence
15 here and, likewise, to give our friends in Europe and other
16 members of the convention -- which I think there are
17 thirty -- the same privilege, the same right, to sue
18 Americans and give them notice over here of litigation
19 when it was pending abroad.

20 QUESTION: Mr. Ring, do you agree with the SG's
21 position that this treaty did eliminate, however, two
22 things: one, the -- what's it called -- French practice,
23 notification au parquet, which is sort of you just serve
24 some functionary in France and can sue anybody by doing
25 that. Do you agree that it eliminates that?

1 MR. RING: I agree that -- I can't pronounce it
2 as you do, Justice -- but I do agree that the purpose of the
3 convention, it was a fair -- and that's why Article 15 and
4 Article 16 were --

5 QUESTION: Just answer. Does it eliminate that?

6 MR. RING: Yes.

7 QUESTION: Does it eliminate that?

8 MR. RING: Yes.

9 QUESTION: It does eliminate that.

10 MR. RING: Yes, it does.

11 QUESTION: Now, how come it eliminates that?

12 MR. RING: Because prior to this time, there
13 was no due process built into the notification au parquet
14 as we have in Secretary of State service. We have that
15 embedded in our particular statute so that there would be
16 an extra requirement of due process.

17 QUESTION: Well, that's a good reason why it
18 ought to be eliminated. But why does the text of it
19 eliminate that but not eliminate this?

20 MR. RING: Because it had no affect on our own
21 domestic policies of service of process.

22 QUESTION: Oh, it says somewhere in the treaty
23 that it can affect internal French requirements as to
24 what's needed to get proper service but not internal
25 United States requirements?

1 MR. RING: The purpose of the notification au
2 parquet, the purpose of the treaty for the civil law
3 countries, was because they were fearful that unless they
4 had some kind of protection that the French, who are using
5 notification au parquet, might, in fact, obtain judgements
6 without giving notification.

7 QUESTION: I understand and I assume that we were
8 fearful of that, too. But I can't, for the life of me,
9 figure out how it reaches the one but doesn't reach the
10 other?

11 MR. RING: It would reach our Secretary of State
12 service.

13 QUESTION: It would reach that, too?

14 MR. RING: It would if --

15 QUESTION: Why?

16 MR. RING: If only -- if we had a Secretary of
17 State statute which provided for, which would have to have
18 for due process, a requirement to give it extra step --
19 if that extra step of mailing could not be done in our
20 shores, yes, we would have to use the convention.

21 If, on the other hand, it was on our shores,
22 I'm saying we would not have to use the convention. If,
23 in fact, we had a mailing required to go to a corporation
24 at its principle place of business, or where he's
25 incorporated, and that place was in a foreign country, yes,

1 we would have to use the convention.

2 QUESTION: That distinction hinges upon the
3 assumption that the French practice requires, for its
4 effectiveness, that the French functionary transmit the
5 document. And that's being contested by Mr. Rubin. Are
6 you certain that the French practice --

7 MR. RING: The French have recently changed their
8 law in that they now require that there be a transmission --
9 I'm not sure of the complete language requirements of the
10 French law -- but if there would be, in the same method,
11 if they had to send over that transmittal to the United
12 States, if there was no agent over there which they could
13 serve, then, yes, it would have to go through the convention.
14 In the same way that our Secretary of State process would
15 have to be through the convention if there was no way of
16 making that second mailing on our shores.

17 QUESTION: Well, Mr. Ring, if your interpretation
18 is correct, though, there would be no reason why France
19 couldn't return to its system of notification au parquet.

20 MR. RING: Well, first of all --

21 QUESTION: None whatsoever. They're not bound
22 by our due process requirement and there is no due process
23 requirement written into the Hague Convention.

24 MR. RING: That's true. They could go back and
25 do that if they wanted to.

1 QUESTION: Yes. And that was exactly one of the
2 things that we had an interest in eliminating and motivated
3 us to participate in the Hague Convention. We didn't like
4 that method of service of American companies in France.
5 Isn't that right?

6 MR. RING: That's true, Your Honor. But the
7 French have recently changed the notification au parquet --

8 QUESTION: Well, all right, except if your
9 interpretation of this treaty is correct, the French can go
10 back to their old system. Nothing would prevent that.

11 MR. RING: We have no control over their internal
12 law. They have no control of our internal law, nor should
13 they have a right to determine our internal law.

