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From the Editor-in-Chief

This issue of the *United States Attorneys' Bulletin* focuses on international aspects of our practice. As international boundaries become less of an impediment to criminal activity, our work more frequently involves international legal issues. In fact, we are confronted with so many fascinating challenges that one edition of the Bulletin cannot possibly do justice to this area of the law. Accordingly, we have divided the subject material into two groups. The next *Bulletin* will also be devoted to international law, with an emphasis on extradition.

The sheer volume of quality submissions has been both overwhelming and gratifying. This magazine is only as good as its contributors and I'm sure you will agree that we have some exceptional contributors. From Mark Richard's piece on the National Security Coordinator Program, to Pamela Foa's article on following the money, to Ron Sievert's primer on export cases, to Mike Marous' fascinating story on the theft of Vatican papers, we have articles that are both interesting and useful.

This month's interview features Fran Fragos Townsend, Director of the Office of International Affairs. Those of you who have had the pleasure of meeting Fran can attest to her energetic dedication to the Department and her commitment to assist Federal prosecutors with international issues. A special thanks goes to Tom Schrup and Tom Snow. Tom Schrup, from the Criminal Division's attorney training office, assembled a series of articles on the Office of Professional Development and Training (OPDAT) program. Tom Snow, formerly the Deputy Director of OIA, produced and solicited a number of the OIA articles in this edition. He is now the Acting Director of OPDAT. The quality of our hidden human resources in the Department is often surprising. One of our contributing authors, Martin E. "Mick" Andersen, a senior advisor with OPDAT, is a former *Newsweek* correspondent for South America who wrote the number one best seller in Argentina (1993), *Dossier Secreto-Argentina's Desaparecidos* (Argentina's Missing People and the Myth of the "Dirty War"). Mick's article about the OPDAT program in Colombia and our Assistant United States Attorney in Bogota is particularly fascinating.

Keep the phone calls and Emails coming. You can reach me in St. Croix at (809) 773-3920 or AVISC01(DNISSMAN).

DAVID MARSHALL NISSMAN

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Interview with Office of International Affairs
Director Frances Fragos Townsend

Ms. Fragos Townsend has been the Director of the Office of International Affairs, Criminal Division, Department of Justice, since November 1995. She graduated from the University of San Diego School of Law in December 1984, and began her prosecutorial career in 1985 as an Assistant District Attorney in Brooklyn, New York. While with the District Attorney's Office, she attended the Institute on International Comparative Law in London. In 1988, she joined the United States Attorney's office for the Southern District of New York where she was an Assistant United States Attorney until 1993, focusing on international organized crime and white collar crime cases. In August 1991, Ms. Fragos Townsend was detailed for nine months to the Office of the Attorney General to assist in establishing the newly created Office of International Programs, the predecessor to the Executive Office of National Security. In December 1993, she joined the Criminal Division as Chief of Staff to the Assistant Attorney General where she served until November 1995, when she became the Director of the Office of International Affairs.

Ms. Fragos Townsend (FT) was interviewed by Assistant United States Attorney David Nissman (DN), Editor-in-Chief of the *United States Attorneys' Bulletin*.

DN: What are the responsibilities of OIA?

FT: OIA's responsibilities fall into four broad categories: extradition, mutual legal assistance, treaty negotiations, and policy. As you know, extradition involves the location and apprehension of fugitives from justice and the ultimate return of the fugitive to the country where the crime was committed. Mutual legal assistance or, in some instances, letters rogatory, is the mechanism by which we attain evidence in a form admissible in a prosecution. The evidence sought may take a variety of forms: telephone and bank records, photographs, forensic and other physical evidence, witness interviews, and witness depositions. OIA's third area of responsibility is in working with the State Departments Office of the Legal Advisor to negotiate extradition and mutual legal assistance treaties. We ask each law enforcement component of the Department of Justice: FBI, DEA, USMS, INS, and the United States Attorneys' offices, where we should focus our limited resources in setting each year's negotiating priorities. The information they provide forms the basis of each year's negotiating priorities. For example, in 1996, the U.S. Senate ratified 12 new treaties with various countries, such as Belgium, Bolivia, Hungary, Malaysia, the Philippines, and Switzerland. Finally, OIA has been doing an increasing amount of policy work for the Attorney General.

DN: Is OIA involved in formulating foreign law enforcement strategies that impact the United States?

FT: Our work ranges from participation in multilateral bodies to assisting in the formulation of country specific or regional strategies. In connection with the PDD (Presidential Decision Directive) 42 process, this has most recently resulted in OIA's participation in assisting in the formulation of a U.S. law enforcement strategy for Nigeria. FBI and DEA did a joint assessment of the Nigerian crime problem as did INS and various sections within the Criminal Division. OIA

solicited the input of the United States Attorneys. OIA has acted as the conduit to provide the Attorney General with a comprehensive report on Justice's assessment of this problem. She is now working together with the State and Treasury Departments to pull together a comprehensive U.S. Government approach to this problem. The bottom line is that OIA is a service organization for local, state, and Federal prosecutors. Our goal is to assist in evidence gathering to strengthen all prosecutions. OIA, when requested, provides support for litigation. Our success depends upon how effectively and efficiently we assist prosecutors in the field.

DN: Tell us about PDD 42.

FT: The Presidential Decision Directive (PDD 42) signed by President Clinton on October 21, 1995, orders all U.S. Government agencies to develop a more aggressive and coordinated U.S. Government attack on international organized crime. Deputy Assistant Attorney General (DAAG) Mark Richard is the Justice Department's senior point of contact in this process. Mr. Richard, with staff support from OIA, has coordinated DOJ components and represented the Department at senior level interagency meetings. As a result of these meetings, Attorney General Reno, together with her interagency counterparts, have agreed to develop enforcement strategies to combat transnational organized crime in Nigeria, Asia, Russia and the newly independent states, Columbia, and Mexico. The objective is to develop a comprehensive, effective U.S. Government approach which sets priorities, eliminates waste of resources, and enhances coordination.

Mark Richard and OIA are working in multilateral groups to try to build consensus within the international community on basic approaches to combating transnational organized crime. For example, extradition of nationals is an important issue. We are working with our counterparts around the world to build consensus that a person who commits a crime should face trial in the jurisdiction where that crime was committed.

DN: Why is there so much foreign resistance to the extradition of nationals?

FT: Unfortunately, many of our allies view extradition of nationals, that is extradition of the country's own citizens, as a violation of that country's sovereignty. We must persuade them that we cannot permit criminals to avoid prosecution based on their citizenship. Crime does not observe national boundaries and therefore we must create an effective framework to combat this problem. As Attorney General Reno has often said, this is not an issue of sovereignty, it is an issue of justice. We must consider where the crime was committed, the location of the evidence and the victim, and the interest of the community aggrieved. We must recognize what our experience has shown us: in those jurisdictions which do not extradite citizens and instead prosecute the offense domestically, this system has not provided an adequate alternative. This system places an unfair burden on the victim, cannot always accept the transfer of evidence, and often results in long delays.

DN: So many other countries see this as a sovereignty issue. How do you go about changing the thinking of foreign governments and their citizens?

FT: What we have done thus far is three-fold. First, there are some very brave countries who have begun to break those barriers. For example, Bolivia will extradite nationals in particularly heinous

cases. They have recognized that they can do this and persuade their own populations to accept it because they are not completely abandoning the concept of no extradition of nationals. What they are saying is that in the most heinous crimes it may be appropriate and they must allow themselves this discretion. Secondly, we look at the impact in their own country of not extraditing their citizens who are accused of committing violent crimes. In New York, for example, we understand from the prosecutors there that Dominicans are often times killing other Dominicans and then fleeing to the Dominican Republic. The nationals in the Dominican Republic want these people brought to justice because their people are also victims of these crimes. In El Salvador, there are people who have committed violent crimes in the U.S. and are fleeing back to El Salvador where they are committing more violent crimes, so El Salvador has an interest in seeing these people brought to justice as well. These are the issues that have to be publicly discussed if we are to overcome the issue of sovereignty. As I said, it isn't an issue of sovereignty--it's an issue of justice. We share a common threat and the only way we're going to win is to find a common solution that suits us all. The third piece to this approach is to work to build international consensus within both our bilateral and multilateral relationships. For example, DAAG Mark Richard and OIA have worked with the P-8 senior experts group to develop reasonable alternatives, such as exploring the possibility of a temporary transfer of an individual to the custody of the United States for trial, and then returning them to their country of citizenship to serve their sentence. It would not surrender the person for all purposes but temporarily surrender them with the advance agreement of return.

DN: What are the international issues that you see developing on the horizon?

FT: We have seen the increasing importance of expanding DOJ presence overseas. As you know, the FBI has large-scale, long-term plans for expanding their presence overseas. The Department has found that the presence of prosecutors in places like Rome and Brussels is very effective and useful in enhancing our law enforcement relationship, and in expediting the exchange of evidence, witnesses, and defendants. The Department of Justice has requested authority and additional resources to assign prosecutors to serve in the U.K., Mexico, Philippines, Greece, and Brazil. The Narcotics Section currently has an attorney assigned in Colombia. Furthermore, Mexico is an important place for U.S. law enforcement. We have advertised and are in the process of selecting someone to send there on a temporary detail. This is a long-term plan which is at the early planning stages and which must be worked on cooperatively with the State Department and our foreign counterparts. If approved we would look to fill these positions with prosecutors who have foreign language ability and knowledge of international law. Recently, Assistant United States Attorney Joel Cohen from the Eastern District of New York served on a temporary detail in France and did a tremendous job assisting OIA and other prosecutors in the field.

DN: Is it your view that the United States can build better relationships with these nations by having one-on-one, prosecutor-to-prosecutor communication?

FT: It's been my observation that both OIA and OPDAT (the Office of Professional Development and Training) have seen the benefits of assigning prosecutors overseas. Assistant United States Attorney Mike Dittoe in Moscow has done a tremendous job in establishing our presence and a working relationship there. The Assistant United States Attorney in Budapest is also doing a

terrific job. Often times, it is necessary to have an AUSA travel overseas to speak directly with the foreign authorities because it is the best way of ensuring that our needs are met. Lawyers here in OIA work very hard to establish personal relationships with counterparts in foreign justice ministries and that has been serving us very well over the years. There is no replacing the personal element. OIA attorney Virginia Towler was visited for a week by one of her counterparts in the United Kingdom who was here on vacation. That sort of personal relationship and interaction is common in OIA. We've managed to build on the personal relationships we've established, in spite of our lack of presence overseas. I think that the additional overseas presence will only enhance what we've already started.

DN: Do you have people or services to help us with the translation of documents?

FT: I addressed the First Assistants' Conference a couple of months ago and the translation issue was raised there. We have access to translation services, however, no budget to pay for them. We use translators and will facilitate the services for you, but the cost of these services must be paid by the United States Attorney's office.

DN: How can Assistant United States Attorneys help OIA?

FT: Your experiences help us to better understand your needs and how best we can serve you. Your input is critically important in determining treaty negotiating priorities and essential treaty provisions, and in prioritizing OIA's burgeoning case load. When I was in New York, line attorneys--myself among them--would often try to devise ways to avoid Washington, to avoid getting the clearances or approvals, because we often felt that we were not well-served. Whatever benefit we got from involving Washington seemed to be undone by the hassle. I realize that it was not intentional but that was the perception.

The lawyers in OIA are committed to being accessible and helpful. OIA is not here to set up barriers, we're here to turn things around quickly and to assist AUSAs in the field in making their cases stronger.

I'm always happy to hear suggestions from the field on how we can do this job better. Because I'm a former Assistant, I hope Assistants will call me and tell me about their experiences. The Attorney General and the Deputy Attorney General look to the field for your experience, guidance, and input in making policy decisions and determining the direction of the Department. In keeping with that approach, OIA needs your input to best focus our resources.

OIA's Fugitive Unit

Mary Jo Grotenrath
Criminal Division

The recently organized Fugitive Unit in the Office of International Affairs is charged with coordinating extradition efforts for select major United States fugitives, including those who have been the subject of unsuccessful provisional arrest requests in several countries and high profile foreign fugitives who have eluded U.S. authorities. The Unit's goal is to expedite the apprehension and surrender of "career fugitives" who remain at large despite extensive law

enforcement efforts.

The Unit works closely with the USMS, FBI, DEA, INS, U.S. Customs Service, ATF, Secret Service, IRS, U.S. Postal Inspection Service, Bureau of Diplomatic Security, U.S. State Department, INTERPOL, and other Federal, state, and foreign law enforcement entities. The Unit identifies these select fugitives and collects the critical information to warrant a provisional arrest or expulsion request for submission to the proper authorities once the fugitive is located.

Shortly after the Unit was organized, an International Fugitives Coordinators' Group was established among the Federal law enforcement agencies. A USMS liaison officer works full-time on the fugitive project, specifically, and assists OIA in extradition and legal assistance related matters.

As a result of the group's efforts, nearly 600 Federal cases have been identified involving international fugitives. A dozen were referred to OIA's geographical teams for immediate action because the fugitive's location was known. For the other cases, the Unit urged the agencies to seek INTERPOL Red Notices (international lookouts) and the United States Attorneys' offices to furnish information to support a provisional arrest request that would be available once the fugitive was found.

With the cooperation of the producers of *Manhunters*, an international affiliate of *America's Most Wanted*, until the program went out of business, the Unit screened cases for 60-second public service announcements for worldwide audiences. The first of these announcements was made last fall. *Final Justice*, another domestic affiliate of *America's Most Wanted*, which also premiered last fall, has expressed an interest in televising announcements on fugitives who may be in the U.S. or traveling between the U.S. and foreign destinations. All candidates for consideration for these programs are being cleared with local, Federal, or state prosecutors and other appropriate authorities whose cooperation in providing photographs, factual information, and provisional arrest assurances is critical.

In August 1996, *Voice of America* launched a new public service program, *International Crime Alert*, to be broadcast weekly worldwide in nearly 50 languages. This show features fugitives suggested by OIA's Fugitive Unit and representatives of the interagency International Fugitives Coordinators' Group. The executive producer of *International Crime Alert* may be contacting field agents, Assistant United States Attorneys, local prosecutors, police, and others authorized to discuss fugitive issues. The Fugitive Unit will lay the groundwork for such contacts once a fugitive's name is suggested by an agency or prosecutor as a candidate for consideration.

Once a fugitive is featured on *Voice of America*, that person's photograph and identifying information will appear on the Internet on the homepage of the United States Information Agency at http//www.usia.gov/topical/ global/ica/ica.htm, and will remain there until the fugitive's case is closed. (Please note that in the address the repetition of "ica" is not an error--it does appear twice.)

The Fugitive Unit is also working to get its own homepage on the Internet for featuring more fugitives. One of the FBI's Ten Most Wanted, Leslie Rogge, attributed his recent surrender at the U.S. Embassy in Guatemala to pressure from being featured on the FBI's homepage on the Internet.

If your office is dealing with major problem fugitives which you would like to bring to the attention of OIA's Fugitive Unit, please contact Mary Jo Grotenrath, OIA Associate Director and Chief of the Fugitive Unit at (202) 514-0039 or fax OIA at (202) 514-0080.

Office of Professional Development and Training in Poland

In Warsaw, Poland, the Department of Justice/ Central and East European Law Initiative program is conducting several initiatives that provide U.S. legal expertise and assistance to a nation considered by Washington policy makers as a priority. In little over a year, the program, headed by Assistant United States Attorney Stephan Baczynski, Western District of New York, assisted Polish officials prepare a draft code of criminal procedure and trained scores of prosecutors on issues such as organized crime, the relationship between the prosecutor and the investigator, money laundering, and computer crimes. In-service training was also provided to Poland's Constitutional Court on issues concerning that country's new witness incognito statute.

Federal Prosecutors in the Age of International Crime

Deputy Assistant Attorney General Mark Richard
Criminal Division

As the 21st century draws near, one of the most difficult problems confronting Federal prosecutors is international crime. With alarming frequency, Assistant United States Attorneys are finding themselves on the "front lines" of U.S. efforts to combat international drug trafficking, terrorism, fraud, and organized crime. Even seemingly "routine" criminal cases can implicate national security and foreign policy issues, requiring Assistants to be knowledgeable in a broad range of matters beyond traditional Federal criminal law and practice. As part of its response to these changes, the Department developed an ambitious new program to provide Assistants the support and guidance they need to handle national security cases while integrating United States Attorneys' offices efforts into the total Departmental response to the internationalization of crime.

Every United States Attorney's office has handled matters that touch upon U.S. national security and foreign policy interests. Frequently, issues arise in the investigation and prosecution of drug trafficking cases, where the drugs, money, or organization are located outside U.S. borders. Financial fraud schemes increasingly have an off-shore component, as strict U.S. currency transaction laws force criminals to launder their ill-gotten proceeds through foreign businesses or financial institutions. And with ready access to international travel, fugitives increasingly are seeking safe haven in foreign nations.

Moreover, national security issues can arise in what appear to be run-of-the-mill cases too. A relatively routine investigation might reveal evidence that a target has a prior relationship with a U.S. intelligence agency (or such a relationship is asserted where none exists). An investigation of alien smuggling may point to the involvement of foreign government officials in criminal activity. A request for the return of a child allegedly kidnapped by a parent may touch off concerns about national sovereignty in the requested country.

Nowhere is the need for open and effective communication between United States Attorneys' offices and Main Justice more important than in cases involving national security and foreign policy issues. First, internal coordination within the Department of Justice can maximize investigative effectiveness. Second, external coordination with Main Justice and the Departments of State and Treasury; the Intelligence Community; and, at times, even the National Security Council and other agencies is absolutely essential. These agencies often have national security or

foreign relations equities in a particular matter, and early consultation and coordination with Main Justice can ensure that these issues are resolved through established procedures.

To facilitate the Government's response to these important issues, the Department has established an ambitious new program to bolster the Federal Government's ability to investigate and prosecute cases that touch upon matters of national security and foreign policy. Under the National Security Coordinators' Program (NSCP), each United States Attorney will designate an Assistant United States Attorney to be the National Security Coordinator ("Coordinator") for the office. The role of the Coordinator will extend far beyond that of a mere liaison with Main Justice. Rather, each Coordinator will be charged with both internal and external responsibilities. Internally, each Coordinator is intended to be an in-house expert available for consultation on the full range of national security issues that might arise in a United States Attorney's office, including:

- Direct handling of matters relating to national security, including espionage, terrorism, trafficking in weapons of mass destruction, and related matters.

- Investigations and prosecutions implicating classified information or the intelligence community.

- Prosecutive actions involving treaties or potential foreign relations consequences, including requests for mutual legal assistance and extradition.

- Law enforcement activities implicating the sovereignty of foreign nations, including extraterritorial renditions, the use of informants in other countries, and the U.S. prosecution of foreign government officials.

In addition, each Coordinator will be responsible for training other Assistants in their office on investigations and prosecutions touching upon potential national security and foreign relations matters. Externally, each Coordinator will serve as a bridge between the United States Attorney's office and Main Justice officials on national security and foreign policy matters.

A critical component of the NSCP will be the creation of an NSCP Manager position in the Criminal Division of the Department. The Program Manager will be an Assistant United States Attorney Coordinator detailed to the Criminal Division who will bring to bear the perspective of the United States Attorneys' offices in policy issues arising from the intersection of national security and law enforcement matters. In addition, the Program Manager will be responsible for energizing and promoting the NSCP, including the publication of a regular newsletter, development of training programs, and related tasks. The Program Manager will report directly to me for international law enforcement issues.

Given the enormous amount of responsibility vested in each National Security Coordinator, the Department has developed a comprehensive program to provide first-rate initial and on-going training for each Coordinator. In August 1996, the Office of Legal Education hosted a national training program for all 93 National Security Coordinators. This extraordinary training effort featured senior officials from the Department and the U.S. intelligence community, with topics ranging from the structure and activities of the U.S. intelligence community, to an overview of extradition and mutual legal assistance treaties, to the proper handling and use of

classified information. The keynote speaker was Deputy Attorney General Jamie Gorelick. The Attorney General and Deputy Attorney General are committed to the success of this project, and their personal involvement reflects how important the Program is to the mission of the Department of Justice.

With increasing frequency, Federal prosecutors must confront the challenges of a global community and the opportunities this creates for global criminal syndicates. The National Security Coordinators Program offers a unique opportunity for Assistant United States Attorneys to take part in the Department's ambitious effort to respond to these and other challenges of the 21st Century.