14 QUESTION: But you agree that one of our goals
15 and purposes in entering into this treaty was to eliminate
16 that notification au parquet.

17 MR. RING: No. Our interest, our interpretation,
18 our desire, was to find a method where we could have
19 service abroad because we were having difficulty finding a
20 procedure. Rule 4(i) started the process in our federal
21 courts where we were trying to find a method by mailing.

22 QUESTION: Don't you agree that we were also
23 concerned about inadequate methods of service and
24 notification on American companies abroad?

25 MR. RING: There's no question about it. But the

1 fact is there are approximately thirty countries which are
2 members of this convention, and most of them, the majority,
3 more than the majority, entered the convention for the
4 purpose of having this protection against notification au
5 parquet. That would mean, I would say, that the majority
6 of those countries agree with us. France would be the only
7 one that might take your position on this.

8 QUESTION: What can you cite to indicate that
9 other members, signing parties to the treaty, agree with
10 your interpretation of it? The briefs filed with us in
11 this case indicate they don't agree with you.

12 MR. RING: There are only four countries -- there
13 are thirty countries, I understand, who are contracting
14 parties. And none of them has stated any objection. If
15 you use that kind of logic, I would say the majority agree
16 with us.

17 QUESTION: Well, you can't take the failure to
18 file a brief here as agreement with you. I wondered if you
19 had anything you could cite?

20 MR. RING: No, I don't, Your Honor. All I can
21 say is I have to use common sense, and I would say that if
22 they really objected strongly they would have possibly also
23 filed briefs, as some of the countries did in deciding
24 nationale.

25 I also might add that because these are diplomatic

1 notes, and I'm not an international lawyer by any means --
2 I would say that we don't know how the courts of these
3 countries might react. Whether or not they would agree with
4 the diplomatic notes. And we also don't know, Justice, what,
5 in fact, the German government -- and I had mentioned to
6 them as the reason for their notes -- I say this because if
7 you look at the Belgium note, they say: based on what the
8 Federal German Republic told us about this situation.
9 I don't know -- I'm not privy to the what the discussions
10 were between the German embassy and the other embassies
11 and, of course, if I had privy to that I might have a better
12 answer for you. I'm sorry. I don't have any more than
13 that.

14 QUESTION: Mr. Ring, can I ask you kind of a
15 common sense, practical question, and get away from the
16 language.

17 What is the burden on an American Plaintiff if
18 we should hold that the treaty -- occasion means, you know --
19 means what your opponents say and this is the way to serve
20 foreign corporations and you have to go through this
21 mailing procedure, is that such a big deal?

22 MR. RING: Well, if mailing was the thing that
23 you would have to worry about alone, I think that would be
24 fine. But there is a problem in this case. There was
25 some question about my wisdom in not using the convention.

1 If you consider, Justice, that it cost me \$42.00
2 to file my suit -- I mean, forget service cost -- on
3 Volkswagen, if I had to get the translation, which is a
4 requirement of Article 5 of the convention, it would have
5 cost me, for a 42-page complaint, \$2,500 to \$3,000. That's
6 common sense to me because that's my client's money. It's
7 my money. I'm trying to do the best I can for my client.

8 QUESTION: So what's involved is the cost of
9 translating the complaint, basically?

10 MR. RING: Very expensive. And there's also
11 another problem, Justice.

12 Let's assume that I were to use the convention --
13 and this happened -- Germany, by the way, has three central
14 authorities. They are the only nation that has requirements
15 of those procedures. Most countries don't have a central
16 authority and some do. There's some confusion with that.

17 However, if the central authority which receives
18 your particular request determines that they can't understand
19 the translation and because I wasn't able to get a real
20 good interpreter, unfortunately, who didn't know law, then
21 the fact would be that they would return it to me.

22 That would mean, under our Illinois law, I have
23 a thirty-day summons life. And that cannot be changed by
24 a clerk, as the Petitioner suggests, or a Judge. Because
25 our rule and procedure do not provide for extension of

1 the life of the summons. That would mean that each time that
2 it would be returned, I would have to go through the same
3 process, more expense with translation, and have that sent
4 back to the consular, or whoever is going to be the central
5 authority, and see if they'll accept it this time.

6 There's problems that would come into a practical
7 situation.

8 QUESTION: I can see that theoretically, but I
9 should think there would be competent translators
10 available.

11 MR. RING: Well, I can show you that we have
12 seen documents where they have been returned. There's
13 nothing to stop them -- any country -- from rejection.
14 What's left for us for relief under these situations is
15 diplomatic channels. Now, that's going to be very
16 intimidating to a lawyer in a small town who has all of
17 a sudden --

18 QUESTION: Like Chicago, you mean?

19 MR. RING: Like Chicago, Justice. Right.

20 And I think it is initimidating to us, too.
21 But I think that when you look at those problems, the fact
22 that you might -- you might turn this convention not into
23 a service convention, but to a dismissal convention.

24 And I think that's unfair to have to use an
25 opportunity if you have an opportunity available to you,

1 an alternate method in your own country, a method which
2 provides you for the tools to use to serve, they have to
3 accept that coming to our country that they have to accept
4 our laws. We do that when we go over there.

5 Our laws are not so difficult to follow. And I
6 think that, basically, when you can find a Defendant, a
7 foreign corporation, acting through an agent on our shores,
8 which they control so completely, as was surely -- if you
9 will look at our pages on the merits, our briefing on the
10 merits, pages 8 through 13 -- overwhelming basis for the
11 control of this corporation.

12 Not only that, but Volkswagen has never contested
13 agency, in the lower courts. Never contested jurisdiction.
14 Never contested controlling relationship. Or that it's
15 amenable to our process.

16 QUESTION: Well, they contested agency. One of
17 the issues before the Illinois court was whether they
18 were an involuntary agent.

19 MR. RING: They have not contest that in the
20 record.

21 QUESTION: Well, there were two issues in the
22 Illinois Appellate Court. One was the treaty issue and
23 the other was whether they were an agent.

24 MR. RING: Well, that's true, but --

25 QUESTION: So they contested that.

1 MR. RING: -- they have not contesting agency now,
2 you know. But the fact remains, that if you look at the
3 facts, each court would look at those facts. Each court
4 would have those facts before them. It has to have those
5 facts. They determined, the basis of that finding, as to the
6 control that the corporation had over them, it complied with
7 due process as far as our Illinois law was concerned. It
8 was recently calculated that the notice to the agent would
9 be notice to the principal. And why shouldn't it have been.

10 QUESTION: Any agent? I'm a little uncomfortable
11 just talking about agency in the abstract. Can't you be
12 an agent for some purposes and not an agent for others?
13 Don't you have to be an agent for the purpose --

14 MR. RING: That's true. But the court can
15 interpret when you can be an agent by the factual setting
16 for the acceptance of service. Even International Shoe
17 made that comment.

18 And the fact is, in this case, it wouldn't be
19 every agency. If they appointed an agency, even they
20 admitted in the lower court, they said: if we had appointed
21 the agent that we will contest the use of the convention.

22 On the Appellate Court level, they said: if we
23 had appointed the agent and he was standing next door to
24 the process server, you couldn't serve us because you have
25 to use the Hague Convention.

1 My feeling is that that's inconsistent. And it's
2 inconsistent because it makes no difference if they appoint
3 or we appoint the courts. Our courts have a right and a
4 duty to look at the facts to determine the agency. It would
5 not be in every agency relationship. Of course, it would
6 be no question if they appointed an agent for a certain
7 purpose.

8 But here, I think, the facts are conclusive
9 that they were an agent for service. They surely were so
10 controlled. There was no question that they were going to
11 get notice. And that was due process as it's supposed to
12 be for -- applying rules which would assure the Defendant
13 of an opportunity to be heard and getting notice of the
14 actions pending against them in this country, or if we
15 are beginning suit over there in that country.

16 QUESTION: Well, Germany takes the position,
17 I gather, that if you don't follow the Hague service
18 convention in your service, that even if a judgement is
19 obtained it won't be enforceable in Germany?

20 MR. RING: Well, there are no guarantees if you
21 use the convention, Justice, that there's no full faith
22 and credit clause in the Hague Convention, there's no
23 guarantee that they will enforce the convention, there's
24 no guarantee you'll get jurisdiction in the convention.
25 And if a party, as myself, chooses to sue them, based on

1 the finding that there may be joint and several liability
2 here anyway, there may be sufficient assets of Volkswagen
3 in this country where I wouldn't be worried about that.

4 I think it's a case by case basis. That would be
5 the judgement of the lawyer. And I don't think that
6 interpretation of enforcement should be a basis for
7 interpretation of a treaty.

8 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Ring.