Everything I Ever Needed to Know About International Investigations I Learned from Watergate

Assistant United States Attorney Pamela Foa
Eastern District of Pennsylvania

First Rule of International Investigation: Follow the Money.

Follow the money. "Deep Throat's" advice is a perfect place to begin an international investigation. Our case involved two groups which had taken up the manufacture and sale of crack vials to stores which would sell them to street corner crack dealers. Ultimately, we indicted 26 men and convicted 25. (One remains a fugitive.)[1] The defendants forfeited over $4 million in personal property, much of it in cash.

Tracking down $350,000 or so of that money, however, required an international search. We knew that it had been a dream of one defendant, Sam Zhadanov, to amass a million dollars. His dream was coming true. At the time of his arrest, agents seized about $825,000 in cash from his bedroom safe. He was the only defendant who decided to go to trial. The evidence against him included postal orders which we had used for part of one undercover buy of crack vials: we had paid $12,000 in cash and $12,000 in blank postal money orders. We did it again a couple of weeks later but they were not accepted. So that was it--one set of postal orders. We left them blank when we used them for the buy. When they came back, they were made payable to Zhadanov and his wife and had been negotiated in Switzerland.

Second Rule of International Investigation: Call OIA.

Alternative Second Rule of International Investigation: Call anybody in Washington. They will tell you to call OIA.

By the time we got the money orders back, all the defendants but Zhadanov had pled. We were preparing for trial. We saw that the postal orders had been negotiated in Switzerland but with two years' worth of evidence to organize, we didn't follow up immediately.

At the time of the indictment, we got a pre-trial restraining order. Three months later, the Third Circuit ruled that substitute assets could not be restrained pre-trial. On the basis of this ruling, the district court held a hearing on whether to continue to restrain Zhadanov's assets.

Zhadanov's wife took the stand. We asked about the postal orders. "Just travelin' money,"

she told us. "Just a few dollars we cashed at a bank in Switzerland." *Yeah, right!* I knew there was no way a Swiss bank would cash a postal order or any other check for anyone it doesn't know. (At last my junior year abroad was paying off.) Zhadanov had to have had an account at the bank with enough money to secure the postal orders. The Swiss are meticulous. Besides, one of Zhadanov's co-defendants had told us by then that during this same period, Zhadanov's wife had offered to lend him a book about how to open a Swiss bank account. Zhadanov's wife admitted that, at one time, they had a Swiss bank account but denied that any of the money in it was theirs. She testified that it belonged to Russian associates of their son, and the postal orders were not deposited to that account; they were cashed.

We were motivated by this testimony. Follow the money. I retrieved a copy of the Asset Forfeiture Office's handbook, *International Forfeiture*, and called for help. They told me to call the Office of International Affairs (OIA), (202) 514-0000.

The folks at OIA were experienced, efficient, and helpful. They immediately sent me the paper to apply for records under our treaty with Switzerland. The work required was minimal. A paralegal assigned to the case completed them with just minor editing and assistance from us. Under our treaty with Switzerland ("MLAT" as the cognoscenti call it), since our request was part of a criminal investigation and the crime involved drugs, we were entitled to complete bank records. We told OIA that the trial was less than two months away and they said they'd do their best to get us information by then. The application for bank information had to be translated into German but OIA got that done virtually overnight.

Corollary 1: The terms of U.S. treaties and other agreements vary from country to country but, except for tax crimes, if there is any kind of agreement, the terms are more favorable than you might imagine from watching TV.

I admit it was at least six months between the time we first knew the postal orders had been negotiated through a Swiss account and the time I asked OIA if there was any point in asking the Swiss about the money. But astonishingly, within about six weeks I was looking at documents provided to us by the Swiss.

While OIA's request was pending with the Swiss authorities, the defendant decided to plead. At his proffer, Zhadanov said he had deposited between $250,000 and $300,000 in cash in Switzerland given to him by Russian associates of his son. The Zhadanovs said that the Russians had asked for the money back when they learned that Zhadanov had been indicted. They said, moreover, that Zhadanov transferred the money back to the Russians by signing over the account to a Swiss lawyer, but they knew nothing more about the current whereabouts of the Swiss money--not even the names of the Russian associates of Zhadanov's son.

In his plea agreement, Zhadanov forfeited any interest he might have had in the Swiss money. At his plea hearing, we made clear our intention to pursue the Swiss money. Off the record, we had to admit we still didn't know what happened to it.

When the Swiss bank records arrived, they were a prosecutor's dream, including:

- extremely clear copies of the fronts and backs of each check, postal order, and money order that went through Zhadanov's Swiss account;

- statements with clear dates of all transactions, including cash deposits;

- Zhadanov's documents opening the account;

- documents showing the addition of other signatories;
- correspondence relating to the account and to the transfer of the account proceeds to a second Swiss bank;
- bank documents from the bank into which the funds had been transferred, showing that the money had been moved to the Channel Islands; and
- an original certification, complete with ribbon and seal suitable for framing or court submission, to authenticate the documents without anything more.

The documents showed that within days of Zhadanov's release on bail, approximately $350,000--all the money that had been deposited into the Swiss account identified on the back of the postal orders went from (1) the Swiss bank where the postal orders had been deposited, to (2) a second Swiss bank, to (3) a branch of the second Swiss bank in the Channel Islands. The bulk of the money in the account was traced to three cash deposits made immediately upon Mr. and Mrs. Zhadanov's arrivals in Switzerland from the U.S. The records also showed additional money order deposits by the Zhadanovs in the months before and after the postal orders, in amounts traceable to proceeds of the conspiracy.

Corollary 2: Don't make the same mistake twice--you learn much more if each mistake is a new one.

This time we didn't wait. I leaped to the phone and called OIA. The person covering Switzerland also handled the Channel Islands. We whipped together a request for records from the Channel Islands.

OIA alerted the Channel Islands' authorities that our request was on its way and asked their assistance in speeding the response. They graciously complied. With these records, we were able to trace all the money that had been in the first Swiss account.

At the request of the Swiss lawyer that Zhadanov identified as the man who helped him return the Swiss money to the Russians who owned it, there had been three wire transfers from the Channel Islands account to the United States.

Axiom One: Foreign nations will, under circumstances known to them and OIA, enforce foreign judgments.

When an indictment includes criminal forfeiture counts, a district court has express jurisdiction over all property noticed for forfeiture, wherever located; its power is not limited by our national borders. 18 U.S.C. § 982, 21 U.S.C. § 853(l), 18 U.S.C. § 1963(k). Thus, one avenue to at least freeze a foreign account is to get a district court order to freeze it, then ask the foreign government to recognize the order or at least provide documents relating to the account.[2] We couldn't be sure that future withdrawals from the Channel Islands account would continue to be wired to the U.S. If it were to go anywhere else, we might lose it. So we got a freeze order from the district court and asked the Channel Islands to freeze the account. They agreed.[3]

Last Rule of International Investigation: Read the Records You Get.

Between the Swiss and Channel Islands' authorities, we received about two inches of paper, including one piece that was totally unexpected. It was a form from the first Swiss bank,

printed in English, French, and German. In it, Zhadanov certified that he was the sole owner of the beneficial interest in the money. It never occurred to us that the Swiss require that you declare who owns the money you deposit. This information was all we needed to establish probable cause for forfeiture.

Corollary 3: Can you say, "Zut Alors! Comme il fait chaud"? Or, If we must travel to the Channel Islands, let it be in January.

As I write, the money which had not yet been wired back to the U.S. remains frozen in the Channel Islands. While they, like some other foreign nations, will recognize an American forfeiture judgment, before honoring our court's forfeiture order they give notice to interested parties of their rights to file a claim for the money.

Zhadanov's son has given notice that he plans to file a claim for the money. The Channel Islands, however, will not act on any claim until all criminal appeals have been resolved.

When Zhadanov's appeal rights expire, we will ask the Channel Islands to deny his son's claim without a hearing since he was given notice of the forfeiture proceedings here and waived his right to litigate his claim. (He filed a claim for the Swiss money in district court but abandoned his claim at the ancillary hearing.) We are counting on OIA to guide us through the process. We will ask the Channel Islands to recognize our forfeiture judgment and to return the money to the U.S. If they won't on the basis of the American record, then we will litigate the claim abroad. The Channel Islands, I'm told, are in the Gulf Stream and warm all winter long.

Corollary 4: Don't be greedy.

Calling the Asset Forfeiture Office (AFO) was not without its rewards. In certain circumstances, the U.S. has the authority to share forfeited property with foreign governments which have provided assistance. Should we succeed in forfeiting the funds in the Channel Islands, we will recommend to the AFO and the State Department that Switzerland and the Channel Islands receive a third of the proceeds of the Swiss account.

The following are helpful tips to prosecutors:

1. Follow money across international borders.

2. When you suspect you know where the money is, call OIA [(202) 514-0000]. They are organized by country. Tell the receptionist the country and they connect you to the right specialist. Their attorneys can help develop the investigation.

3. With OIA's guidance, fill out the information application, describing the case and the charges you are investigating/
indicting, and return it to OIA.

4. Expect OIA to take 60 days to obtain information.

5. Keep the OIA liaison informed of the case progress.

6. Use alternative strategies to get the defendant to repatriate assets; e.g., as a condition of bail (or anything else he wants).

7. Read the records you get back.

8. Call AFO [(202) 514-1263] and OIA [(202) 514-0000] as soon as you get an order or judgment affecting any foreign assets.

Hazardous Duty: Assistant United States Attorney Kim Lindquist Promotes Judicial Reform in Colombia

Martin Edwin Andersen
Senior Advisor for Policy Planning in OPDAT
Criminal Division

Ask Assistant United States Attorney Kim Lindquist, District of Idaho, where he's been lately and you may end up slowly shaking your head or whistling low when he answers. As the ubiquitous OPDAT program director stationed in Bogotá, Colombia, he's likely just in from a frontier town whose Old West character is captured by the fact that the local airport was full of drab green helicopters transporting soldiers in a decades-long war against Marxist guerrillas. Or maybe he's returned from visiting some legal outpost in Bogotá's outlying barrios--places that make the Bronx's "Fort Apache" look like Club Med. Some of the cities that are part of Lindquist's turf reflect the exotic, dangerous terrain of the war on drugs and those who traffic in them--Cali, Medellín, the island of San Andrés.

In a country whose violent history and corruption-tinged present is mirrored in the magical realism genre created by Gabriel García Márquez, Colombia's foremost storyteller, Lindquist has worked quietly but energetically. His mission to help Colombians leave behind their current legal system characterized by its slowness, staleness, ineptitude, and lack of responsiveness for a new reality of community service and respect for fundamental rights. It is a difficult fight but one Lindquist and his Colombian allies and United States Agency for International Development sponsors are determined to win.

Like most Latin American countries, Colombia's legal system was founded on the Napoleonic Code and, unlike the Anglo-American system of justice, is based on the premise that the truth will most likely be found by an impartial inquisitor whose only interest is that justice is served. This Renaissance person--supposedly steeped in the law, criminal psychology, and myriad other disciplines--is called an investigating magistrate, and is roughly equivalent to a one-person jury. While conducting an investigation, this person issues subpoenas for documents and witnesses as well as search warrants, and directs the police in executing those warrants or performing other investigations. The result is either a criminal charge or a decision to drop the case. The magistrate's case file inevitably states the findings of fact and conclusions of law, and includes a dossier replete with witness testimony, the fruits of search warrants, scientific test results, opinions of experts, and other evidence that very often prove worthless. Frequently, this results in the acquittal of a defendant who has been incarcerated in preventative detention longer than if he or she had been sentenced to the maximum penalty for the crime charged.

A 1991, Constitutional reform in Colombia required the development of a public trial, both to increase efficiency and safeguard basic rights. The new Magna Carta guaranteed the presumption of innocence until the final adjudication of guilt by a "trial" judge. Despite this, proof

continued to be formally practiced in the investigation stage, with the accusation (charge) a defacto judgement of conviction. The accused, therefore, still entered the trial phase presumed guilty. "The result is a time-consuming novel, the vast majority of which is irrelevant," Lindquist notes. "Moreover, as the virtual `judgment' in the case already occurred, little if anything is left to the judges in the trial stage, and there is no meaningful public trial as required by the Constitution."

The Criminal Division initiative spearheaded by OPDAT is designed to assist the Colombian Government in reducing court caseloads by increasing procedural efficiency and promoting due process through the development of public oral trials. The program, which seeks to revamp Colombia's justice system by offering instruction to more than 5,000 prosecutors by using a cadre of Colombian faculty trained by OPDAT, comes after years of U.S. funded assistance to Colombian institutions engaged in constitutional and legal reform. The Colombia project was a quantum leap, in size and scope, from the highly-successful OPDAT program in Bolivia. Where Bolivia counts a mere 300 prosecutors, Bogotá alone has more than that. Lindquist is key to the Colombian program's success.

Lindquist arrived in Colombia uniquely prepared for his mission. He had served as a Mormon missionary in the largely Colombian and Puerto Rican barrios of New York City. "There you have to learn quickly, or you fall flat on your face," said Jorge Ríos-Torres, a former Assistant United States Attorney in Puerto Rico and South Florida, who is currently OPDAT Associate Director for Latin America. Regarding Lindquist, Ríos-Torres said, "He's gained the confidence of important figures in Colombian political and legal life. He knows more about Colombian law than many Colombian lawyers and he can sit down and argue with them chapter and verse."

As part of OPDAT's efforts to train Colombian prosecutors, last March Lindquist and Ríos-Torres brought more than 100 Colombian prosecutors, judges, and investigators to San Juan, Puerto Rico, to take part in a final two-week program that immersed them in the island's unique Spanish-language accusatorial system of justice. The effort followed a one-year series of OPDAT-sponsored conferences, seminars, and workshops designed to provide Colombian prosecutors in-country with the legal and procedural background needed for reform. In pushing the reform agenda, Lindquist counted on the support of key senior Colombian public officials.

In Puerto Rico, the Colombians observed the functioning of prosecutors' offices and the courts in an accusatorial system. Abstract constructs, such as "teamwork" and why the system offers a rapid and humane approach to criminal justice, came alive as a result of the visit. The Colombians were impressed by the system's efficiency, thoroughness, and professionalism. Throughout the program, prosecutors and magistrates with similar regional backgrounds were paired as roommates and work group members to enhance prospects for personal investment in the training and to ensure the future implementation of the concepts.

Prospects for ultimate success, of course, lie in the hands of the Colombians themselves. "The hard decisions are Colombian decisions," says Lindquist. "What we have done is provide them with the training, orientation, and complete legal and procedural context within which they can make this difficult adjustment. We can and should do no more."

Medieval Manuscript Mystery

Assistant United States Attorney J. Michael Marous*
Southern District of Ohio

Imagine that someone walks up to you outside of the Library of Congress, hands you three random pages, and tells you to find out which books they're from, where they've been for the past 500 years, and which laws were broken in getting them. Then, suppose that instead of one library, there were hundreds of libraries and cathedrals in Europe as possible crime scenes. Where would you start? For the average Assistant United States Attorney such a case brings into play some seldom-used and little understood legal principles, and complicates usual issues such as evidence gathering, verification, and custody. It also provides a unique opportunity to work with the Departments Office of International Affairs (OIA), U.S. Embassy staffs (attaches), INTERPOL, foreign governments, and other international agencies.

In May 1995, our office was asked to assist U.S. Customs to prepare an unusual search warrant--unusual because it sought a single folio (or page) from a medieval manuscript prepared for the Italian Renaissance Philosopher, Francisco Petrarch.

What are Manuscripts?

Manuscripts are hand-made books about a variety of topics, including religious, legal, and practical subjects. The parent manuscript involved in our initial investigation contained chapters on both war and agriculture. Manuscripts were hand printed, often by monks, on treated sheep or goat leather called vellum. Many works of the 1300s, such as the manuscript in question--Vatican Library Manuscript #2193 (or "Vat. Lat. #2193")--were simply copies of earlier works. At the completion of the written text portion of the manuscript, artists drew tiny paintings on the pages of text, usually depicting something that had to do with the subject of the page. These paintings often used gold leaf and fine detail and are known as "miniatures" or "illuminations."

The Vatican Connection

The subject of the search warrant was an Ohio State University professor who was less than a month from retirement. He had visited the Vatican Library on more than 100 occasions, and published a book on medieval manuscripts with the Vatican Press in 1975. In 1973, the Vatican manuscript was microfilmed and completely intact. In 1987, the defendant visited the Vatican Library and signed out Vat. Lat. #2193.

In May 1995, the professor presented two manuscript pages to an Akron, Ohio, art dealer. After receiving a less than adequate explanation of their origin and noticing their pristine condition, the dealer contacted a Princeton University art historian for assistance in identifying the documents' provenance (origin). The art historian examined them and determined that they were written in ancient Latin shorthand. He partially translated the pages, determined the author, and then traced them, through a series of phone calls and faxes, to the Vatican library. The art historian also determined, through his communications with the Vatican, that a third page was missing from Vat. Lat. #2193.

Once the art dealer learned that the two manuscript pages provided by the defendant were stolen, he immediately contacted U.S. Customs. U.S. Customs then approached our office for assistance with the search warrant. The search warrant was never executed. When the U.S.

Customs agents arrived at the defendant's house to execute the search warrant, he immediately provided a statement to them and voluntarily provided the third manuscript page. In the course of the interview, the suspect provided various explanations as to how he obtained the manuscript pages, including a 1948 purchase in Rome and a more recent flea market purchase.

In the course of the investigation, U.S. Customs determined that in March 1994, the professor provided the art dealer with two other manuscript pages, which had supposedly been obtained in Rome in 1948, and the professor had additional non-Vatican manuscript pages at his home.

By the end of 1995, our efforts were focused in two very different areas. First, we were trying to identify all the necessary witnesses and documents for the eventual indictment and trial pertaining to the three Vatican manuscript pages. Second, we were trying to determine the origins of the non-Vatican manuscript pages.

Lay and expert witnesses for the Vatican case would be needed from Italy, the Vatican, England, and the U.S. We were quick to learn that employees of the Justice Department and the U.S. Customs Service cannot simply pick up the phone, contact citizens of other countries, purchase plane tickets, and travel to foreign countries on official business. On the other hand, almost immediately one of the professor's defense attorneys traveled to the Vatican, spoke with the head of the Vatican Library, and viewed the victim manuscript and crime scene.

For every Assistant United States Attorney who works on an international art work or stolen property case, we recommend an early phone call to OIA. Their attorney responsible for the appropriate country will facilitate and expedite the challenging process of obtaining evidence through international channels.

In most circumstances, when a foreign, lay, or expert witness needs to be interviewed, it is best to have your investigative agency's attache notify the foreign law enforcement agency. If a DOJ representative or investigative agency is traveling to a foreign country, a brief but essential authorization form must be filed with OIA well in advance and, for Assistant United States Attorneys, an authorization must be filed with the Executive Office for United States Attorneys so it can be forwarded through State Department channels.

Obtaining Foreign Documents

The Vatican officials were very cooperative. Their business records established the dates of our defendant's library visits and his handling of the victim parent manuscript. We also planned to introduce Vatican statutes governing the original theft offense and, because the Vatican cooperated in our investigation and preparation for trial, involuntary production issues did not arise.

Authentication and hearsay issues still needed to be addressed. For authenticating foreign public documents, Federal Rule of Evidence (F.R.E.) 902(3) spells out a two-stage process. Our hope was that the Vatican Library official who would testify could also meet the authentication requirements for the documents pursuant to F.R.E. 901(b)(1) as testimony of a knowledgeable witness.

In order to overcome hearsay issues, we initially looked at F.R.E. 803(6), Records of Regularly Conducted Activity, and F.R.E. 803(16), Statement in Ancient Documents. (Some records were more than 20 years old.) However, as we continued to prepare the case we were pleased to discover 18 U.S.C. § 3505, Foreign Records of Regularly Conducted Activity.

The Spanish Folios

The most significant challenge in this case was the search for the origins of the non-Vatican manuscript pages. While the defendant insisted that some of the items had been purchased in 1948, U.S. Customs' agents, prosecutors, and many art history professionals were convinced they were stolen. The defendant had visited libraries and reviewed hundreds of manuscript books throughout Europe.