9 We'll hear now from you, Mr. Minear.

10 ORAL ARGUMENT BY JEFFREY P. MINEAR, ESQ.

11 AS AMICUS CURIAE, SUPPORTING RESPONDENT.

12 MR. MINEAR: Mr. Chief Justice, and may it
13 please the Court:

14 Volkswagen is fundamentally mistaken in arguing
15 that the Hague Service Convention gives foreign corporations
16 blanket immunity from local service rules.

17 Article 1 states the convention comes into play
18 only when there is occasion to transmit a judicial document
19 for service abroad.

20 QUESTION: Well, that isn't the French language
21 exactly, is it?

22 MR. MINEAR: That is correct, Your Honor. The
23 French language is even stricter than that. And it says,
24 essentially, that the convention is applicable only when
25 the document must be transmitted abroad to be served there.

1 QUESTION: It says: doit, which is from devoir.
2 Meaning should or ought, not must.

3 MR. MINEAR: Yes. In this context, it would be.
4 I think the best interpretation would be must or is to be
5 transmitted. In any event, it seems quite clear that it
6 does not leave much room for the interpretation that
7 Petitioner's suggest, namely, that whenever there is an
8 opportunity to transmit the document abroad.

9 This is, of course, the most natural reading of
10 Article 1. And it is fully supported by the negotiating
11 history which indicates the drafters left to each state
12 responsibility for determining when a document must be
13 served abroad.

14 The reporter specifically explained in the
15 debates that, quote: one must leave to the requesting state
16 the task of defining when a document must be served abroad.

17 This appears at Negotiating History, page 254.

18 QUESTION: When the French do that -- how can you
19 strike down the French practice? That is what troubles me.

20 MR. MINEAR: The notification au parquet
21 practice?

22 QUESTION: Yes.

23 MR. MINEAR: That, in fact, was clarified in the
24 report that was prepared by the reporter of the convention.

25 In this report, the reporter noted, and I quote:

1 While the strict language of Article 1 might raise the
2 question whether or not the convention regulates notification
3 au parquet, the understanding of the drafting commission
4 based on the debates is that the convention would apply --
5 close quote.

6 QUESTION: Well, that's nice. What do you mean
7 based on the debates. Is it in the --

8 MR. MINEAR: On the debates -- what the reporter,
9 at this point, this appears at Negotiating History, page
10 367. At that same page, there is also a footnote back to
11 the debates.

12 What the reporter's relying on is on statements
13 from the French and Dutch delegations that au parquet
14 service does include an obligation to transmit the document
15 abroad as part of the service procedure.

16 For example, Mr. Lef of The Netherlands explained,
17 and this is at page 169 of the Negotiating History,
18 translated, quote: There is in The Netherlands a real
19 obligation on the part of the Public Prosecutor's Office
20 and the Ministry of Foreign Affairs to transmit abroad --
21 close quote.

22 He also indicated the situation in The
23 Netherlands is, therefore, quote: almost identical --
24 close quote, to that of France.

25 Indeed, shortly after signing the convention,

1 France amended its Code of Civil Procedure, Article 684
2 through 686, to eliminate any doubt that documents served
3 through this method must be transmitted abroad.

4 QUESTION: So your position is that it covers any
5 situation in which under the domestic law the document must
6 be transmitted abroad.

7 MR. MINEAR: That is correct, Your Honor.

8 QUESTION: And you assert that there is no
9 necessity under the domestic law of Illinois here for the
10 agent to transmit the complaint to his principal?

11 MR. MINEAR: That is also correct, Your Honor.
12 That is our position.

13 QUESTION: What if Illinois simply says: you
14 can serve this -- when you want to serve Volkswagen Germany,
15 you can serve the Secretary of State right here in
16 Springfield?

17 MR. MINEAR: Illinois, in fact, does leave open
18 that opportunity under its corporation law. I believe
19 that's Section 5.25 of the Illinois Code.

20 But what it also indicates is that if one serves
21 the Secretary of State, the Secretary of State is under an
22 obligation to transmit those documents abroad.

23 QUESTION: What if Illinois says, hypothetically,
24 you may serve the Secretary of State here in Springfield
25 and he'll post a notice on the door.

1 MR. MINEAR: That would probably be
2 unconstitutional under Wuchter v. -- Wuchter. I don't
3 recall the last name of the party, but that's cited in our
4 brief.

5 QUESTION: But it's a matter of due process and
6 not of service?

7 MR. MINEAR: Yes, and that simply indicates that,
8 in fact, Volkswagen has two levels of protection here.
9 First, Illinois statutory law and, second, the due process
10 clause. In short, there's ample protection.

11 QUESTION: Due process isn't going to protect
12 American companies abroad from other state's, member
13 state's, rules.

14 MR. MINEAR: Yes, that's right, Your Honor.
15 But I also, respectfully, submit that interpreting the
16 convention in the way that Petitioner suggests will not
17 protect American corporations, either. The foreign
18 corporations are not obligated to follow our interpretation
19 of the convention, and they are not obligated to follow
20 this Court's interpretation of the convention. In fact,
21 it appears that some of the foreign governments' positions
22 are somewhat inconsistent with their own law.

23 For instance, in Illinois, under the Illinois
24 Companies Act of 1985, Section 695 does provide for service
25 upon an unregistered foreign corporation at its place of

1 business in England. That, under Petitioner's position,
2 would be inconsistent with the convention but, nevertheless,
3 is allowed. Likewise, the French's new Code of Civil
4 Procedure, of Section 690, also provides for service at a
5 place of business or upon any qualified member of the
6 corporation. Now, we don't know how the French or the
7 English courts might ultimately interpret the convention.
8 We're not aware of any decisions from those courts that have
9 interpreted the convention.

10 However, we believe, that given, in particular,
11 with France, the language of Article 1 the most likely
12 interpretation would be the interpretation that we, in
13 fact, advance here.

14 Now, I would like to return to the notification
15 au parquet again to clarify another matter of confusion.

16 The convention does not eliminate or remove the
17 notification au parquet. That method of service still
18 exists in the French Civil Code, of Section 684 through
19 686. What it does do is regulate that method of service.
20 In particular, it regulates it under Article 15 of the
21 convention. Now that also explains why there might be
22 some confusion about this question of where there is
23 occasion.

24 If you look at Article 15, it says: where a
25 writ of summons, or an equivalent document --

1 QUESTION: Where are you reading?

2 MR. MINEAR: This is page 32A of the Petition
3 Appendix. And again: where a writ of summons or an
4 equivalent document had to be transmitted abroad for the
5 purpose of service. In other words, they go on to say
6 that judgement shall not be given unless certain conditions
7 are met.

8 Now, Article 15 does seem to cover notification
9 au parquet, here. But, again, it depends on whether or not
10 a document had to be transmitted abroad for the purpose of
11 service.

12 QUESTION: Could you -- I don't know whether
13 you have it handy now, but I'd be curious to whether the
14 phrase: had to be transmitted abroad, there is in the
15 French, using the verb devoir.

16 MR. MINEAR: I don't have it here, but I believe
17 that is the past tense of the verb devoir.

18 We note, further, that there are no substantial
19 policy reasons for rewriting the Hague Convention to
20 protect Volkswagen from the service method employed here.
21 It is certainly not unfair to serve Volkswagen through
22 instate delivery of a summons to wholly-owned and closely
23 controlled subsidiary that conducts Volkswagen's affairs
24 in the foreign state.

25 First, Volkswagen is subject to the Illinois

1 court's jurisdiction, precisely because it does business in
2 Illinois through that subsidiary and, in fact, the Illinois
3 Appellate Court's decision reflects this in Pages 8 through
4 Page 18 of the Petition Appendix.

5 Second, Volkswagen has complete control over that
6 subsidiary and, therefore, can, and we believe, has, taken
7 the necessary steps to assure that it will receive prompt
8 notice of suit.

9 Third, this service method does not discriminate
10 against foreign corporations because it subjects them to
11 precisely the same requirements as any domestic out-of-state
12 corporation.

13 And, fourth, Volkswagen receives all the
14 protections associated with the due process clause. This
15 is as much, or more, protection than U.S. corporations
16 receive when they do business overseas.

17 QUESTION: For what purpose are they an agent?
18 Suppose I appoint someone an agent and I say: you're an
19 agent for everything except receipt of service of process.
20 I do not want you to be an agent for that and I forbid
21 you to transmit to me any process you receive on my
22 behalf? Would this Illinois provision --

23 MR. MINEAR: Effectively, that is what
24 Volkswagen has said here, with respect to its wholly-owned
25 subsidiary.

1 Our position is that a state is in a position to
2 identify that agent as an agent for service of process, and
3 that is a matter of state law. Some states do allow that.
4 Others don't. I think that one thing that is clear,
5 however, is that the requirements to become an agent for
6 that purpose are, in fact, very strict.