We consulted with medieval manuscript experts in Europe and the U.S. The content and artistry of the manuscript pages were examined to identify a time period and geographic location when the original manuscript was created. Using this information, experts attempted to identify libraries in Europe that were likely to hold manuscripts from the appropriate era and authorship. Finally, microfilm was examined in an attempt to match manuscript pages with similar kinds of artwork and content. We had academic assistance from Princeton, Michigan State, the University of California at Berkeley, and libraries and museums in Europe.

We also consulted with the Medieval Manuscript Society and they established a $5,000 reward for anyone able to connect the suspicious pages with their manuscript. With this incentive, in May 1996, a graduate student working at the Pierpont Morgan Library in New York City was able to trace the mystery manuscript pages to two cathedrals in Spain. Then, in another stroke of luck, we found that in 1964 a monk in the Cathedral Library of Toledo, Spain, had manually counted the pages in the victim manuscript and all pages were accounted for. In 1965, the defendant had "studied" the manuscript. In 1975, when the manuscript was microfilmed, the stolen page was missing. Similarly, we were able to trace two additional manuscript pages to another cathedral in Tortosa, Spain, also visited by the defendant in 1965. The Tortosa manuscript pages were then seized through the execution of a search warrant.

Maintaining Custody of Stolen Artwork

The defendant's attorneys did not contest the Vatican's right of ownership for the first three manuscript pages. However, prior to the May 1996 discovery, they continued to insist that the two manuscript pages provided to the Akron art dealer in 1994 were, in fact, legitimately obtained by the defendant in 1948. The attorneys were so convinced of their position that they sent a threatening demand letter to the art dealer. By this time, one 1994 manuscript page was in the possession of U.S. Customs and the other was being held by a prospective buyer in Austria. Importantly, beyond our suspicions we had little evidence that these pages were stolen and we could not identify a victim library.

More difficulty can arise at the conclusion of a criminal case. A victimized museum or foreign government obviously wants its property returned. However, a criminal case may not necessarily terminate an American citizen's claim of ownership of an item of previously stolen foreign property. Because our case was concluded through a plea agreement, the defendant waived claim of ownership of all the manuscript pages identified in our investigation.

If you are unable to obtain a waiver of this sort, the U.S. Customs' law at 19 U.S.C. § 1595 provides confiscation provisions for property brought into the U.S. contrary to law. Similarly, the civil forfeiture provisions of 18 U.S.C. § 981(a)(1)(C) enable the Government to obtain property entering the country in violation of 18 U.S.C. § 545. Foreign governments can also request return of property through letters rogatory under the provisions of 28 U.S.C. § 1782.

Finally, assistance can be obtained through the Cultural Property Implementation Act, 19 U.S.C. §§ 2602 to 2613.

The Conviction

In January 1996, the defendant was indicted on four counts--two charges for possession of stolen property, 18 U.S.C. § 2315, and two charges for concealment and sale of previously smuggled property, 18 U.S.C. § 545. In May 1996, when the Toledo documents were finally identified two weeks prior to the scheduled trial date, a superseding indictment was handed down. The defendant was charged with one additional count of possession of stolen property and one additional count of concealment of smuggled property.

Approximately one week later the Tortosa, Spain, documents were identified and seized.

On August 13, 1996, the defendant pled to the six-count superseding indictment and to two additional charges pertaining to the Tortosa documents--one for a violation of the Archaeological Resource Protection Act (ARPA), 16 U.S.C. § 470. The ARPA is typically applied to property that has been looted from public lands; however, one provision of the act prohibits trafficking of archeological resources in interstate or foreign commerce, the receipt of which is a violation of state or local law. This is probably the first time this provision has been applied to an international case involving artifacts of foreign origin.

Conclusion

If you are ever presented with an international art case, consider the following tips:

- Call OIA at (202) 514-0000, as soon as possible.

- Determine if the U.S. has a treaty with the country or countries involved that pertains to artwork, property, evidence gathering, or use at trial, double jeopardy, or extradition--and read it.

- Be sure your passport is current.

- Have the investigative agency contact the appropriate attache for the country you are working with and find an accessible and affordable translator.

- Seize your "art" as evidence but be prepared to defend claims of ownership.

- Read 18 U.S.C. § 3505.

Finally, we found that Assistant United States Attorneys can be the best source of practical advice. We recommend consulting with Assistant United States Attorney Carol Johnson of the Eastern District of Texas at (803) 868-9454 and Assistant United States Attorney Evan Barr of the Southern District of New York at (212) 791-1978 for cases involving possession and/or sale of stolen, foreign art.

*Co-counsel on the case was Assistant United States Attorney Robyn Jones and the lead U.S. Customs Service Agent was Mark Beauchamp.

Fear of Foreign Prosecution and the Privilege Against Self-Incrimination

Assistant United States Attorney David S. Mackey
District of Massachusetts

District courts are divided about whether the Fifth Amendment privilege against self-incrimination applies to the fear of foreign prosecution. Two cases are now pending in the Courts of Appeal which will address the issue, both arising in the context of investigations into the immigration to the United States of persons suspected of collaborating with the Nazis during World War II. See *United States v. Balsys*, appeal docketed, No. 96-6144 (2d Cir.); *United States v. Gecas*, appeal docketed, No. 93-3291 (11th Cir.). This article describes the litigation of that issue in a recent denaturalization case also involving a Nazi collaborator. Nonetheless, the scope of the Fifth Amendment testimonial privilege also has potential significance for any case pending in an American court in which a defendant may assert fear of prosecution by a foreign government. It also has important implications for the United States' ability to compel testimony through a grant of immunity in some cases of transnational criminal activity, especially in the terrorism and narcotics trafficking areas.

Background

In September 1994, the U.S.[1] filed suit against Aleksandras Lileikis, a law-school educated Lithuanian who entered the U.S. in 1955 and was naturalized in 1976. The Complaint sought to strip Lileikis of his American citizenship under Section 340(a) of the Immigration and Naturalization Act, 8 U.S.C. § 1451(a). The Complaint alleged that Lileikis, as Chief of the Lithuanian Security Police in Vilnius Province, Lithuania, during World War II, was implicated in the murder of much of the Jewish population of Vilnius, Lithuania. By the end of the war, fewer than 5,000 of the 60,000 pre-war Jewish inhabitants of Vilnius remained alive.

Specifically, the Complaint recounted a series of orders signed and issued by Lileikis ordering the arrest of Jews and turning them over to the Special Detachment, a battalion of Lithuanians whose sole function was mass murder. (See copy of "execution order" below for a mother and her six-year old daughter.) Documents uncovered by DOJ's Office of Special Investigations included not only orders reflecting Lileikis's delivery of Jewish men, women, and children from hard labor prison to the Special Detachment, but "execution cards" prepared by the Special Detachment which reflected the victims' names and ages, as well as the date upon which the victim had been "handled according to orders" or "liquidated." A pencil slash across the card typically confirmed the fact of execution. (See execution card on page 19.)

Lileikis refused to answer the substantive allegations of the Government's Complaint, including whether he signed and issued the orders in question. Though the denaturalization proceeding against him was civil in nature, Lileikis argued that his answer to the civil Complaint could subject him to criminal prosecution by Lithuania (and possibly by other countries as well). Therefore, he argued, he was entitled to exercise his Fifth Amendment privilege against

self-incrimination.

The Government moved to compel Lileikis to respond to the Complaint. The Government did concede, for purposes of the motion, that Lileikis had a realistic fear of criminal prosecution by Lithuania, but asserted that the privilege was inapplicable when a foreign sovereign, and not the U.S., was threatening prosecution.

The Legal Framework

District courts have been divided about whether the Fifth Amendment can be asserted based upon fear of foreign prosecution. While the Supreme Court once granted certiorari to resolve the question, it declined to address the constitutional issue because it concluded that the appellant's fear of foreign prosecution was remote. *Zicarelli v. New Jersey Investigation Commission*, 406 U.S. 472, 478 (1972). Two Courts of Appeal have concluded that the privilege was inapplicable to fear of foreign prosecution. *United States v. Under Seal (Araneta)*, 794 F.2d 920, 925-928 (4th Cir.), cert. denied, 479 U.S. 924 (1986); In re *Parker*, 411 F.2d 1067, 1069, 1070 (10th Cir. 1969), vacated as moot sub nom. *Parker v. United States*, 397 U.S. 96 (1970). An Eleventh Circuit panel initially held that the Fifth Amendment did apply in those circumstances, *United States v. Gecas*, 50 F.3d 1549 (11th Cir. 1995), but its mandate was subsequently vacated and the case has been reargued en banc. *United States v. Gecas*, 81 F.3rd 1032 (11th Cir. 1996). A number of district courts have, like the panel opinion in *Gecas*, extended the Fifth Amendment testimonial privilege to fear of foreign prosecution. For example, *Moses v. Allard*, 779 F. Supp. 857, 882-883 (E.D. Mich. 1991); *Mishima v. United States*, 507 F. Supp. 131, 134-135 (D. Alaska 1981); *United States v. Trucis*, 89 F.R.D. 671, 673 (E.D. Pa. 1981); In re *Cardassi*, 351 F. Supp. 1080, 1084-86 (D. Conn. 1972).

Courts which have held the Fifth Amendment inapplicable to fear of prosecution by a foreign sovereign have done so for both historic and policy reasons. Historically, the Fifth Amendment testimonial privilege applied only in Federal criminal proceedings. See, for example, *Knapp v. Schweitzer*, 357 U.S. 371, 377 (1958), and *Jack v. Kansas*, 199 U.S. 372, 379-80 (1905). Federally-compelled testimony could be and often was used in state criminal prosecutions, and vice versa. See *United States v. Murdock*, 284 U.S. 141, 149 (1931), and *Hale v. Henkel*, 201 U.S. 43, 68-69 (1906). In *Malloy v. Hogan*, 378 U.S. 1, 8 (1964), the Supreme Court held that the Fifth Amendment applied to the states through the Fourteenth Amendment, and in *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964), the Court held that the Fifth Amendment forbade the use of compelled testimony in any criminal prosecution, irrespective of whether it had been obtained by state or Federal authorities. Id. at 77-78. This historic analysis supports the proposition that the privilege applies only under circumstances where the sovereign threatening prosecution is bound by the Fifth Amendment, i.e., the Federal Government and the 50 states.

Courts which have held the privilege inapplicable to fear of foreign prosecution have also examined the policies protected by the Fifth Amendment. First and perhaps foremost, the Fifth Amendment is designed to prevent the "inhumane treatment and abuses" of individuals from whom self-incriminating information might be sought, by removing one of the motives for abusive interrogation tactics. See *Murphy v. Waterfront Commission*, 378 U.S. at 55 and *United States v. Araneta*, 794 F.2d at 926. There is no such motivation in a case where a foreign sovereign, not the U.S., is purportedly the source of potential prosecution. "Where the crime is a foreign crime, any motive to inflict brutality upon a person because of the incriminating nature of the disclosure--

any `conviction hunger' as such--is absent." *Murphy v. Waterfront Commission*, 378 U.S. at 56 n.5, quoting 8 Wigmore, Evidence 345 (1961).

Courts have also recognized that domestic law enforcement interests could suffer where the United States' ability to compel disclosure of information is impeded by fear that some foreign sovereign might act to prosecute based on the information obtained. As the Fourth Circuit recognized, our own national sovereignty would be compromised if our system of criminal justice were made to depend on the actions of a foreign government beyond our control. It would be intolerable to require the United States to forego evidence legitimately within its reach solely because a foreign power could deploy this evidence in a fashion not permitted within this country.

United States v. Araneta, 794 F.2d at 926; see In re *Parker*, 411 F.2d at 1070 (ability of the U.S. to gather information ought not depend on what is or is not criminal under foreign law).

The arguments for extending the reach of the Fifth Amendment to fear of foreign prosecution were set forth in a Court of Appeals panel decision issued almost one month after the Government filed its motion to compel in *Lileikis*. *United States v. Gecas*, 50 F.3d 1549 (11th Cir. 1995), rehearing en banc granted and opinion vacated, 81 F. 3rd 1032 (11th Cir. 1996). With that decision, the Eleventh Circuit became the first Court of Appeals to hold that the privilege against self-incrimination did, in fact, apply to fear of foreign prosecution. The panel opinion by Judge Birch reasoned that "the Fifth Amendment privilege against self-incrimination is a personal right; it is a matter of individual dignity." Id. at 1564 (emphasis in original). Since the punishment resulting to the respondent from compelled testimony would be "no less penal for its being imposed by another government," id. at 1565, quoting Comment, Fear of Foreign Prosecution and the Fifth Amendment, 58 Iowa L. Rev. 1304, 1313 (1973), the panel opinion concluded that "theoretical consistency demands" that the Fifth Amendment apply. The panel opinion also raised concern about the United States' and Lithuania's agreement "to provide mutual legal assistance" concerning the prosecution of persons suspected of having committed war crimes in World War II in Lithuania and who are residents of the U.S. It noted that the United States' efforts to fulfill this agreement could make the U.S. both the compelling and using sovereign. *United States v. Gecas*, 50 F.3d at 1565.

The *Lileikis* Rulings

On September 15, 1995, Judge Stearns issued a memorandum on the Government's motion to compel in Lileikis. He declined to accept the Government's argument that the privilege by its nature only applies where the sovereign threatening prosecution is itself bound by the Fifth Amendment. *United States v. Lileikis*, 899 F. Supp. 802, 807 (D. Mass. 1995). Moreover, he acknowledged at least the theoretical concern regarding whether the U.S. was "acting as a surrogate" for Lithuania in furthering whatever interests that country had in prosecuting Lileikis criminally. Nonetheless, he was persuaded by the argument that "the national sovereignty of the U.S. `would be compromised if our system of criminal justice were made to depend on the actions of a foreign government beyond our control'." Id. at 807, quoting *Araneta*, 794 F.2d at 926.

Based on these competing concerns, Judge Stearns formulated the analysis as follows:

> If a governmental interest in enforcing the organic laws of the United States is involved, and the United States has a legitimate need for a witness's testimony in furthering that interest, the privilege must yield. It would be an unacceptable

> affront to the sovereignty of the United States if the operation of its laws could be stymied by the desire of a foreign government to prosecute the same witness. That the United States may have a contingent purpose to aid a foreign nation in vindicating its own laws or, as in this case, international law, is not determinative. On the other hand, I agree that a court of the United States should not bend the Constitution solely to promote the foreign policy objectives of the executive branch, however laudable, by compelling the cooperation of a witness in a proceeding that does not have as its fundamental purpose the vindication of the domestic laws of the United States.

On November 16, 1995, after further briefing on the United States' interest in enforcement of its immigration laws, and on the nature and extent of the "legitimate need" for Lileikis' responses to the Complaint, Judge Stearns granted the Government's Motion to Compel, and ordered Lileikis to answer the Complaint.

> [T]he [law enforcement] interest asserted by the Government is compelling, particularly so when the allegations of the Complaint are measured against the duty incumbent upon the Government to uphold the moral standards that regulate the eligibility of aliens for American citizenship. Moreover, I am persuaded that the Government is acting primarily in accordance with its own sovereign interests, and not on behalf of the prosecutorial interests of Lithuania or any other foreign state.

Lileikis refused to abide by the court's order requiring him to respond to the Complaint. Consequently, on December 18, 1995, the Government filed a motion seeking an order, under Fed. R. Civ. P. 8(d),[2] that the allegations of the Complaint which he refused to answer be deemed admitted. The court granted that motion on January 9, 1996. Less than six months later, the court granted the Governments motion for summary judgment and stripped Lileikis of his citizenship. *United States v. Lileikis*, 929 F. Supp. 31 (D. Mass. 1996). It did so on two independent grounds: (1) because the expert testimony and historic documents submitted by the Government demonstrated that there was no genuine issue of material fact regarding Lileikis participation in mass murder; id. at 38;[3] and (2) because Lileikis, in any case, was deemed to have admitted the substantive allegations in the Complaint because of the ruling on the Government's motion under Rule 8(d). Id. at 37. In his memorandum on the summary judgment motion, Judge Stearns concluded that Lileikis was implicated in the murders of tens of thousands. Id. at 39.[4]

Since Judge Stearns' ruling in *Lileikis*, there have been two significant developments in this area of the law. On April 11, 1996, the Eleventh Circuit vacated its panel opinion in Gecas, and granted the Governments motion for rehearing en banc. The case was reargued to the full court on June 5, 1996, and is awaiting decision. Moreover, in *United States v. Balsys*, 918 F. Supp. 588, 598 (E.D.N.Y. 1996), the court followed the *Lileikis* decision, concluding that "the United States cannot be deterred by the threat of a prosecution by a foreign sovereign from gathering evidence for its own purposes." Id. at 599, quoting *Lileikis*, 899 F. Supp. at 807. This case is currently on appeal in the Second Circuit.

This developing area of the law has significant potential implications for criminal matters extending beyond the denaturalization context. As Judge Stearns recognized, if the Fifth Amendment extended to fear of foreign prosecution, a foreign government could impede the

United States' ability to gather evidence merely by threatening criminal prosecution, even if it had no intention of instituting such a prosecution. "Examples might include a renegade state seeking to protect the bosses of a drug cartel or the leaders of a terrorist organization by threatening the prosecution of lieutenants granted immunity as a means of compelling their testimony." *United States v. Lileikis*, 899 F. Supp. at 807 n.9. Judge Stearns' ruling in *Lileikis* resolves the issue in a manner which avoids this "unacceptable affront" to legitimate law enforcement interests of the United States.

[1] The Lileikis prosecution was a collaborative effort by the United States Attorney's office for the District of Massachusetts and the Office of Special Investigations, Criminal Division, Department of Justice.

[2] Rule 8(d) provides that [a]verments on a pleading to which a responsive pleading is required, . . . are admitted when not denied in the responsive pleading.

[3] The Government submitted an expert affidavit from Dr. Yitzhak Arad, a preeminent Holocaust historian. This affidavit attached thousands of pages of historic material relating to the Nazi occupation of Lithuania, the Lithuanian Security Police, and Lileikis himself. The Government also submitted forensic affidavits from experts at the United States Secret Service and the Immigration and Naturalization Service regarding the handwriting, ink, paper, and typeface appearing on the historic documents in question. Judge Stearns concluded that the Government's factual showing met the "clear, unequivocal and convincing" burden of proof applied in denaturalization proceedings. *United States v. Lileikis*, 929 F. Supp. at 36.

[4] Lileikis fled this country for his native Lithuania on June 17, 1996. Pursuant to court order he had surrendered his American passport to the United States Attorney's office. Nonetheless, he was apparently allowed entry to Lithuania on Lithuanian travel documents procured sometime during the course of the litigation. He did not pursue an appeal of Judge Stearn's ruling. Lileikis has been questioned briefly by Lithuanian authorities, but no charges have been brought against him there.

Rendition of Omar Mohammed Ali Rezaq

Assistant United States Attorney Joseph B. Valder
District of Columbia and Trial Attorney Scott Glick
Criminal Division

After being obtained through a rendition in July 1993, Omar Mohammed Ali Rezaq, 38, was convicted of air piracy in U.S. District Court in Washington, D.C., in July 1996 for his involvement in the November 1985 terrorist hijacking of Egyptair Flight 648.

Egyptair Flight 648 had been en route from Athens to Cairo but the hijackers forced the pilots to fly to Malta where, during negotiations for fuel, Rezaq shot five passengers in the head at point blank range; an Israeli and an American were killed. Fifty-six other passengers were killed when Egyptian commandos stormed the plane in an effort to end the terrorist incident. Two

terrorists died in the course of the hijacking and rescue, resulting in 60 deaths during the bloodiest hijacking in history.

After being shot and caught in the commando rescue attempt, Rezaq was charged in Malta with murder and a number of other crimes, excluding air piracy. He was convicted and served only 7 years of a 25-year sentence. Maltese authorities released him in February 1993, over the vigorous objection of the United States. After his release, through a rendition in cooperation with the government of Nigeria, the United States was able to obtain custody of Rezaq. This is the story of that rendition.

In mid-December 1985, after Egypt had requested Rezaq's extradition, and while he was being held by Maltese authorities, the United States presented them with a Diplomatic Note requesting that Malta provisionally arrest him pursuant to the extradition treaty in effect between the United States and Malta. The Diplomatic Note specifically acknowledged that Rezaq was being held by Malta for purposes of prosecution there, and that Egypt had made a prior request for his extradition. Consistent with Articles 4, 10, and 11 of the Extradition Treaty, the United States requested that Malta "hold the United States request in abeyance pending the conclusion of Maltese proceedings and a final disposition of the Egyptian request."

A State Department affidavit filed by the prosecution stated that the "United States made it clear to Malta that it wished to preserve the option of prosecuting Rezaq for offenses not within Maltese jurisdiction, once the proceedings in Malta were completed."

The Diplomatic Note presented to Malta also stated that "[i]n the event that Rezaq may be eligible for release for whatever reason, the Government of Malta is requested to execute immediately this request and to detain him for purposes of extradition to the United States pursuant to Article 11 of our Treaty." The position of the United States was to assist Malta in its prosecution of Rezaq, while maintaining all available options for further United States action.

In December 1985, Malta decided to proceed with its prosecution of Rezaq rather than extradite him to Egypt. After a lengthy "Compilation of Evidence Proceedings" phase in which Maltese courts obtained evidence and witnesses from other nations including the United States, Malta indicted Rezaq for nine violations of Maltese law including murder, attempted murder, arresting and holding persons against their will, and explosives and firearms offenses.

In November 1988, Rezaq pled guilty to two murders, four attempted murders, and false arrest charges while the explosives and firearms charges were dismissed in consideration of his guilty plea. Rezaq was not indicted for air piracy, since it was not an offense under Maltese law when the hijacking occurred. Rezaq was sentenced to 25 years' imprisonment in Malta.

In February 1993, after having been incarcerated for over seven years in Malta, Rezaq was released by Malta. They did not act on the Diplomatic Note submitted by the United States and, over the vigorous objection of the United States, permitted Rezaq to board an Aeroflot airplane in Malta. The United States learned that he was on this airplane and was en route to the Sudan, with intermediate stops in Ghana, Nigeria, and Ethiopia. The United States promptly advised these nations that he intended to travel through their countries.

Pursuant to The Convention for the Suppression of Unlawful Seizure of Aircraft, December 16, 1970, 22 U.S.T., 1643, T.I.A.S. No. 7192 [the "Hague Convention"], Ghana had the legal authority under international law to detain Rezaq upon his arrival in Ghana for trial there. The Hague Convention states that a Party to the convention may prosecute any person who may have violated the convention and who is "present in" its territory. Ghana, the United States, Nigeria, and more than 100 other nations are Parties to the Hague Convention. Malta, however,

did not become a Party to the Hague Convention until June of 1991. Malta, therefore, was not a Party to the Convention at the time that Rezaq hijacked the airplane, nor did they enact domestic legislation outlawing air piracy, which was necessary to implement the Hague Convention, until August 1991.

Within hours of the time that he voluntarily left Malta in February 1993, Rezaq arrived in Ghana. The United States had immediately asked Ghana if it would detain him for trial in Ghana or elsewhere. The United States, however, did not submit an extradition request to Ghana. When Rezaq arrived in Ghana, he was detained by Ghanaian authorities. Approximately four and a half months later, Ghana decided not to prosecute Rezaq for his role in the hijacking. Although the United States had not submitted an extradition request to Ghana prior to this time, the United States had asked Ghana if it would render him to the United States for trial on air piracy charges. Ghana declined and notified the United States that it would not grant any extradition request that the United States might choose to make and it would not render Rezaq to the United States. Instead, Ghana notified the United States that Rezaq would be released on July 15, 1993, to resume his original itinerary.

On July 15, 1993, Rezaq was released by Ghana and resumed his original itinerary, traveling from Ghana to Nigeria where he was scheduled to change planes and then continue on to Ethiopia. The United States advised Nigeria and Ethiopia that he intended to travel through their countries. When Rezaq arrived and voluntarily deplaned at the airport in Lagos, Nigeria, at about 10:00 p.m., Nigerian authorities refused to allow him to enter Nigeria and escorted him to an airplane where FBI Special Agents were waiting for him inside. The plane departed immediately and was airborne within a few minutes, pausing on the runway only long enough to allow one of the agents to make a fingerprint comparison to ensure Rezaq's correct identity. The United States did not submit an extradition request to Nigeria and no Diplomatic Note was presented to it.

Within two hours of the time Rezaq was taken into custody by the FBI, a Federal grand jury in the District of Columbia returned an indictment charging him with violating the air piracy statute. When Rezaq arrived in the United States the next morning, FBI agents executed an arrest warrant that was obtained in Washington, D.C., on February 12, 1993, and that was conditioned upon Rezaq being in the United States. The agents immediately took Rezaq to the nearest Federal courthouse--the District of Columbia. While he was present in the U.S. Courthouse in Washington, D.C., the grand jury returned a superseding indictment against Rezaq, citing his presence in the District of Columbia, and he was arraigned on the superseding indictment a few hours later.

On October 7, 1996, Rezaq was sentenced in this pre-guidelines case, to life in prison and ordered not to be paroled for 10 years. The judge who sentenced Rezaq also said he would recommend to the Parole Commission that Rezaq not be paroled for 30 years.

The case was tried by Washington, D.C., Assistant United States Attorney Joseph B. Valder and Department of Justice Trial Attorney Scott Glick.

White Collar Crime Investigation Team

Senior Trial Attorney Betsy E. Burke
Office of International Affairs

and AFMLS Trial Attorney John F. Hyland, Jr.

This article will acquaint you with a resource that may be useful in certain white collar and money laundering investigations.

In the early 1990s, the FBI and the United Kingdom conceived the concept of a joint law enforcement team to eliminate, or at least minimize, obstacles in multi-jurisdictional cases involving off-shore fraud. In response to an alarming number of savings and loan frauds, advance fee schemes, insurance scams, and other fraud, the White Collar Crime Investigation Team (WCCIT) was established on November 10, 1993. The team, a joint effort of the United States and the United Kingdom of Great Britain and Northern Ireland, commenced operations in 1994 out of the Miami Field Office of the FBI.

Currently, WCCIT is busy working on a half dozen or more cases affecting the United States and the British Caribbean Dependent Territories (territories), which comprise Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos Islands. And in the past 12 months, WCCIT has achieved notable results.

WCCIT attained its first conviction in 1995 in the Southern District of Florida when Miami lawyer David Moed was convicted and sentenced on three counts of wire fraud in conjunction with an insurance scam involving Cayman Island bank accounts. The Moed case, handled by Assistant United States Attorney Alicia Valle, Southern District of Florida, was a major victory. Moed purportedly embezzled more than half a million dollars from an insurance company licensed in the Cayman Islands. He also operated a reinsurance business from the Cayman Islands, which defrauded at least 15 insurance companies in the U.S. of millions of dollars. The Royal Cayman Police investigated Moed in the early 1990s but dropped their case when Moed quit doing business there. The WCCIT concept is especially well-suited for financial frauds such as the Moed case, which involve off-shore jurisdictions where the victims are typically in the U.S. or elsewhere, and where the complex nature of the scheme or the limited involvement with the islands may hinder local investigators.

In another recent WCCIT case, approximately $7.5 million was restrained in Miami in an advance fee scam implicating nominee corporations in the British Virgin Islands, financiers in England and Egypt, and a South American felon. This seizure represents the FBI's largest non-drug seizure, and foreign authorities concur that WCCIT's efforts and expertise enabled the monies to be restrained in a timely manner. In addition to these accomplishments, two unrelated insurance fraud schemes, each involving millions of dollars in fraud proceeds churned through off-shore bank accounts, are ready for grand jury presentation.

WCCIT is composed of two FBI Special Agents and two British police officers who focus on financial crimes, including bank fraud and money laundering occurring principally in the U.S. and the territories. WCCIT cases are approved for investigation by a Steering Committee comprised of DOJ attorneys, FBI representatives, and British police officers. The Committee is chaired in alternate years by the FBI and the British/territories' police. WCCIT policy matters are controlled by an Oversight Committee of senior officials from both countries. Because WCCIT cases tend to have venue in the Southern District of Florida, an Assistant United States Attorney from that district assists the team with prosecution and forfeiture matters. WCCIT can provide assistance, if appropriate, to any United States Attorney's office (USAO) in cases where venue is outside the Southern District of Florida.

The procedure for gathering evidence in the territories is generally two-fold. First, the

team has been able to conduct investigations directly in the territories because the British police officers there are designated as police officers, with constable powers. During the investigative process, the evidence is identified and gathered in the islands by WCCIT, relying primarily upon the authority of the British officers. Second, the formal Mutual Legal Assistance Treaty (MLAT) procedure is used to obtain a formal order for the production of financial records or other evidence and for the foreign evidence to be shared with authorities in the U.S. Under the MLAT, bank officials or other persons also can be compelled to appear and to answer questions posed by the FBI. Moreover, the evidence is produced under the MLAT in a manner that self-authenticates banking records and public records, so that the records can be readily introduced in U.S. judicial proceedings.

The assistance of WCCIT is not intended to replace the MLAT process, which usually works well in cases where foreign bank records or other evidence can be identified readily with specificity. Rather, it may be advantageous to have WCCIT involved pre-MLAT in sophisticated fraud or financial scams where the USAO and FBI can rely upon the access of the British officers to identify particular financial documents, to determine the scope of a fraud, and/or to obtain informal information that may generate further leads in the U.S. or elsewhere. Also, WCCIT can supplement the MLAT procedures in complicated cases by eliminating the necessity of having to rely on numerous supplemental requests for assistance.

While the MLAT procedure may not be as expeditious as a domestic search warrant or grand jury subpoena, the Cayman MLAT (which has been extended to the other territories) has been an invaluable tool for gaining access to financial records in the territories. Generally, the Cayman MLAT requests are turned around in 90 to 120 days. Under 18 U.S.C. § 3292, the period of limitations for bringing formal charges is tolled while a formal request for assistance to a foreign government is outstanding. The provisions of the Speedy Trial Act also toll the period of prosecution up to one year when foreign evidence is being retrieved.

An ideal case for WCCIT would be one involving financial fraud or the laundering of white collar proceeds which encompasses more than one jurisdiction, including substantial activity in one of the British Caribbean Territories. If you would like more information about this valuable resource, please contact Lystra Blake at (202) 514-0010, Email CRM03(BLAKE), or John Hyland at (202) 616-2264, Email CRM07(HYLAND).

New Agreement on Cooperation in Criminal Matters with Russia

Senior Trial Attorney Jennafer Litschewski
Office of International Affairs
Criminal Division

The disturbing growth of Russian organized crime has increased the importance of effective cooperation between American and Russian law enforcement in criminal investigations. Prosecutors and investigators who need evidence located in Russia now have a new tool for obtaining that evidence: the "Agreement Between the Government of the United States of America and the Government of the Russian Federation on Cooperation in Criminal Law Matters," an executive agreement that was effective on February 5, 1996. The Office of International Affairs is now processing requests under the agreement, and a brief description of

OIA's process follows.

Introduction

The Agreement provides for assistance in the investigation, criminal prosecution, and prevention of the criminal offenses specifically listed in the Annex to the Agreement, and in "proceedings related to such criminal matters," such as grand jury proceedings and civil and administrative proceedings involving forfeiture and criminal fines. The Agreement, which is intended as an interim agreement pending negotiation of a Mutual Legal Assistance Treaty, replaces the burdensome letter rogatory process and creates an obligation to render assistance in criminal matters.

Provisions of the Agreement

Scope of the Agreement

Scope of Covered Offenses

The Agreement establishes an obligation to provide assistance only with respect to offenses specifically designated in the Annex. The offenses are as follows: (1) illicit traffic in narcotic drugs and psychotropic substances, including, but not limited to, all offenses having any relationship to any narcotics activity described in the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, the 1972 Protocol Amending the Single Convention, or the 1988 United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances; (2) offenses encompassed in other multilateral treaties to which the U.S. and Russia are parties; (3) organized criminal activity and racketeering; (4) money laundering; (5) offenses against the laws relating to control of weapons, including nuclear weapons or other weapons of mass destruction, explosive substances, nuclear material, incendiary devices, or substances injurious to health; (6) fraud and corruption involving Government officials, including bribery; (7) violent crime against individuals; and (8) sexual offenses against children, including child prostitution and child pornography. It also covers "[a]ny attempt or conspiracy to commit, aiding and abetting, or participation as a principal" to the listed offenses.

Scope of Assistance

Assistance that may be sought from Russia under the Agreement includes: (1) obtaining testimony, statements, or materials; (2) providing documents, records, and other items; (3) serving documents; (4) locating and identifying persons; (5) executing searches and seizures; (6) taking actions related to immobilization and forfeiture of assets, restitution, and collection of fines; and (7) any other assistance not prohibited by the laws of the Requested Party.

Pursuant to subsection (7), assistance may include a request that the Russian authorities sign and attach a Certificate of Authenticity to business records which will make the foreign records admissible in evidence in U.S. courts in accordance with Title 18 U.S.C. § 3505.

Limitations on Compliance

A U.S. request for assistance under the Agreement may be denied by Russia for any of the following reasons: (1) the request relates to a military offense; (2) the execution of the request might prejudice the security or "other essential interests" of Russia (which includes political offenses); (3) the offense does not constitute an offense under Russian law; and (4) the request does not conform to the provisions of the Agreement.

Requests for Assistance--Contents and Procedures

All requests to Russia under the Agreement must be made by the "Central Authority" for the U.S., which is the Office of International Affairs, Criminal Division, Department of Justice.

Each request for assistance must contain the following information: (1) the name of the authority conducting the criminal investigation, prosecution, or proceeding; (2) a description of the facts to which the investigation, prosecution, or proceeding relates; (3) a description of the specific offenses believed to have been violated; (4) the purpose for which the evidence, information, or other assistance is sought; and (5) a description of the evidence, information, or other assistance sought.

Furthermore, whenever necessary and possible, requests should specify whether a judicial proceeding relating to the criminal matter is pending or, if not, how soon one will be instituted; the identity and likely whereabouts of persons who are to be served or located or from whom testimony is sought; a description of places to be searched and items to be seized; a list of questions to be asked of the person; a description of the procedure to be followed in executing the request; an enumeration of the expenses to be covered; and any other information that might facilitate execution of the request.

Miscellaneous Provisions and Requirements

Costs and Translation

The following costs must be paid by the U.S. prosecutor's office making the request to Russia: (1) fees of expert witnesses; (2) costs of translation, interpretation, and transcription; and (3) allowances and expenses related to persons traveling to the U.S. either as voluntary witnesses or witnesses transferred in custody pursuant to the Agreement. Costs incurred in connection with a U.S. request under the Agreement will be the responsibility of the United States Attorney's office or other appropriate law enforcement agency initiating the request. U.S. requests to Russia must be translated into Russian language. Prosecutors and agents in this country will be responsible for having the requests translated prior to transmittal to Russia for execution. OIA can assist the prosecutor/investigator in obtaining a translation if such assistance is needed.

Confidentiality

The Agreement provides that upon request, each Party will use its best efforts to keep confidential the contents of a request and the product of the execution of a request. As a result, a request from the U.S. may be processed without violating grand jury secrecy or jeopardizing an investigation. If Russian authorities determine that a U.S. request may not be kept confidential,

Russian authorities will notify the U.S. Central Authority so that OIA, in conjunction with the prosecutor and/or investigator, can decide whether to ask the Russian authorities to proceed with the execution. Prosecutors wishing to use or share information obtained from Russia for cases or purposes other than those specified in the original request must consult with OIA before doing so.

Use of Other Cooperative Mechanisms

The Agreement explicitly recognizes that either Party may seek assistance from the other pursuant to other international treaties and agreements, national laws, and practices.

Mutuality of Obligation

The Department of Justice, through OIA, will use its best efforts to establish a close working relationship with the Central Authority in Russia to ensure that all requests made by the U.S. under the Agreement are given careful and expeditious treatment, bearing in mind recognized technical, financial, and personnel limitations in Russia. To assist the Department of Justice in its efforts on behalf of U.S. prosecutors, authorities in this country who are designated to execute requests under the Agreement from Russia are asked to undertake their duties in providing assistance as expeditiously and fully as possible, with an overall view towards making the Agreement an effective means of strengthening bilateral law enforcement cooperation.

Conclusion

As noted earlier, OIA is the Central Authority for the U.S. in implementing the Agreement. Prosecutors or agents interested in making a request to Russia under the Agreement should contact Senior Trial Attorney Jenna Litschewski, (202) 514-0038, or write OIA at 1400 New York Avenue, N.W., Bond Building, Fifth Floor, Washington, D.C. 20005. Exemplars, advice, and assistance are available upon request.

Office of Professional Development and Training in Russia

OPDAT's anti-crime program in the Russian Federation, where a Justice Department prosecutor is stationed, is now entering its second year. A prosecutor manages the Department of Justice/Central and East European Law Initiative program, which focuses on general criminal law reform issues. Assistant United States Attorney Michael Dittoe, who recently returned from Moscow to the United States Attorney's office for the Southern District of Florida, established a separate DOJ program funded by the International Narcotics and Law Enforcement section of the State Department, focusing on law enforcement and prosecutor training in Moscow this year.

Together with the FBI and other investigative agencies, OPDAT is expanding its training of prosecutors and law enforcement officials, as well as the judiciary. The OPDAT/Russian program also provides commentary on key pieces of criminal justice legislation designed to restructure the Russian legal system, such as the Russian criminal code (which was recently made into law), the draft code on criminal procedure, and the draft law on organized crime.

New Mutual Legal Assistance Treaty with Panama

Associate Director Mary Troland
Office of International Affairs
Criminal Division

Prosecutors and investigators who need evidence located in the Republic of Panama should consider requesting assistance under the mutual legal assistance treaty between the United States of America and Panama that was effective September 6, 1995. The Office of International Affairs has now processed several requests under the new treaty, and the following is a brief description of how it works.

Introduction

The treaty provides for assistance in the investigation, prosecution, and suppression of serious criminal offenses and in "proceedings connected therewith," such as grand jury proceedings and civil and administrative proceedings involving forfeiture and criminal fines. The treaty covers a wide range of criminal offenses, including terrorism, fraud, narcotics trafficking, and money laundering. The Justice Department believes that the existence and use of the treaty will substantially improve, expand, and expedite U.S. prosecutors' access to evidence and other legal assistance from Panama.

Provisions of the Treaty

Scope of Treaty

Scope of Covered Offenses

The treaty applies to all conduct punishable as a crime under the laws of both the U.S. and Panama. It also specifically covers all serious criminal conduct arising from, relating to, resulting from, or otherwise involving illegal drug trafficking, theft, crimes of violence, fraud, and the laundering of money from the other crimes encompassed by the treaty.

It should be noted, however, that under the treaty, Panama is <u>not</u> obligated to provide assistance to the U.S. in "pure tax" cases--that is, tax cases that do not involve money shown to have been derived from criminal offenses otherwise covered by the treaty.

Scope of Assistance

Assistance that may be sought from Panama under the treaty includes: (a) taking testimony or statements; (b) providing documents, records, and articles of evidence; (c) transferring individuals in custody for testimonial purposes; (d) serving documents; (e) locating persons (f) executing requests for searches and seizures; (g) immobilizing forfeitable assets; (h) providing assistance in proceedings relating to forfeiture, restitution, and the collection of fines; and (I) exchanging information relating to the investigation, prosecution, and suppression of offenses. Pursuant to the treaty's Annex, the treaty may also be used as the mechanism for

exchanging currency transaction information that is, information reported or recorded by regulated financial institutions in Panama and the U.S. concerning currency transactions in excess of $10,000 U.S. or its equivalent in foreign currency.

Furthermore, assistance under the treaty includes measures aimed at facilitating the formal use of information from Panama in proceedings in the U.S. Specifically, the completion of Forms A(2), B, and C by appropriate Panamanian officials or individuals is designed to help prosecutors in securing the admission into evidence of bank and business records, Government records and reports, and items seized by Panamanian authorities in response to U.S. treaty requests.