7 Here, the Illinois court went on at some length
8 to identify all the factors that indicate the substantial
9 identity between Volkswagen of Germany and Volkswagen of
10 America.

11 I'd like to address a few other points that have
12 arisen here. Petitioners have pointed out the importance of
13 formality of service. However, I think it's important to
14 note that a German court's jurisdiction does not depend on
15 service. Those formalities are primarily common law
16 formalities. This point is made in Kaplan and Von Merin,
17 in 71 Harvard Law Review, at 1203 through 1204.

18 Professor Smith's book on international service
19 of process also indicates this at some length.

20 I've already mentioned that, with respect to
21 Justice Scalia's office of the state hypothetical, that
22 that situation is covered under the English law, and
23 apparently under the French law as well.

24 While Volkswagen says that the convention is --
25 Excuse me. My time has expired.

1 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Minear.

2 Mr. Rubin, you have four minutes remaining.

3 ORAL ARGUMENT BY HERBERT RUBIN, ESQ.

4 ON BEHALF OF PETITIONER - REBUTTAL

5 MR. RUBIN: If Your Honor, please:

6 The question was raised as to what is simpler?

7 Where is the simplification? That really is a question
8 which has been answered by the Solicitor General.

9 He concedes that it is simpler. We have shown
10 that it is inexpensive. There's a reference to the cost of
11 translation. I think that Your Honors will have a better
12 idea as to what the opportunities are for translation,
13 even in Chicago, and what costs could be.

14 The fact is that the Solicitor General has
15 conceded that in 1986 alone, there were 5,000 occasions
16 where service was made on American companies under the
17 treaty. And in 1986 alone, there were approximately, or
18 up to, 700 cases where service as made from the United
19 States to Germany. So that this is a treaty which is
20 working. It operates.

21 In terms, now, of trying to weigh why now --
22 what disadvantage, what real disadvantage is there to
23 changing the system which is stated by these five major
24 powers -- major commercial, contracting countries -- as
25 the system which should be working. You have, apart from

1 anything else, you have the considerations of comity. This
2 Court in Aerospatiale made the point about providing for a
3 smoothly operating legal regime.

4 You have here a smoothly operating legal regime.

5 The reference has been made to the jurisdictional
6 basis for the action in Illinois. That jurisdictional
7 action was not based on doing business and the court didn't
8 find any doing business. It was based on the long arm
9 statute. It was a long arm type of situation. But, again,
10 we respectfully submit that's not relevant to the issue of
11 service of process which is conceded by the Solicitor
12 General to be a question of federal law in terms of
13 interpretation.

14 QUESTION: But isn't the long arm issue one of
15 service of process?

16 MR. RUBIN: Pardon me?

17 QUESTION: But isn't the long arm issue one of
18 service of process? It's a long arm statute --

19 MR. RUBIN: Long arm has to do with amenable --

20 QUESTION: The question there was whether the
21 service of process was valid as a matter of Illinois law,
22 under the Illinois long arm statute.

23 MR. RUBIN: That's right, Your Honor. But the
24 question here of service is a federal question. It's a
25 question of contractual intent and that's conceded by the

1 Solicitor General.

2 In terms of contractual intent, the intent was to
3 go to create a bright line. And there's no reason which has
4 been advanced here, there's nothing which weighs on the
5 other side, to depart from the bright line which is feasible,
6 which has worked as we see here by these statistics, and
7 which was the specific intention of the parties.

8 The indication to the Senate at the time that
9 the Senate was presented with this treaty -- the Senate was
10 told that this doesn't essentially change, there's no major
11 change, with respect to judicial assistance. And that's
12 what Mr. Amram said. He didn't say anything more than that.

13 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Rubin.
14 Your time is expired. The case is submitted.

15 (Whereupon, at 12:02 p.m., the case in the
16 above-entitled matter was submitted.)
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REPORTER'S CERTIFICATE

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DOCKET NUMBER: 86-1052

CASE TITLE: VOLKSWAGENWERK AKTIENDESELLSCHAFT v. HERWIG
J. SCHLUNK, ADMINISTRATOR OF ESTATES OF FRANZ J. SCHLUNK
HEARING DATE: AND SYLVIA SCHLUNK, DECEASED
March 21, 1988
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence
are contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the

Date: March 25, 1988

Margaret Daly

Official Reporter

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