Limitations on Compliance

A U.S. request for assistance under the treaty may be denied by Panama for any of the following reasons: (1) that execution would prejudice its security or "essential public interests"; (2) that the request relates to a political offense; (3) that the request is for the trial of a person on a charge for which that person has already been convicted, acquitted, or placed in jeopardy in the U.S.; (4) that there are substantial grounds to believe that the prosecution or punishment underlying the request is based on the defendant's race, religion, nationality, or political opinions; (5) that the request does not establish reasonable grounds to believe that the specified criminal offense was committed and that the information sought is related to the offense and located in Panama; or (6) that the request does not conform to the provisions of the treaty. Panama also has discretion under the treaty to postpone execution of a request or provide a conditional response if execution would interfere with an ongoing Panamanian proceeding.

Requests for Assistance--Contents and Procedures

All requests to Panama under the treaty must be made by the "Central Authority" for the U.S., which is the Office of International Affairs in the Criminal Division of the Department of Justice.

Each request for assistance must contain the following information: (1) the name of the authority conducting the relevant investigation or proceeding; (2) the subject matter and nature of the investigation or proceeding; (3) a description of the offenses involved; (4) a summary of the facts underlying the offense(s); (5) a description of the information or other assistance sought and the time period to which such information relates; (6) the purpose for which assistance is requested; and (7) an indication of the time limits within which assistance is desired or needed.

Furthermore, whenever necessary and possible, requests should specify the identity and likely whereabouts of persons who are to be served or located or from whom testimony is sought, a description of places to be searched and items to be seized, an enumeration of the expenses to be covered, and any other information that might facilitate execution of the request (e.g., specific procedures to be followed in authenticating records or obtaining the assistance being sought).

Miscellaneous Provisions and Requirements

Costs and Translation

The following costs must be paid by the U.S. prosecutor's office making a request to

Panama: (1) costs of reproducing and transporting requested records to the U.S.; (2) costs of transcripts; (3) expert witness fees; (4) fees for attorneys retained or appointed with U.S. approval for witnesses giving testimony; (5) reasonable costs for interpreters or translators; and (6) travel expenses for witnesses providing testimony in the U.S.

Although not specifically so stated in the treaty, it was mutually agreed by the Parties during negotiations that treaty requests submitted to Panama would be translated into Spanish. Prosecutors and agents in this country should therefore be aware that they will be responsible for having their requests translated prior to transmittal to Panamanian authorities for execution.

Confidentiality

The treaty generally provides that evidence or information obtained under the treaty will be kept confidential except to the extent it is needed for the investigation or prosecution of the criminal offense(s) described in the request. The treaty goes on to set forth additional purposes for which information and evidence may be used by Government authorities after it has been made public at trial. Prosecutors wishing to use or share information obtained from Panama for cases or purpose other than those specified in the original treaty request must seek the advice of the Office of International Affairs before doing so.

The treaty also allows either party to ask that the subject matter and contents of its requests for assistance be kept confidential. The Central Authorities are called upon to inform each of any inability to maintain such confidentiality before the requests in question as executed. This provision may be particularly important in requests made to Panama because, in certain cases, Panamanian financial institutions may be required to notify their customers of inquires about their accounts.

Use of other Cooperative Mechanisms

The treaty explicitly recognizes that either Party may seek assistance from the other pursuant to other international agreements or domestic laws. It also states, however, that except as provided by such other agreements and laws, the Parties **shall** use the treaty to obtain assistance for criminal investigations and prosecutions of offenses covered by its provisions. Therefore, before seeking recourse to alternative, unilateral mechanisms for securing evidence or information from Panama (e.g., issuing Bank of Nova Scotia subpoenas, pursuing Ghidoni waivers), it is imperative that U.S. prosecutors first consult with the Office of International Affairs to ensure that such actions do not result in a violation of treaty commitments.

Mutuality of Obligation

It is likely that far more requests under the new U.S.-Panama Mutual Legal Assistance Treaty will be made by U.S. authorities than by our Panamanian counterparts. The Department of Justice, through the Office of International Affairs, will use its best efforts to establish a close working relationship with the Central Authority in Panama to ensure that all treaty requests made by the U.S. are given careful and expeditious treatment, bearing in mind recognized technical and personnel limitations in Panama. To assist the Department of Justice in its efforts on behalf of U.S. prosecutors, authorities in this country who are designated to execute treaty requests from

Panama are asked to undertake their duties in providing assistance as expeditiously and fully as possible, with an overall view towards making the new treaty a viable, effective, and efficient means of strengthening bilateral law enforcement cooperation.

Conclusion

As noted earlier, OIA has been designated as the Central Authority for the United States in implementing the U.S.-Panama Mutual Legal Assistance Treaty. Prosecutors or agents interested in making a request to Panama under the treaty should contact OIA Associate Director Mary Troland, (202) 514-0049, or write OIA at 1400 New York Avenue, N.W., Bond Building, Fifth Floor, Washington, D.C. 20005. Exemplars, advice, and assistance will be readily available upon request.

Requesting Assistance from Switzerland in Matters of Fraud

Beth McDonald, Frostburg State University and
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Criminal Division

Article 4 of the Treaty between the United States of America and the Swiss Confederation on mutual assistance in criminal matters, entered into force January 23, 1977 (27 UST 2019), imposes a dual criminality" requirement for providing assistance involving compulsory measures. In order to render assistance, the requested country must determine that the offense described in the request is one that would be punishable under the law of that country if committed within its jurisdiction.

Fraud is defined by Swiss law as the act of a person who, with the intent to unlawfully enrich himself or another person, deceitfully misleads a person by misrepresentations or distortions of true facts, or who exploits a mistake made by a person and, thus, manipulates the victim into committing acts prejudicial to his pecuniary interests or those of a third party. Article 148, Swiss Federal Criminal Code.

In order to meet the Swiss fraud standard, a U.S. request must provide facts that show:

1. the author's intent to deceive;
2. the sophistication of the scheme, illustrated in detail;
   and,
3. the victim's care and effort to check out the deal beforehand.

These criteria, discussed in detail below, seem to be dependent on one another, with certain elements of each present in the others. (The U.S. request also must connect the information requested regarding the crime to Switzerland.) This strict standard for requests involving fraud reflects the Swiss view of criminal law as a last resort, and private law as favoring self-reliance.

Author's Intent to Deceive

The author must engage in "artful trickery." Swiss law makes deceit a characteristic element of fraud, and punishes only an "unmistakable and morally reprehensible deception imputable to the author." Swiss Federal Tribunal (SFT) Decision in *Varma*, March 14, 1995. According to the SFT, a person is acting in a devious manner if he "resorts to fraudulent maneuvers or plotting," or if he "makes false statements that would be impossible to verify without any special effort that could not reasonably be expected," **or** if he "dissuades the victim from investigating (the scheme)." SFT Decision in Kupzyck, July 10, 1995.

The SFT noted that "the author who resorts to an edifice of lies is not acting in a (sufficiently) deceitful manner unless these lies are the expression of particular trickery and are mutually supporting in a manner which is so subtle that even a victim who begins to think otherwise and starts to ask questions would be taken in." The requisite deception is excluded "when the situation depicted in its entirety by the author plus the fallacious allegations taken individually can reasonably be confirmed, and when the discovery of a single lie would reveal the whole as a deception." *Kupzyck*.

The author may dissuade the victim from verifying credentials by establishing a special relationship of trust between the parties. However, the "relationship of trust between the person responsible for the fraud and the victim, (which) by nature implies mens rea, does not exist merely due to the existence of a business connection." (Letter dated December 10, 1995, from Federal Office for Police Matters (FOPM), Swiss Central Authority for U.S. Requests.) For example, a bank is not the victim of fraud if, in relation to a loan for a large amount of money, it fails to take fundamental precautions in checking out the author. Swiss case law has also recognized that "anyone who had no intention of fulfilling a contractual obligation was committing an act of (misrepresenting) actual fact . . . (since) the victim was no longer able to know what the author's desires were." *Kupzyck*. Nevertheless, in order to determine whether deception exists, the position of the victim must be examined in concrete terms; the existence of a fault on the part of the victim can lead to a negation of the element of intent.

Sophistication of the Scheme

The scheme must constitute what the Swiss call "artful trickery." It must be demonstrated that the fraud was very "slick" and would have been impossible or extremely difficult to uncover. When describing the fraud, one must be very detailed.

Cautious Victim

In order to constitute fraud in Switzerland, the victim has to have exercised an unquantified minimum of caution and reliance on the author that was reasonable under the circumstances. Swiss law does not protect the stupid victim! Detail the steps the victim took to avoid being defrauded and, if appropriate, explain the futility of the actions. If the scheme was so slick that the victim didn't stand a chance, that needs to be documented.

Nexus to Switzerland

Finally, the U.S. request must relate the assistance requested to the crime and specifically

to Switzerland. When the U.S. seeks to freeze a Swiss bank account, the request must: (1) trace the proceeds of the fraud to the Swiss banks and (2) provide as much information as possible about the specific account.

Swiss Freezes of Fraud Proceeds

The Swiss will freeze proceeds of fraud as a provisional measure so that victims can recover their proceeds. Article 8, Swiss Federal Law on the Treaty with the U.S. on Mutual Assistance in Criminal Matters. The fraud victim must initiate civil litigation in Switzerland at the time the account is frozen. The Swiss believe that fraud victims have initiated litigation in Switzerland in only approximately 50 percent of the instances where accounts have been frozen pursuant to an OIA request, and they desire better results to justify continued freezes. The following principles apply to requests for freezes:

1. Before OIA will request a freeze, the victim or representative must commit in writing to initiate litigation in Switzerland.
2. The victim must retain Swiss counsel before the request is submitted to FOPM.
3. The Swiss counsel must record an "appearance" with FOPM with respect to the request (i.e., I represent the VICTIM and am ready, willing, and able to litigate in Swiss court).

Swiss Repatriation of Proceeds of Crimes Against the United States

When the U.S. is the victim of a crime, and the proceeds of the crime are located in Switzerland, the U.S. can request the return of the assets. The request will ask that any funds traceable to the crime be frozen to prevent their removal or dissipation and thereafter returned to the United States pursuant to Article 1 (1)(b) of the Treaty.

OPDAT: On the Frontiers of America's Newest National Security Challenge

Martin Edwin Andersen
Senior Advisor for Policy Planning in OPDAT
Criminal Division

Until recently, United States policy makers found themselves bereft of necessary tools to beat back the burgeoning threat of transnational crime. Multinational syndicates, drug cartels, shady financial institutions like the Bank of Commerce and Credit International (BCCI), and smugglers of state-of-the-art arms technology, found that in much of the developing world their illegal exploits--ever more sophisticated and far-flung--encountered little effective resistance from those who staffed antiquated courtrooms of Second- and Third-world countries. Crime and misuse of the public trust threatened to both undermine confidence in emerging democracies and discredit new free market economies.

In the past few years, the Criminal Division's Office of Professional Development and Training (OPDAT) has become an important weapon in the U.S. crime fighting arsenal abroad. Established in the Department in 1991 to enhance the administration of justice both in the U.S. and overseas, OPDAT is a key element in U.S. efforts to promote the effective and fair

administration of justice within these new and developing democracies, affording their citizens protection from lawlessness and support for basic human rights.

Setting up a model prosecutor's office in Bolivia, training prosecutors in oral advocacy in Colombia, and providing anti-organized crime assistance in the Russian Federation are a few of the efforts OPDAT has undertaken to provide timely and effective assistance essential to meeting this new national security challenge.

In the face of this growing global mission, the Department of Justice through OPDAT provides legal training and resources to prosecutors, judges, and other judicial personnel abroad as a means to help build more responsive and responsible criminal justice systems. Currently, OPDAT is providing rule of law assistance, with financial support from the U.S. Agency for International Development and the State Department, in Bolivia, Colombia, Haiti, Peru, Poland, the Baltics, Russia, and Ukraine.

The office, straddling Washington, D.C.'s bustling Metro Center, also serves as host to hundreds of international visitors, who come to the U.S. to gain insight into the legal system of the world's oldest democracy. At OPDAT, overseas guests are offered professional opportunities ranging from specially-tailored presentations and training workshops supplemented by foreign language translation, to educational audiovisual aids.

OPDAT's overseas mission has grown rapidly since 1993 when it established a field representative in La Paz, Bolivia. Within a year, OPDAT trained 808 judges, prosecutors, police, and public defenders on new laws and regulations, modernizing the legal structure of South America's poorest nation and major producer of the crop needed to make cocaine. OPDAT helped the Bolivian Office of the Attorney General, the country's only prosecutorial institution, in raising the professional standards of prosecutors, and has worked to develop model prosecutors' offices and to incorporate the use of oral advocacy--essential to streamlining a vastly overburdened court system--in criminal procedures. By offering training programs and creating a manual of procedures for prosecutors, OPDAT has enhanced the competence, accountability, and consistency of Bolivia's legal community.

"The Bolivian experience was important for a number of different reasons," explained OPDAT Director Thomas G. Schrup, former Assistant United States Attorney for the Northern District of Iowa. "It reflected a change in philosophy that recognized that U.S. public safety assistance went far beyond just training police. It represented a change of mentality, too, in terms of the types of foreign assistance offered to a country. Instead of offering them machine parts, we were offering the insights and skills of seasoned prosecutors. Finally, it helped open the eyes of the diplomatic community to the desirability of sharing prosecutorial skills as a means of fortifying and consolidating the rule of law."

The success in Bolivia led OPDAT to establish a similar program in Colombia. Assistant United States Attorney Kim Lindquist relocated to Bogota to develop a training program for nearly 5,000 Colombian prosecutors. (See story on page 12.) Meanwhile, in neighboring Peru, two DOJ trial attorneys assisted the National Congressional Commission charged with drafting amendments to a 1991 criminal procedure code that had not gone into effect, in order to make it compatible with a Constitution that was enacted after the code was written. For the first time, the code focuses on oral advocacy and provides prosecutors with a broader role and more responsibility.

In early 1995, as "Uphold Democracy" went into full swing, OPDAT established a training program for judges and prosecutors in Haiti. As part of that effort, it assisted the Haitian Ministry

of Justice in establishing a training facility, the Ecole de la Magistrature (Judicial School), in Port-au-Prince. OPDAT has also coordinated the production of a bench book for judges and prosecutors which serves as a roadmap of the Haitian criminal justice system.

In the Russian Federation, the Baltics, and several countries in Central and Eastern Europe, OPDAT offers training and technical assistance to prosecutors and cooperates in the preparation of reform legislation that can serve as the foundation for a modern criminal justice system. A principal focus of the program is to assist in the areas of organized and economic crime, an effort whose importance is underscored by the growing threat of transnational crime groups and their penetration into the U.S. By mid-1995 OPDAT had relocated an Assistant United States Attorney and a Criminal Division attorney to Moscow to serve as resident legal advisors. A Federal prosecutor is also working in Central and Eastern Europe from his base in the Parliament building in Warsaw. An Assistant United States Attorney relocated from Buffalo, New York, is also working in Central and Eastern Europe out of Warsaw. OPDAT continues to provide additional technical assistance and resources to the region in partnership with the American Bar Association's Central and East European Law Initiative.

OPDAT believes the key to the Department's success in this endeavor is its ability to count on DOJ attorneys, particularly those of the United States Attorneys' offices, for participation in its training and development efforts, whether they are short-term efforts such as conferences or seminars, or multi-year assignments as resident legal advisors. "Experience is the best teacher," Schrup explained, "and DOJ, the world's largest law firm, can count on the talents of the best trial attorneys and prosecutors. And these experts, especially the Assistant United States Attorneys, now have a venue for sharing those skills around the world."

Honor Roll

The following is a list of Assistant United States Attorneys who participated in OPDAT programs overseas.* It does not include the many others who assisted the training effort in other ways, such as reviewing draft legislation or hosting foreign visitors in their offices. EOUSA Director Carol DiBattiste said, "I congratulate those United States Attorneys and Assistant United States Attorneys who have assisted OPDAT in offering the finest quality assistance to our colleagues overseas. This is an important program--important to United States national security and important to strengthening the rule of law abroad. I urge our offices to continue to help OPDAT carry out its mission."

Albania
Debra Yang
Central District of California

Bolivia
Michelle Alvarez
Southern District of Florida

Virginia Covington
Middle District of Florida

Chris Hall
Eastern District of Pennsylvania

Isaias Ortiz
District of Wisconsin

Carlos Pérez
District of Puerto Rico

Joan Safford
Northern District of Illinois

Eduardo Toro Font
Middle District of Florida

Edwin Vázquez
District of Puerto Rico

Brazil
Alex Angueira
Southern District of Florida

Joan Safford
Northern District of Illinois

Bulgaria
Debra Yang
Central District of California

Colombia
Esther Castro
District of Puerto Rico

Carlos Pérez
District of Puerto Rico

Joan Safford
Northern District of Illinois

Czech Republic
James Blankenship
Western District of Texas

Estonia
Kurt Schulke

Organized Crime Strike Force/ Las Vegas

Haiti
Jonathan Haub
District of Oregon

J.D. Larosiliere
District of New Jersey

William Ryan
District of Utah

Hungary
Benton Campbell
Eastern District of New York

Kyrgyzstan
Michael Kendall
District of Massachusetts

Lithuania
Brian McCormick
Southern District of Florida

Kurt Schulke
Organized Crime Strike Force/ Las Vegas

Alberto Arevalo
Southern District of California

Virginia Black
Southern District of California

Yvonne Campos
Southern District of California

Gonzalo Curiel
Southern District of California

Joe Flores
Southern District of Texas

David Garcia
Middle District of California

Amalia Meza
Southern District of California

Angel Moreno
Southern District of Texas

Felipe Sánchez
Northern District of Illinois

Perú
Ana Martínez
Southern District of Florida

Steve Zimmermann
District of Maryland

Poland
Robert Boitman
Eastern District of Louisiana

Craig Iscoe
District of Columbia

Lloyd Meyer
Western District of Michigan

Kurt Schulke
Organized Crime Strike Force/Las Vegas

Romania
Michael Kendall
District of Massachusetts

Russia
Mitch Dembin
Southern District of California

Richard D. Gregorie
Southern District of Florida

Steven Jigger
Northern District of California

John Radsan
Southern District of California

Bruce Udolf
Southern District of Florida

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*Former Assistant United States Attorneys Robert Moreno, Middle District of Florida, and Martin Weinstein, Northern District of Georgia, also participated in OPDAT programs in Bolivia and Peru, and Lithuania, respectively. They both have since resigned from the United States Attorneys' offices.

The Special Importance and Challenge of Export Control Cases

Assistant United States Attorney Ronald J. Sievert
Western District of Texas

For years, Assistant United States Attorneys, with the welcome assistance of the Internal Security Section of the Criminal Division, have pursued and prosecuted Export Control cases on behalf of the U.S. These cases are often vitally important and deserving of all the time and effort put into them. But they also have unique problems which must be anticipated and overcome before the individual and corporate defendants can be convicted, fined, or forced to cease their illegal activity. This article briefly discusses the impact of such export violations, reviews the applicable law, and identifies some of the areas which must be examined closely by Assistant United States Attorneys when they agree to proceed on a case in this area.

We live in a world increasingly threatened by the actions of rogue nations and radical splinter groups. Many of these entities have, for one reason or another, chosen the U.S. as the target of their hostility. They are, of course, dangerous enough when they possess bombs and guns, but our greatest concern is that they will somehow obtain the technology to manufacture weapons of mass destruction. News reports of the last few years indicate they are aggressively seeking such knowledge and equipment from any available source. All too often their suppliers, unwittingly or not, are Western Corporations.

As just one example close to home, according to an article in the *Washington Post*, between 1989 and 1990, the Halliburton Company of Dallas, Texas, sent to Libya without a special Commerce license "between 10 and 12 pulse neutron generators . . . that could be used as nuclear trigger mechanisms," all labeled as "valves and pressure gauges."[1]

Construction of the bomb has also been actively pursued by other Middle Eastern and Asian nations relying on high tech parts and testing equipment purchased from Western Europe and occasionally even the U.S.[2] Asked about the use of their products, companies who have sent technology overseas state that they often have no idea what the receiving nation does with their equipment or where it may be transferred. According to one high-ranking official of an American corporation, "We never know what the end application is."[3]

It is the duty of the U.S. Government to maintain a proper balance between encouraging free trade that will stimulate American business and ensuring we do not export materials that will threaten our nation's security.[4] We obviously want to prevent radical nations or groups from developing a nuclear weapon which they could use against any U.S. city or concentration of troops, whether delivered in a van or by means of a scud missile. We do not want to arrive at a

point where the U.S. is in danger of being attacked with weapons which we, in effect, have helped to make. There are many steps that must be taken to prevent this threat. One of them must be aggressive action by prosecutors against offending companies when export violations are discovered.

The potentially lethal flow of highly sensitive American technology to foreign countries is not due to a lack of legislative or agency effort to control exports through laws and regulations. On the contrary, a detailed regulatory scheme to control exports has been established by the Government. It must be acknowledged at the outset, however, that these laws are regarded by many as complex and confusing.[5]

Nevertheless, there are some generally understood statutory and regulatory principles which a prosecutor can effectively use to confront a business which has shipped sensitive material overseas. These are contained in four major, somewhat complementary and overlapping statutory enactments. The regulations adopted pursuant to the Arms Export Control Act of 1976 (AECA), 22 U.S.C. § 2778, enable the State Department to monitor and control the shipment of weapons and ammunition to other nations. The Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3201) allows the Nuclear Regulatory Commission and Department of Energy to oversee the export of purely nuclear materials and equipment. The President can utilize the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701) in times of declared national emergency to restrict trade to such nations as Iraq, Iran, and Libya. Finally, the vast majority of "conventional" exports come under the still current regulations of the previous Export Administration Act of 1979 (EAA), 50 U.S.C., Appendix 2401, which by its provisions was supposed to promote international trade while restricting the export of materials in short supply and sensitive technology for reasons of national security and foreign policy. (The EAA has technically lapsed but the regulations have been continued under the authority of IEEPA.)

It is not generally difficult to understand which countries present potential danger to the U.S., what products are **completed** weapons, and what constitutes **purely** nuclear technology. Consequently, with some notable exceptions, both Government officials and international corporations have been able to work together to prevent the massive export from the U.S. of materials which fit easily into those specific categories and, thus, under the rules of AECA, the Nuclear Non-Proliferation Act, and IEEPA. Most problems arise with the shipment of so called "dual use" products under the EAA regulations.

The EAA regulations establish a licensing system that in large part relies upon voluntary compliance. If an American corporation wishes to ship a product to a specific foreign country, it is supposed to check the voluminous commodity control list (CCL) (and the incorporated nuclear referral list) to determine if that item can be exported to the known destination without an application for a validated license from the Commerce Department. This generally depends on the characteristics of the product, the perceived nature of the destination country, and current American foreign policy interests. A thorough review of the CCL may reveal, for example, that of 50 high tech, chemical or biological products, 50 may need a license if shipped to Iraq, Iran, Libya, Syria, North Korea, North Vietnam, or Libya, or to any known listed weapons facility; half may need a license if sent to former Communist block countries; and no license may be needed for export to the NATO countries plus Switzerland, Japan, Australia, and New Zealand.

Under recent amendments to the regulations of the EAA, exporters are put on notice that there are some circumstances in which a license application is required, even if the combination of product and nation as listed in the CCL does not require permission. Thus, for example, 744.2(a)(3) states that

a license may be required if the exporter knows or has reason to know that the exported commodity or technical data will be used directly or indirectly in:

> Safeguarded and unsafeguarded nuclear fuel cycle activities, including research on or development, design, manufacture, construction, operation, or maintenance of any of the following facilities or components of such facilities.
>
> 1. Facilities for the chemical processing of irradiated special nuclear source materials,
>
> 2. Facilities for the production of heavy water,
>
> 3. Facilities for the separation of isotopes or of sources especially for nuclear material, or
>
> 4. Facilities for the fabrication of nuclear reactor fuel containing plutonium.

Similarly worded provisions have been enacted for the export of chemicals and biological materials (15 C.F.R., 744.4).

If an American corporation concludes from an examination of the regulations and the CCL that a validated license may be required, then it must submit an application to Commerce describing the product, identifying the end user and how the item will be used, and disclosing the steps the end user may have taken to prevent diversion to other countries or facilities. In evaluating whether or not to grant the license application, Commerce will consider the above factors plus foreign availability; the significance of the item in terms of the potential development of nuclear, biological, and chemical weapons; and the non-proliferation credentials and assurances of the destination country.

If, upon examination of the CCL and additional regulations, the American firm determines that a validated license is not required, it may then ship the product on its own under the general license classification "G-dest." Customs officials may review the sometimes purposefully vague and non-descriptive bills of lading and shippers export declarations that accompany the product for something that piques their interest, or perform spot cargo inspections, but for the most part there will be no further governmental interference between the manufacturer and the point of destination.

It is obvious from the previous references to the shipment of what is often restricted American technology around the globe, that this system is not always completely effective. There are many reasons, at least one of which is occasional violations of the law by American corporations and their subsidiaries in search of markets and profits. Nevertheless, when an agent from U.S. Customs approaches you seeking your assistance with a potential violation of law, you must be aware that there are several defenses which must be overcome before you can obtain the desired result, whether it be injunction, fine, or a conviction. An understanding of these will enable you to direct the investigation in a manner which will insure ultimate success.

The first claim that is likely to be made by an American corporation in any export case is that the regulations do not prohibit the conduct or, if they do, this was certainly not their own interpretation at the time of the shipment. The complexity of the export statutes and regulations

can, at first, appear to constitute an obstacle to the successful prosecution of those who wrongfully ship sensitive technology and materials to foreign countries. The review of the law on the previous page was a summary of hundreds of pages of detailed regulations. The typical requirement faced by the average exporter might read something like this:

> In addition to the validated license requirements for commodities and data referred to in 778.2, a validated license is required for export to all destinations, including Canada, of any data not exportable under the provisions of GTDA (except operations technical data and sales technical data for export to and use in the countries listed in Supplement No. 2 to Part 773 or Canada) where the exporter knows or has reason to know that the data will be used directly or indirectly . . . in the activities listed below (15 C.F.R., 742.5).

The CCL may state, regarding a particular item of software, that a validated license is required for:

> 6D02A software especially designed for the use of equipment controlled by 6A02.6, 6A08, or 6B08. . . . GDTR: Yes, except MT controls apply to software for the use of equipment controlled by ECCN 6A08 that is designed for airborne applications and that is used in the system described in 778.7(a) . . . See also 6D22B for MT controls on software specially designed for the use of equipment controlled by 6A02.a.1, a.3, and a.4; 6A22; 6A07.B and C, 6A2B; or 6A30 (6A02 and the other cited sections contain further lists of highly technical descriptions of various items).

The case law reveals that many defendants have sought to take advantage of this technical language. In *U.S. v. Malsom*, 779 F.2d 1228 at 1234 (7th Cir. 1985), involving the shipment of aircraft parts to Libya, the defendant maintained that:

> The licensing requirements for these parts were so complex and confusing that a layman could not determine whether or not a license was required for the exportation of the parts. To support this argument, the defendants note that the Government experts at trial disagreed as to whether the parts listed in several counts of the indictment require either a State Department or Commerce Department license.

The end result was that the trial court dismissed a number of counts of the indictment based on the above argument.

In *U.S. v. Gregg*, 829 F.2d 1430 (8th Cir. 1987), a case involving the shipment of aircraft and navigation equipment in violation of the Trading with the Enemy Act (TWEA) and EAA, the defendant was himself an expert in the export laws who "gave lectures and published newsletters on the subject." Nevertheless, he vigorously claimed innocence on the grounds that the laws were too confusing to understand. In support of his position he offered into evidence "the Arms Export Control Act, the Export Administration Act, and the voluminous regulations thereunder." [See also *U.S. v. Fuentes-Coba*, 738 F.2d 1191 (11th Cir. 1984) (defendant maintained that the

regulations are so complex that his misunderstanding them excused his otherwise criminal conduct) and the convictions reversed in *U.S. v. Frade*, 709 F.2d 1387 (11th Cir. 1983); *U.S. v. Hernandez*, 662 F.2d 289 (5th Cir. 1981); and *U.S. v. Zevallos*, 748 F.Supp. 1569 (S.D. Fla. 1990), discussed under specific intent below.]

The defendants in export cases are often businessmen, not lawyers or proclaimed experts on the regulations, and their claim of confusion in the law, if not always honest, may make sense to a jury or court which is exposed to the complex structure of all the laws in this field. This defense can cause additional problems when combined with the mental state of willfulness discussed later.

The reality, however, is that despite the challenge of the regulations, the employees of the American corporation you are investigating are probably not as ignorant of the requirements of these provisions as their attorney may represent. Institutions which do significant business overseas often have staff, attorneys, or contractors who can advise them of the applicable rules **if** they are given the correct information by the corporate hierarchy and act in good faith. As in many white collar crimes, it is likely there were people in the company who knew exactly what they were doing. In addition, as in any regulatory case, it is not always necessary to show that the defendant thoroughly comprehended all of the hundreds of pages of regulations on the general subject. There are many specific enforcement regulations, for example, in the AECA and Export Regulations Act which can be clearly understood by the defendant and may form the basis of a successful prosecution. Thus, do not be easily discouraged for you will often be justified in proceeding with your case in an effort to uncover the truth regardless of the "confusion" defense.

A related problem which can arise when the agent brings you an export case is the definition of terms in the regulations. You are entering the realm of science and technology and the words do not necessarily mean what you and the agent may think at first glance. For example, I was advised by a Government expert that the use of an exported commodity in a facility for the processing of irradiated special nuclear source materials, or heavy water, or the separation of isotopes, or sources for nuclear material or for the fabrication of fuel containing plutonium [744.2(a)(3)] would **not** necessarily include a Middle Eastern country's nuclear reactor and atomic energy commission. After you talk to the agent you will often need to call Commerce and other professionals in the field to carefully check and make sure there is general agreement as to the meaning of the terms. Those who have worked in the field for years believe that the need for this basic step cannot be overemphasized. If necessary, bring your experts to the Grand Jury to determine **before** a hearing or trial how they will define and explain key words and phrases under oath in a formal setting.

In working an export investigation, you further need to understand that proof that a corporation shipped its product to Iraq or Libya where it was immediately used in a nuclear plant will not necessarily make your case. This is because the defense will maintain, with some degree of truth, that there is no statutory "duty to inquire" as to the end use of all products which you can utilize to hold an exporter responsible for the final consequence of his acts. If an American company receives an order from, for example, an African nation for a high-speed computer, it is supposed to check the CCL and export regulations to determine if this particular computer can be shipped to the requesting foreign country **without a license**. If the company determines in good faith that a license is not needed, it may then export the goods. It never has to ask the buyer exactly how the product will be used. Under the law as currently written, if the computer is intended to be used by the African nation in a special project to build nuclear bombs, that fact can

remain unknown to the exporters.

This lack of duty to inquire can have perhaps its greatest effect when the American corporation sells its material to an intermediate or affiliated company in a NATO country with an export system even less restrictive than our own. When an American corporation knows that the direct purchaser of its mass spectrometer is the "People's Republic Nuclear Corporation," it may at least have some qualms about the export and contact Commerce regardless of whether the CCL requires a license application. If "Italian International Technology" orders the product with the unstated intent of reselling it to the People's Republic, however, and a license application is not required for export to Italy, then no alarms will be sounded at the American corporate offices. Without a statutory duty to inquire of the Italian company as to the true final destination and end use of the product, the shipment is made by the American company without any sense of guilt. Italian International can then proceed to export the spectrometer to the Peoples Republic as it intended. This is why the overseas business official quoted earlier in this article could say, without fear of legal repercussion, that "we never know what the end application is."

Exporters are not, however, permitted to completely stick their heads in the sand. If they "know or have reason to know" because of the presence of certain "red flags"[6] that a product is destined for the listed activities involving nuclear, chemical, or biological weapons or missile delivery systems, for example, they must request a license (744.2) and state the end use in their application. The same requirement applies where their initial review of product and country tells them a license is needed. In these cases, as well as those in which you determine that the company was not acting in good faith in its decision not to apply for a license, you may be able to effectively hold the company to a legal and equitable "duty to inquire" as to end use.

Finally, when the agent first approaches you with an export case, you would be well advised to tell him up front that you will need evidence to demonstrate in court that the defendant knew he was acting illegally and possibly even that he knew the specific provisions of the law he was violating. This is because courts have applied the willfulness standard to the EAA, as well as the AECA and other export laws, even though in the original 50 U.S.C. § 2410(a) it appears Congress attempted to set up a lesser standard with a reduced penalty for knowing violations. *U.S. v. Lizarraga-Lizarraga*, 541 F.2d 826 (9th Cir. 1976). Considering the complexity of the regulations, requiring that the Government prove that the defendant was acting in violation of a known legal duty is a sensible application of the law. This standard has been used correctly by a number of courts in export cases. *U.S. v. Rudy Yujen Tsai*, 954 F.2d 155 (3d Cir. 1992); *U.S. v. Murphy*, 852 F.2d 1 (1st Cir. 1988); *U.S. v. Tooker*, 957 F.2d 1209 (5th Cir. 1992); *U.S. v. Beck*, 615 F.2d 441 (7th Cir. 1980); *U.S. v. Malsom*, 779 F.2d 1228 (7th Cir. 1985). But a few Appellate decisions have held that in export cases, contrary to virtually all other known criminal violations, the concept of willfulness demands that the Government must go **beyond** establishing that the defendant knew his conduct was unlawful. The Government must actually prove, according to these opinions, that the defendant was specifically aware of the **exact provision** being violated, and that he then deliberately acted contrary to these regulations. Thus in *U.S. v. Adames*, 878 F.2d 1374 (11th Cir. 1989), an AECA case related to the export of firearms, the Eleventh Circuit stated that even though the defendant was aware of the unlawful nature of her actions, that alone is insufficient under a statute requiring specific intent. In *U.S. v. Frade*, 709 F.2d 1387 (11th Cir. 1983), a TWEA case involving the import of emigres from Cuba, the court held that:

> Finding that a defendant is aware that his conduct is generally unlawful is insufficient to sustain a finding of guilt under a statue requiring specific intent . . . the Government relies principally on the testimony of Government officials who stated that they had warned the priest that the venture was against the law. The warnings given by the Government are inadequate to support a finding of specific intent. They did not describe, refer to, or even hint at the provisions of regulation 515.415.

In *U.S. v. Hernandez*, 662 F.2d 289 (5th Cir. 1981), an AECA case, the court held that:

> While it is true that Hernandez's concealment of the weapon supported a jury finding that he knew his conduct was unlawful, such a finding falls short of deciding that he knew he was unlawfully exporting weapons on the munitions list. (662 F.2d at 292.) Citing *U.S. v. Davis*, 583 F.2d 190 (5th Cir. 1978) and *U.S. v. Etheridge*, 380 F.2d 804 (5th Cir. 1967).

See also *U.S. v. Gregg*, supra at 1437.

With this background it is not surprising that the district court in *U.S. v. Zevallos*, supra could grant the defendants motion for acquittal despite proof that he had, in knowing violation of the law, exported equipment to Cuba to make counterfeit American products to be sold in the U.S. in apparent violation of the TWEA and EAA. The Court stated at page 1575 that:

> The evidence reasonably suggests only that the defendants were aware of the generally unlawful nature of their actions . . . such knowledge does not amount to specific intent . . . the evidence of defendants' suspicious or devious conduct cannot provide the basis for a finding of specific intent . . . In addition, none of the evidence regarding the defendants (considerable) experience in international trade, including their possession of import regulations, provides adequate grounds . . . Moreover, actual knowledge of the regulations referred to in a U.S. Customs publication "Imported into the United States" cannot be imputed to defendants merely because the booklet was in their possession.

Because the Government did not prove that the defendants were on notice concerning exactly what constitutes a violation of 31 C.F.R. 515.201 of the EAA regulations, they could not be held liable for their actions. The *Zevallos* court found "unpersuasive" the Government's obvious argument that "the court is creating an impossibly high standard." The court responded that, in the past, convictions have been obtained when there was evidence "that the defendant published newsletters and gave lectures concerning the act," there were tape recordings of the defendant's conversations demonstrating specific knowledge and intent, or when the defendant testified and admitted his knowledge. Supra at 1577.

If the Government was limited to prosecuting only those exporters who are academic experts in the field, caught on tape discussing the violation of a specific export law, or those who actually admit that knowledge, there would be few prosecutions indeed and very little enforcement of the export regulations. The 11th Circuit appeared to recognize this in *U.S. v.*

Macko, 994 F.2d 1526 (11th Cir. 1993), stating that in the *Zevallos* situation, viewing the evidence in the light most favorable to the Government, the defendant could have been found to have knowingly violated the law. Nevertheless, despite its more reasonable interpretation of these particular facts, the Court then went on to perpetuate instead of eliminate the problem by holding that in export cases, the Government must not simply prove "knowing illegality," but intentional violation of "actually known" regulatory provisions. The Court recently maintained this position in *U.S. v. Sanchez-Corcino*, 85 F.3d 549 (11th Cir. 1996), citing *Adames* in support of its finding in a firearms case that the District Court's instructions that the Government must prove only that the defendant knew his conduct was illegal did not go far enough. The Government must further prove "knowledge that one is violating a specific rule." Supra at 553, 554.

Fortunately, most of the latter decisions are only in one Circuit. The Government should be able to successfully argue for a more standard definition of willfulness in other jurisdictions, based on the virtual impossibility of meeting *Zevallos*-like requirements.

If we are to avoid a world with a large number of nuclear powers, each more unstable and unpredictable than the Soviet Union ever was, all of us have a stake in taking corrective action. For law enforcement, this means aggressive investigation and pursuit of high tech export violations. Prosecutors must not be discouraged by these unique problems which are inherent in export cases. Once you have been warned of what to expect, you can take steps to avoid problems and build a solid case. Many convictions have been obtained in this area and, often, simply obtaining a fine or negotiating voluntary compliance, which prevents delivery and sale of sensitive material, can be an effective use of your authority. In addition, you should be aware that, despite the obstacles you must overcome, the corporation you are examining will have its own concerns that your investigation could result in their placement on an export denial list maintained by the Commerce Department. This could obviously have a devastating effect on their international trade. Thus you will find that they will often be willing to fully cooperate and may even give up employees who crossed the line in order to maintain themselves in good standing with the Government. Finally, don't worry about entering alone into what for most AUSAs is a strange new area of the law. The Internal Security Section, which produced an outstanding 1992 monograph, "United States Export Control Laws," that will guide you and the ISS staff, is always helpful and well informed.

[1] *Washington Post*, Wednesday, October 23, 1991, Jack Anderson and Dale Van Atta, "World Drilling or Nuclear Triggers," Section C, page 27.

[2] *U.S. News and World Report*, November 25, 1991, Vol. III, No. 22, page 42.

[3] *U.S. News*, supra at 40.

[4] 15 C.F.R. 770.1.

[5] See numerous cases cited in following section of this article. Note also *U.S. v. Gregg*, 829 F.2d 1430 (8th Cir. 1987), relating to contradictory policies of export laws.

[6] Bureau of Export Administration, Know Your Customer," issued April 27, 1992.

A Seafood [I]Deal Gone Bad

Assistant United States Attorney Mark Costello
District of New Jersey

In February 1994, a seafood inspector from the United States Department of Commerce driving past the offices of Ideal Fish & Seafood Company, Inc., a well-known shipper of prepared seafood in Newark, New Jersey, noticed several tons of frozen scallops on pallets bound for Newark Airport.

Commerce had adopted new regulations in compliance with a treaty designed to put United States seafood exporters on a parity with European Community (EC)-member nations. Under the regulations, the Federal Government agreed to inspect American seafood products to the EC standards before the goods left our shores. In return, the EC nations permitted American seafood into the lucrative European frozen or prepared seafood market. The program was a model of the integrated, multi-national regulatory schemes of the future, in which barriers between nations are removed by streamlining such processes as inspections, to benefit both the country of origin and consumers at the dinner table.

The treaty mandated a new round of plant inspections, which the inspector knew Ideal had flunked just weeks before. Having failed an inspection of its plant, Ideal could not export seafood to Europe, which raised the question: where was this two-ton consignment of freeze-dried scallops going?

Prompt and skillful investigation by Special Agents Kevin W. Heying and Joseph E. Green, Jr., of the National Marine Fisheries Service Law Enforcement Division; Brian Lynch, a Supervisory Food Inspector with the National Marine Fisheries Service; and Roxie Allison Browne of the Office of the General Counsel of the National Oceanographic and Atmospheric Administration established that the uninspected seafood was headed for Portugal.

Commerce inspectors swore the seafood had not been inspected, yet air freight services insisted that Ideal employees had shown them the required inspection certificates with each load. Further investigation proved that the president and foreman of Ideal, Julio Pereira and Bertimo Rocha, had simply and brazenly forged these certificates. In doing so, they had not only undermined the integrity of the U.S. inspectional process but called into question the ability of the U.S. to assure European consumers that they could trust the wholesomeness of U.S. seafood. Eventually, investigators uncovered 21 outlaw shipments, involving over 41 tons of uninspected seafood, before shutting down the seafood company.

In the end, Pereira and Rocha pled guilty to conspiring to violate the Lacey Act [Title 16, United States Code, Sections 3372(a)(1) and 3373(d)], a powerful (but, to non-specialists, unfamiliar) criminal statute that can be used effectively against a wide variety of environmental wrongs and were sentenced to terms of probation and fines of $30,000, the maximum permitted under the United States Sentencing Guidelines.

For a copy of the Information and Plea Agreement in this case, contact Mark Costello at (201) 645-2876.

Job Swapping: Rejuvenation

Assistant United States Attorney Ken Sorenson
Western District of Virginia
and Assistant United States Attorney Sharon Burnham
District of Hawaii

A year ago, Assistant United States Attorneys Ken Sorenson and Sharon Burnham switched jobs, houses, and cars, and assumed employment duties in each other's district for six months. United States Attorney Bob Crouch, Western District of Virginia, submitted this article to share the unique challenges, opportunities, and perspectives afforded in such an experience.

Assistant United States Attorney Ken Sorenson:

When I first met Sharon Burnham from the District of Hawaii, I was immediately curious about what it would be like to work as an AUSA in Hawaii. When she was visiting our district in Virginia, I pummeled her with questions about life in Hawaii as an AUSA. Believe it or not, we eventually agreed that it would be a unique experiment to go to each other's district and work for six months. We both have similar caseloads and have been AUSAs for a substantial period of time. We ran our idea up the flagpole to our respective United States Attorneys, Bob Crouch in the Western District of Virginia and Steve Alm in the District of Hawaii. They agreed and proposed the idea to the Executive Office for United States Attorneys. The plan was approved, and in late September I flew to Hawaii.

I had never been to Hawaii before "the switch." There was some immediate culture shock (for example, when I read the price on the first box of cereal I attempted to buy) but it wasn't long before I felt at home in my new location. United States Attorney Steve Alm operates a first-rate office in Hawaii, with a courteous, highly competent staff of attorneys and support personnel. From day one I was treated as part of the team and always felt welcome.

The first month or so was the busiest I have ever been as an Assistant. I was in the Narcotics and Violent Crime Section. Within a week of arrival, I was embroiled in a two-week money laundering trial with a visiting attorney from Main Justice. I had jumped into an active caseload. Within the first few months, I slowly began to feel comfortable with an entirely new system and method of doing things. So many things were done differently, including grand jury procedures, indictment review, office policies, and court policies and procedures. Its funny how we take for granted our fundamental knowledge of our office personnel and structure, and our surrounding agencies. The methodology of the exchange and the nature of existing caseloads forced both Sharon and I to quickly learn how to crawl, walk, and run at the same time.

From a professional standpoint, the exchange left me more confident and knowledgeable about my role as an AUSA. I have been blessed with a second vision of my place in the system. I not only suspect, but know that there are a number of ways of accomplishing tasks within our offices, practice, and the court system in general. Procedures I thought were set in granite were done completely different.

While I learned a lot about the art of being an AUSA in Hawaii, I learned other things too. When you are an AUSA in Hawaii, you have to have exceptionally thick skin. For example, when calling the mainland, I would frequently identify myself as an AUSA in Honolulu, thus causing myself to be the instant target of unnecessary sarcasm and derision. "Oh, that must be very difficult for you" a chilly voice would answer. "I hope you're bearing up alright, given the fact that the temperature here in New York is minus 30!" You would have thought I was personally to

blame for the worst winter to hit the Northeast this century. But once people realized I needed their testimony, they became instantly cordial, especially in January and February. Sometimes people I had never heard of would call and volunteer to testify in my cases. An enterprising New York cop even called to see if I needed his family too.

I realized before I left that the key to a successful exchange would lie in the ability of both Sharon and I to be competent and socially compatible in our new offices. While I like to think we achieved this, I learned that the rest of the key was in the personnel of each office accepting and teaching us. In this, the District of Hawaii excelled. The other Assistants went out of their way to befriend and assist me. The support staff was always a great help. Most notably and appreciated, Steve Alm made me feel welcome.

I will never forget my experiences as an AUSA in Hawaii. The friendships I made and the work I did will shape me personally and professionally throughout my career. My appreciation goes to Bob Crouch, Steve Alm, and EOUSA for being receptive to the initiative and allowing this unique opportunity for both Sharon Burnham and myself. Aloha!

Assistant United States Attorney Sharon Burnham:

I was very fortunate to have the opportunity to work in another district for six months by trading places with Assistant United States Attorney Ken Sorenson of the Western District of Virginia. For our respective offices and for us personally, the experiment was a definite success. In the event other districts consider a swap, this article summarizes the procedures we put into place to facilitate the exchange and the benefits that resulted.

Once Assistant United States Attorney Ken Sorenson and I agreed to approach our United States Attorneys with the idea to switch places, we discussed numerous details to make the plan as realistic as possible. Both Ken and I work on drug and violent crime cases. Ken also serves as his districts Asset Forfeiture Chief; fortunately, I spent my first two years in the District of Hawaii doing primarily civil forfeiture. Thus, we were a good match--a key component to our success. As a result, we assumed each other's entire caseload with only a few exceptions. One of my cases was reassigned to another AUSA since it would require immediate, extensive attention that was expected to extend beyond six months. Two of Kens cases were reassigned as well.

We proposed a six-month exchange period because we felt that any shorter time would not allow us to complete cases or significantly further ongoing investigations. We also believed that a longer time might complicate the assignment of new cases. If a supervisor believed it would be better not to assign new, long-term investigations to the visiting AUSA, it would not be unreasonable to give such assignments to others for a six-month period. On reflection, both Ken and I felt that another two to three months would have been beneficial. Although we were able to immediately pick up each others caseload with little delay, a true level of comfort took a few months to develop. By that time, the end of the swap was in sight and there were a few cases that I would have liked to develop further before leaving.

To ensure a smooth handoff of cases, Ken flew to Hawaii a few days before I left. We were able to discuss my cases plus review the summary of cases he prepared. After my departure, we spoke frequently to discuss the development of a case and to ensure continuity of positions taken by the Government on ongoing cases. Based on general assessments by our offices, there was no noticeable lag in workload nor were other AUSAs required to pick up any slack, other than the few cases that were reassigned.

As for cases on appeal, we agreed that we would be responsible for any appeals out of our

home district because it would be inefficient for us to learn the appellate law and procedure in our temporary district. Both of us worked on appellate cases during the swap, and it did not create any problems. In fact, with the consent of the United States Attorney in my temporary district, I even flew to San Francisco to attend oral argument in one of my appellate cases.

As for personal details, Ken and I traded homes and cars during the six months. We each continued to pay any fixed expenses associated with our own residences as well as necessary repairs. Again, we talked as necessary concerning the myriad details associated with the swap, and no significant problems arose.

Both during and after the swap, I have appreciated its many benefits. Each district has different procedures to implement the Federal Rules of Procedure. Experiencing a new set of procedures resulted in a broader perspective and appreciation for what procedures are effective and why. In addition, each district has a different array of cases, which expanded the learning experience. For example, the District of Hawaii, as an international entry point, generates a number of immigration and customs cases and, in contrast, doesn't have the health and safety cases related to coal mines and other industries as in the Western District of Virginia. Plus, Hawaii prosecutes few cases involving interstate transportation of stolen property!

Working in a different district enabled me to explore new approaches to working up a case. Since I was learning new procedures and office policies, I also had the time and impetus to look at how other experienced AUSAs develop and prosecute cases. In a sense, I had the opportunity to set aside "my" way of doing a case in order to take full advantage of the expertise of new colleagues. I considered this aspect of the exchange especially invaluable.

I appreciated the opportunity to explore a different part of the country. Just as in the work environment, a change in one's personal environment broadens ones perspective. I gained new friends as well as new colleagues.

I would like to think the exchange was not just for the benefit of Ken and myself. I came prepared to lend whatever expertise I could to my temporary district. I brought various forms either my district or I developed, I participated on committees, and I disseminated information that I developed concerning specialized areas.

As a final note, an unexpected benefit from the swap is a renewed and increased enthusiasm for one of the best jobs a lawyer can have. I have always enjoyed my work but, upon my return, I found myself more dedicated than ever to doing the best, most efficient work I can do. I am most appreciative that United States Attorney Steven Alm, United States Attorney Robert Crouch, and EOUSA had the foresight and flexibility to authorize this unique experiment.

Department of Justice History: Herbert Brownell and the Little Rock Crisis

Ed Hagen
Executive Office for Untied States Attorneys, Office of Legal Education

Former Attorney General Herbert Brownell, who died on May 1 at the age of 92, ought to be remembered by everyone in the Department as a model of courage under fire.

Brownell, who grew up in Nebraska, became involved in New York politics after graduating from Yale Law School. After serving in the State Assembly, Brownell managed Tom Dewey's successful campaign for governor. Dewey later introduced Brownell to Dwight

Eisenhower. Brownell served as a key advisor in Ike's 1952 presidential campaign and was appointed Attorney General after the election. Eisenhower later wrote that the selection "was practically a foregone conclusion in my mind, if he would agree to serve. He had become a close friend, and possessed an alert mind. Moreover, I so respected him as a man and lawyer that I did not seriously consider anyone else for the post."

Brownell was an intense man who kept some people on edge. One colleague recalled: "Did you ever get into a poker game with a man who remembered every card played in every hand, how each player bet each hand, who figured all the odds instantly in his head, and was lucky besides? It's exasperating, because a guy like that usually wins, and when the game is over you don’t quite trust him, no matter how pleasant he seems."

On Brownell's first day in Washington he saw an African-American being thrown out of a restaurant. Outraged, he coordinated legal and political measures that ended segregation in public accommodations in the District of Columbia. This was only the beginning of Brownell's fight for civil rights in the Eisenhower administration. He helped persuade Eisenhower to appoint progressive Earl Warren as Chief Justice of the Supreme Court in 1953, and filed a persuasive brief for the Justice Department in the 1954 *Brown v. Topeka* case. After the Brown case was won, Brownell lobbied for the appointment of Federal judges who would enforce school desegregation laws. Brownell made headlines in 1956 when he declared that segregation on local buses would be prosecuted as "a crime against the United States." The next year he drafted the Civil Rights Act of 1957, the first important civil rights legislation to pass Congress since Reconstruction. DOJ's current Civil Rights Division was a Brownell initiative.

The positive civil rights measures championed by Brownell, however, met stiff resistance in the South, leading to a dramatic confrontation in 1957. Governor Orval Faubus called out the Arkansas National Guard and placed it around Central High School in Little Rock to prevent the entry of 12 African-American students. The Justice Department immediately went to court seeking an injunction. Faubus, stalling, sought a meeting with Eisenhower. Brownell strongly opposed the meeting, arguing that there was nothing to discuss with Faubus, an untrustworthy character whose actions were clearly unlawful.

Eisenhower nevertheless met with Faubus, who later wrote that Eisenhower appeared to weaken at one point, and turned to Brownell asking if the court proceedings could be delayed. Brownells tight-lipped response: "No, we can't do that. It isn't possible. It isn't legally possible. It can't be done." Faubus then agreed to change his orders to the National Guard troops and admit the students.

Faubus reneged on the agreement as soon as he got back to Little Rock. This enraged the President, who told Brownell, "Yes, you were right, Herb. He did just what you said he'd do--he double-crossed me." Eisenhower wanted to go to the press to expose Faubus duplicity. Brownell told Eisenhower that this would not be necessary. A court hearing that week was likely to result in Faubus being ordered to admit the students. It would be better to wait for the ruling and then act decisively.

At the hearing, Faubus' lawyer's contested the court's authority. The judge ruled from the bench, and the National Guard troops were ordered removed. The following Monday, however, the school was surrounded by a violent, racist mob. The students were slipped into the school by a side door, and when the mob learned this they stormed police barricades. The mayor ordered the police to remove the students.

That afternoon Brownell called Eisenhower and briefed him on the events in Little Rock.

Some disagreements arose over how to best protect the students. Brownell wanted to use local National Guard troops because any other troops were six to nine hours away from Little Rock. Eisenhower opposed the use of local troops. Ultimately, a mix of regular Army and National Guard units from other parts of the state was deployed. Order was restored and the school was integrated.

The extraordinary and historic measure of using Federal troops to enforce the law was received with outrage throughout the South, decried even by moderate politicians like Lyndon Johnson. Mississippi Senator James Eastland compared Eisenhower to Hitler, although others focused on Brownell as the villain. Historian Stephen Ambrose recounts that one local political boss called for secession but that "calmer heads reminded him that this time around the Feds had atomic weapons."

In mid-October as the crisis eased, Brownell resigned to pursue private legal practice. He had expressed a desire to leave on earlier occasions, but had been persuaded to stay. This time Eisenhower let him go. Faubus, on the other hand, became an Arkansas hero and ended up serving six terms.

There were still bad feelings about the case in 1969 when President Nixon (whose 1952 Vice Presidential nomination had been a Brownell initiative) considered Brownell for the position of Chief Justice of the Supreme Court. Reportedly, concerns about Southern opposition to Brownell caused Nixon to change his mind and nominate Warren Burger.

In retrospect, the politics of the decision are not important. Brownell's advice was morally and legally correct. His wisdom and courage served the nation well.

Attorney General Highlights

AG Announces 14-State Midwest Strategy Against Methamphetamine

On September 26, 1996, building upon the Administration's National Methamphetamine Strategy announced last April, Attorney General Reno unveiled a 14-state Midwest Methamphetamine Strategy to raise public awareness, boost intelligence sharing, and train local law enforcement to handle methamphetamine trafficking. Methamphetamine, which is moving from the West Coast to the Midwest, is often responsible for violent, erratic behavior that puts law enforcement and the community at risk. Abuse of the drug can lead to domestic violence, child neglect and abuse, and possibly plays a causative role in HIV infection in and transmission by female methamphetamine users. "The time to stop methamphetamine is now," said Reno, "before it sweeps through the American heartland." The Midwest Strategy reflects the coordinated efforts of 17 United States Attorneys from Minnesota, Wisconsin, North Dakota, South Dakota, Kansas, Missouri, Arkansas, Montana, Wyoming, Colorado, Illinois, Nebraska, Iowa, and Utah. They formed an alliance with DEA, INS, FBI, and U.S. Customs Service and devised a strategy to address problems unique to the Midwest. Each district will designate an Assistant United States Attorney to coordinate investigations between state, Federal, and local law enforcement; share intelligence; and control illegal distribution of chemicals used to make methamphetamine. DEA and FBI agents are being trained to detect precursor chemicals, investigate labs, safely seize methamphetamine-making materials, and understand the pharmacological and psychoactive effects of the drug. The Midwest alliance will launch a public

information campaign, organize communities to counter the problem, develop school and community-based drug demand reduction education programs, and evaluate the availability of drug treatment and rehabilitation.

DAG Addresses Child Exploitation Case Procedures

On July 18, 1996, Deputy Attorney General Jamie Gorelick sent a memo discussing Child Exploitation Case Procedures to United States Attorneys and the Assistant Attorney General of the Criminal Division. The memo sets forth guidelines for establishing policy for resolving disagreements concerning these cases that cannot be resolved at the field level. Protecting America's children from victimization and vigorously prosecuting their abusers is a top priority in the Department, including using all the tools available to prosecute those who knowingly trade in, receive, or possess child pornography. The Criminal Division's Child Exploitation and Obscenity Section (CEOS) provides resources, coordination, and support for child exploitation cases in the field. Their attorneys are experts in the investigation and prosecution of crimes involving the sexual exploitation of children, in the laws related to such cases, and in the relevant sentencing guidelines. They have developed an expertise upon which all Federal prosecutors should call.

The Attorney General's Advisory Committee and the Criminal Division have formed the Child Exploitation and Obscenity Working Group composed of United States Attorneys, Criminal Division attorneys (including CEOS attorneys), and investigative agency personnel. The Group's objectives are to provide a vehicle to help develop and advance a partnership between the United States Attorneys' offices (USAOs) and the CEOS, and to develop a means to improve communications with the primary investigative agencies responsible for handling child exploitation matters, namely, the FBI, Postal Inspection Service, and Customs Service. Members of this group include AGAC Vice-Chair Gregory Sleet; CEOS Acting Chief Terry Lord; United States Attorney Lynne Battaglia, District of Maryland; United States Attorney Nora Manella, Central District of California; United States Attorney Alan Bersin, Southern District of California and AGAC member; First Assistant United States Attorney Terry Derden, District of Idaho and AGAC member; and Deputy Assistant Attorney General Kevin Di Gregory, Criminal Division. Associate Deputy Attorney General Rory Little will serve as the liaison to the Working Group for the Deputy Attorney General's office.

The Group anticipates, assesses, and discusses relevant issues regarding planning and coordinating our child exploitation prosecutive effort. The guidelines, which are already followed by most Department attorneys for resolving disagreements that cannot be resolved at the field level, follow:

- Nationwide or regional efforts in child pornography should be discussed as early as possible with the AGAC's Working Group on Child Exploitation issues.

- Attorneys in the field and CEOS attorneys should make every effort to communicate fully at every significant stage of every case in which they may have a mutual interest. United States Attorneys should ensure that their staffs keep them informed of significant developments and CEOS attorneys should be informed and consulted by attorneys in the field.

- No significant action should be taken unilaterally in a case in which CEOS and a United States Attorney's office have a mutual interest. Respectful advisement and full consultation must always be the norm. Most specifically, investigative steps should not be taken or recommended in districts without first consulting with a relevant United States Attorney's office.

- If points of disagreement arise, they must be quickly brought to the attention of the United States Attorney for the relevant district, discussed, and resolved as quickly as possible, before any action that could affect a case is taken. If no agreement can be achieved expeditiously, the issue should immediately be brought to the attention of the Assistant Attorney General for the Criminal Division or the appropriate Deputy Assistant and, if necessary, to the Office of the Deputy Attorney General.

These guidelines flow naturally from existing provisions set forth in the *United States Attorneys' Manual* (*USAM*) which address sexual abuse and exploitation cases and often require consultation with, or approval by, CEOS attorneys. If you would like a copy of the Deputy Attorney General's memorandum which contains the *USAM's* guidelines for U.S. Attorneys' offices and Main Justice attorneys working on the these cases, please contact the *United States Attorneys' Bulletin* staff, (202) 514-3572.

AG Attends Terrorism Meeting in France

On July 30, 1996, Attorney General Reno met with high officials and representatives of Britain, Canada, France, Germany, Italy, Japan, and Russia to aggressively press forward against terrorism. She noted in her statement to the representatives that together they will, . . . "seek out and stop terrorists who move silently across borders, plying their trade on innocent people." The Attorney General addressed five steps agreed to by the eight nations, to strengthen the ability of the international community to stop terrorism and to more effectively respond when it happens. They include:

- New measures to protect mass transportation from terrorism,

- Development of a new international convention on terrorist bombings,

- Development of a means of lawful Government access to and decoding of scrambled or coded communications transmitted by terrorists, a problem currently being worked on by the Organization for Economic Cooperation and Development (OECD).

- Adoption of the United States Proposal to call on all parties to the Biological Weapons Convention to make it a crime for individuals to use or possess biological weapons.

- Speed up and share research and development regarding explosives detection methods, and strengthen domestic controls over the manufacture and sale of explosives.

Some other critical measures that were agreed to include preventing terrorist fund-raising,

promoting cooperation in controlling borders, returning fugitives, urging nations to impose severe and certain sentences, and preventing abuse of political asylum by terrorists. Attorney General Reno also announced that the FBI's study into the creation of a terrorism forensic science database will be reported to other member nations' police agencies following completion of the study. After consulting with the other nations, consideration will be given on how to proceed in creating this database or clearinghouse for forensic evidence, such as fingerprints related to terrorist incidents.

AG Speaks Out on 1996 Environmental Crimes and Enforcement Act

On September 19, 1996, the Attorney General announced that the Department and the Environmental Protection Agency sent proposed environmental crimes legislation to Congress. Attorney General Reno spoke out about the importance of strong environmental protection and the 1996 Environmental Crimes and Enforcement Act, noting that "the bill will provide us with better tools to achieve goals important to everyone: to protect human health, public safety, and the natural resources we all cherish; and, to enhance partnerships between Federal law enforcement and state, local, and tribal governments in investigating and prosecuting environmental crimes." In a statement by EPA's Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, he said that EPA and the Justice Department have "collected among the biggest environmental fines in the history of EPA." The 1996 Environmental Crimes and Enforcement Act legislation:

- Adds an "attempt" provision to environmental statutes.

- Authorizes courts to order convicted criminals to reimburse states, localities, and tribes for costs they incur assisting in Federal environmental prosecutions, thus increasing their ability to cooperate in Federal criminal environmental proceedings.

- Provides for enhanced punishment when anyone suffers death or serious injury as a result of a criminal violation of Federal environmental law.

- Provides a limited extension of the statue of limitations in cases where a violator has concealed his environmental felony.

- Amends the Federal restitution statutes to clarify the authority of the courts to provide for restitution in environmental crimes cases.

- Enables Federal courts to issue orders to ensure that those charged with environmental crimes do not shield or dispose of assets needed to pay for restitution.

If you would like a copy of a summary of the Act's major provisions, please contact the *United States Attorneys' Bulletin* staff, (202) 514-3572.

AG Cites Success in Anti-Violent Crime Initiative Report to President

On September 13, 1996, in a progress report to President Clinton on the Department's Anti-Violent Crime Initiative (AVCI), Attorney General Reno credited falling crime rates in part to reinvigorated Federal, state, and local law enforcement efforts sparked by AVCI. She said, "Thirty months ago, we pledged to reinvigorate crime fighting by pooling Federal, state, and local law enforcement resources as never before. Thirty months later, violent crime is steadily falling--thanks in part to the Anti-Violent Crime Initiative." United States Attorneys and their law enforcement counterparts identified their most serious violent crime problems and mapped out strategies such as the "Three Strikes and You're Out" law or the Violence Against Women Act, to target problems like youth violence, gun crimes, carjacking, and violence in public housing. Federal prosecutors have increasingly used organized crime statutes to target street gangs. Racketeer Influenced and Corrupt Organizations (RICO) prosecutions in gang-related cases have risen 58 percent, and 38 percent of the Department's RICO prosecutions this year have been gang-related. The Attorney General emphasized that the AVCI's objective is not to federalize violent crime. She said that, "State and local police remain the ground troops in the war against violent crime," and that the Department, "will continue to oppose any attempt to undercut our commitment to funding 100,000 police nationwide." Questions should be directed to Assistant United States Attorney Charysse Alexander, EOUSA's Office of Counsel to the Director, (202) 514-5326.

The National Sex Offender Registry

Assistant Associate Attorney General Joan Silverstein,
Office of the Associate Attorney General

On August 24, 1996, President Clinton announced in his radio address a plan for a national sex offender registry. The registry, operated by the FBI, will enable law enforcement to quickly determine whether an individual has been convicted of a sex offense in any state in the country. The plan was developed by the Attorney General, as directed by the President, and builds on progress made by the 1994 Jacob Wetterling Act and Megan's Law to protect our neighborhoods and communities from sex offenders and child molesters. The interim registry has two basic components:

- A centralized database at the FBI where existing criminal history records are flagged to identify whether an individual is a registered sex offender and where the individual is registered; and

- The National Law Enforcement Telecommunications System (NLETS), a computer-based link that will enable states to access and retrieve information from other states about registered sex offenders.

Law enforcement can use the centralized database to identify in a single, national search where an individual is registered and, through NLETS, can immediately access vital information

about that individual from the indicated state registry.

The registry will be both efficient and cost effective because it combines existing data already collected by state and Federal agencies to track sex offenders. It will be operating in less than six months although states will be able to communicate through NLETS next month.

The registry is an interim measure that will fill a critical role until a permanent National Sex Offender Registry file is in place with the FBI by mid-1999. When fully completed in mid-1999, the permanent registry will include state-of-the-art identification techniques, such as an indication of DNA availability, fingerprint matching, and mugshots, which will be invaluable in tracking offenders.

Ultimately, the successful tracking of sex offenders and child molesters, and the prevention of future sex crimes, calls for a commitment from law enforcement at every level to work together and to share information. Maintaining a reliable and centralized national sex offender registry is one step forward. In addition, states should be encouraged to do the following:

- Issue arrest warrants for offenders whose addresses cannot be verified or who fail to comply with state registration requirements;

- Require submission of DNA samples as part of the state registration process, which will help significantly in the investigation of rape and serial rape cases where the suspect is unknown; and

- Work together to develop agreements for interstate sharing and disclosure of sex offender registry information to ensure public safety.

Grants for Inmate Drug Testing and Treatment and Prisons

On September 11, 1996, the Department announced that it will award grants for more than $90 million to assist states in providing drug testing and treatment for inmates and to build additional prison space to imprison violent criminals longer. These grants under the 1994 Crime Law will be awarded through the Residential Substance Abuse Treatment for State Prisoners Program and the Violent Offender Incarceration Program. The $27 million in Substance Abuse Treatment grants will be awarded to 49 states, five eligible territories, and the District of Columbia to fund drug intervention programs in state and local correctional facilities. Recent studies show that cost-effective drug testing and treatment programs consistently reduce recidivism rates for offenders. The Violent Offender Incarceration Program will award $1.2 million to each state, the District of Columbia, and Puerto Rico to help build or expand correctional facilities and prisons. Please contact Janice Innis-Thompson at (202) 514-6267 if you have any questions.

***Nation to Nation*--Office of Tribal Justice's Newsletter**

In August 1996, the first issue of the Department's Office of Tribal Justice's official

newsletter, Nation to Nation, was published. The mission of the Office is to coordinate and focus the Department's policies and positions on Native American issues, maintain government-to-government relations with the federally recognized Indian tribes, and work with the appropriate tribal, Federal, state, and local officials. This yearly newsletter shares information on tribal issues and concerns to enhance the government-to-government relationship with tribes. The August 1996 issue includes information on legislation, affirmative action program review, the tribal courts project, recent conferences and symposia, cases, the Department's steps to fight crime in Indian Country, grants and funding, and a contact list. If you would like to receive copies of the newsletter, please contact Veronica Bush, Office of Tribal Justice, (202) 514-8812.

Nine Percent Drop in Violent Crime in 1995

In response to new National Crime Victimization Survey data reporting a nine percent drop in violent crime in 1995, the Attorney General said, I was gratified to hear that violent crime continues to fall, though we must continue to work very hard to keep bringing it down. Fighting violent crime and terrorism is this Department's number one priority, and under President Clinton's leadership we have moved from gridlock to solutions that work." On September 17, 1996, the Bureau of Justice Statistics (BJS) reported that there were an estimated 9.9 million violent crimes during 1995, compared to about 10.9 million during 1994. Rape and sexual assault crimes dropped for the third year in a row. BJS Director Jan Chaiken said the decline in the violent victimization rate began in 1994 and interrupted a rising trend that existed since the mid-1980s. Among actions the Attorney General credited for this drop are the re-energized cooperation between all levels of law enforcement and attacks on major gangs and drug rings like the Bottom Boys in New Orleans and the Cali Cartel overseas. For additional information, contact BJS at 1(800) 732-3277.

The Crime Victims' Fund

In an August 28, 1996, memo from Attorney General Reno to United States Attorneys, she highlighted prosecution efforts on the Crime Victims' Fund (Fund) and thanked United States Attorneys and their financial litigation staffs for their dedicated efforts. She urged them to continue to aggressively collect fines from those convicted of Federal crimes. The Fund was created within the U.S. Treasury by the Victims of Crime Act of 1984 and is administered by the Department's Office of Victims of Crime. The Fund is used to assist more than two million state and Federal crime victims each year in recovering from the devastating impact of crime. For example, the Fund is used to provide battered women with safe shelter, sexually abused children with counseling, elder abuse victims with emergency treatment for physical injuries, and homicide victims' families with funds to pay for funeral services. A record $234 million was collected from Federal offenders in Fiscal Year 1995. If you would like a copy of the Attorney General's memo, which includes brief descriptions of the special accomplishments and innovative approaches the honorees from the 1995 and 1996 Crime Victims Fund Awards ceremonies employed, please contact the *United States Attorneys Bulletin* staff, (202) 514-3572.

United States Attorneys' Offices/ Executive Office for United States Attorneys

Appointments

Southern District of Ohio

On August 23, 1996, Dale Goldberg became interim United States Attorney for the Southern District of Ohio. Ms. Goldberg takes over for Ed Sargus who was appointed to the Federal bench by the President. Ms. Goldberg has been a member of the Southern District of Ohio for a number of years and has served most recently as the First Assistant United States Attorney.

Honors and Awards

Maine Assistant United States Attorney Named Judicial Fellow

On June 6, 1996, Assistant United States Attorney Elizabeth C. Woodcock, District of Maine, was selected for a prestigious judicial fellowship with the United States Sentencing Commission that will allow her to research such topics as deterrence, incapacitation, just punishment, rehabilitation, recidivism, and judicial decision making. Ms. Woodcock is one of four people chosen to participate in the 1996-97 Judicial Fellows Program, which runs from September 1996 through September 1997.

Significant Issues/Events

Attorney General's Advisory Committee

The Attorney General's Advisory Committee met on September 17-18, 1996, in Washington, D.C. Some of the highlights of the meeting included discussions on the proposed Constitutional Amendment to protect the rights of crime victims, the need for National Security Coordinators to be apprised of cases in their districts which may have national security implications, assaults by airline passengers on airline personnel, and Nigerian Crime. The next meeting will be held on October 22, 1996, in Panama City, Florida, in conjunction with the Victim-Witness and LECC Coordinators Conference.

National Church Arson Task Force

In response to the rampant number of church arsons, the Department established a National Church Arson Task Force (NCATF) in September. In a September 9, 1996, memo to United States Attorneys and First Assistant United States Attorneys, EOUSA Director Carol DiBattiste announced that Assistant United States Attorneys Lawrence Middleton, Central District of California, and Paul Naman, Eastern District of Texas, were selected by the Civil Rights Division to serve one-year details to NCATF.

A Civil Rights Division August 20, 1996, memorandum to the Attorney General reveals staggering statistics which serve as the impetus for forming this Task Force. As of July 23, 1996,

approximately 320 incidents of fire or desecration at houses of worship since 1990 have been reported to Task Force components--only 34 of which have been preliminarily determined to be accidental. Of the approximately 320 incidents, arrests have been made involving 105 houses of worship--45 have involved convictions with sentences ranging from 3 years for a Federal conspiracy conviction in an Arkansas arson, to 20 years in prison for four Georgia defendants convicted of arson and burglary.

On September 13, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys materials relating to the recent church burnings and the work of NCATF, including the investigative protocol; a statement of the scope of the task force investigations; updated talking points; a summary of violent incidents against churches; and various charts. If you have any questions, please contact Assistant United States Attorney Sandra Bower, EOUSA's Office of Legal Counsel, (202) 514-4024.

Enactment of the Antiterrorism and Effective Death Penalty Act of 1996

On August 23, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistant United States Attorneys, Criminal Chiefs, and Civil Chiefs discussing how Title II of the Antiterrorism and Effective Death Penalty Act of 1996, the Mandatory Victims Restitution Act, has significantly altered the way that restitution is imposed and enforced. The Attorney General promulgated guidelines on July 24, 1996, to comply with Section 209 of the Act to ensure (1) that when negotiating plea agreements, prosecutors must give consideration to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the count to which the defendant actually pleads; and (2) that the orders of restitution made pursuant to the amendments made by this subtitle are enforced to the fullest extent of the law. PL 104-132 section 209. Ms. DiBattiste's August 23 memo supplements the Attorney Generals guidelines and summarizes changes the Act makes in the way restitution is imposed and collected. Assistant United States Attorneys are encouraged to review a June 3, 1996, memo from Acting Assistant Attorney General John Keeney regarding ex post facto issues of the new amendments. If you have any questions, please contact Associate Director Lynne Solien, Financial Litigation Staff, (202) 616-6444.

Potential Litigation Concerning the Eleventh Amendment

On August 9, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys a memo from Deputy Attorney General Gorelick regarding the potential for litigation arising out of *Seminole Tribe of Florida v. Florida*, 116 S. Ct. 1114 (1996), and requesting that Mark Stern, Appellate Litigation Counsel, Civil Division, be notified if you learn that the *Seminole Tribe* is being invoked in Federal court. Mr. Stern can be reached on (202) 514-5089. In the *Seminole Tribe* case, the Court held that Congress lacks power under the Interstate and Indian Commerce Clauses to abrogate a states Eleventh Amendment immunity and permit a private citizen to sue a state in Federal court. The Department established a task force to examine and resolve issues involving *Seminole Tribe* and to coordinate the Departments litigation efforts.

Drug-Testing Program

On August 8, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys a memo from Attorney General Reno and information describing the Departments drug-testing program. The program involves drug testing of arrestees before they are released into the community, and initially will be implemented in 25 Federal districts. It also includes guidelines for prosecutors seeking appropriate measures when defendants fail drug tests. If you have any questions or would like a copy of the memorandum, please contact Assistant United States Attorney Kirby Heller, Criminal Division, (202) 514-4582, or Email CRM04(HELLERKI).

Use of Cooperating Individuals and Confidential Informants

On August 26, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistant United States Attorneys, and Criminal Chiefs containing guidelines on the use of cooperating individuals and confidential informants. On August 15, 1996, Attorney General Reno approved the adoption of Resolution 18 of the Office of Investigative Agency Policies, which creates a uniform policy for all Department of Justice and Department of Treasury investigative agencies with regard to the use of cooperating individuals and cooperating informants. If you have any questions, please contact Assistant United States Attorney Charysse Alexander, EOUSA's Office of Counsel to the Director, (202) 514-5326.

ACE Positions Supported by Three Percent Fund

On August 12, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistants, Civil Chiefs, and Administrative Officers containing an overview of the April 30, 1996, decision by the Collection Resources Allocation Board to allocate $8.5 million from the Three Percent Fund for use by United States Attorneys' offices (USAOs) for ACE. Approximately $3.5 million was allocated to USAOs for extraordinary one-time expenses related to ACE cases and/or special projects, and the remaining $5 million will go to USAOs for temporary ACE personnel. The memo covers extraordinary expenses and special projects for ACE, temporary ACE personnel, and temporary ACE personnel accounting procedures. Questions regarding the accounting procedures section should be directed to Budget Analyst Greg Marshall, EOUSA's Financial Management Staff, (202) 616-6886, and other questions should be directed to Deputy Director Iden Martyn, EOUSA's Legal Programs staff, (202) 616-6483.

LECC/Victim-Witness National Conference

The LECC/VW National Conference was held on October 22-24, 1996, in Panama City, Florida. Attorney General Reno was the keynote speaker. Some of the agenda topics include victims' laws and issues, the Presidential Directive to the Department, the Proposed Constitutional Amendment on Victims Rights, the Violence Against Women Act, child victim/witnesses,

working with state prosecutors, model victim-witness program, victims' notification system, and short-term victim/witness assistance. Workshops were held on hate crimes, community policing, crisis response/intervention, drug victim initiatives, bank robbery victims, Weed and Seed, church burnings, drug demand reduction, an effective newsletter, gangs, asset forfeiture, and the victim-witness survey. For further information, please contact Kim Lesnak, EOUSA's LECC/Victim-Witness Staff at (202) 616-6792.

Victim-Witness Survey Results

In an August 9, 1996, memo to United States Attorneys and Victim-Witness Coordinators, United States Attorney Thomas P. Schneider, Eastern District of Wisconsin; United States Attorney Mike Troop, Western District of Kentucky; and EOUSA Director Carol DiBattiste forwarded a copy of, "Victim-Witness Survey Results: An Analysis of Federal Victim-Witness Services." The survey was conducted to determine the extent to which United States Attorneys' offices are fulfilling their obligations to support and protect Federal victims and witnesses. If you would like a copy of the survey results, please contact Assistant Director Kim Lesnak, EOUSA's LECC/Victim-Witness Staff, (202) 616-6792.

Guidance Regarding Seeking Private Sector Employment

In a September 20, 1996, memo, EOUSA Director Carol DiBattiste forwarded a memo from Assistant Attorney General Stephen R. Colgate, Administration and Designated Agency Ethics Official, to United States Attorneys, First Assistant United States Attorneys, and Administrative Officers. Mr. Colegate's memo reminds employees planning to leave the Government to consider the ethics rules that apply to them during a job search. His memo emphasizes the circumstances under which an employee must be disqualified from working on a matter which involves a party with whom he or she may be seeking employment. If you would like a copy of his memo, please contact Attorney-Advisor Kevin J. Keefe, EOUSA's Legal Counsels Office, (202) 514-4024.

Limited Delegation of Authority for Non-Federal Travel

In a July 22, 1996, memo to United States Attorneys, EOUSA Director Carol DiBattiste discussed current procedures for the approval of travel authorizations for United States Attorneys' office personnel with respect to non-Federal travel. United States Attorneys are delegated limited authority to approve non-Federal travel authorizations for any travel, subsistence, and related expenses for attendance of an employee (and accompanying spouse when applicable) in travel status at a meeting or similar function sponsored by a non-Federal source or jointly by the agency and the non-Federal source. This delegation eliminates the need for offices to get approval from two staffs within EOUSA, except in the limited cases when United States Attorneys personally participate in the travel. This authority cannot be redelegated. The delegation does not include the approval authority of EOUSA's Legal Counsel. Pursuant to the *United States Attorneys' Manual*,

all requests for attendance at non-Federal meetings must be approved by EOUSA's Legal Counsel. This delegation does not include approval of travel authorizations for United States Attorneys accepting travel payment from a non-Federal source. United States Attorneys' travel must be approved by EOUSA's Legal Counsel and Financial Management Staff. If you have any questions, please contact Budget Analyst Lydia Ransome, Financial Management Staff, (202) 616-6886.

Delegated Examining Authority

In a September 5, 1996, memo to United States Attorneys, EOUSA Director Carol DiBattiste clarified previous guidance issued on the authority granted to Servicing Personnel Office (SPO) United States Attorneys' offices (USAOs) to establish Delegated Examining Units (DEUs). SPO USAOs have the option to continue using OPM's examining services or to establish their own DEU to conduct competitive examining for positions, which is more cost effective. If you have any questions, please contact Assistant Director Debbie Brown, EOUSA's Personnel staff, (202) 616-6873.

Use of Premium Class Travel and Procedures Concerning Foreign Travel

On August 23, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys and Administrative Officers clarifying the use of premium travel and the approval requirements for foreign travel, and noting actions which will be taken in cases where foreign travel requests are not received timely within EOUSA. For a copy of the memo or questions related to travel authorizations and foreign travel, please contact Budget Analyst Lydia Ransome, Financial Management Staff, (202) 616-6886. Questions related to approval for payment of travel by non-Federal sources should be directed to Assistant United States Attorney Juliet Eurich, EOUSA's Legal Counsel, (202) 514-4024.

Evaluation and Review Staff Follow-up Program

In a July 29, 1996, memo to EOUSA Assistant Directors, EOUSA Director Carol DiBattiste and Assistant Director Douglas Frazier, Evaluation and Review Staff, announced that in Fiscal Year 1995, the Evaluation and Review Staff elevated follow-up activity to program status thereby emphasizing its importance as a component of the entire evaluation process. The purpose of this program is to verify and assess the appropriateness of the corrective actions taken by the United States Attorneys' offices (USAOs) in response to the findings and recommendations in the draft evaluation reports, and to ensure that necessary assistance is provided to USAOs to obtain compliance with the findings and recommendations. If you have any questions, please contact Follow-up Program Manager David Tait, EOUSA's Evaluation and Review Staff, (202) 616-6776.

Tax Information

On August 23, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistant United States Attorneys, Criminal Chiefs, and Civil Chiefs announcing IRS' "Interim Safeguard Review Report of the Department of Justice," which is based on their recent audit of several Department components and 12 United States Attorneys' offices. Ms. DiBattiste's memo outlines restrictions placed on the distribution of tax information and provides guidelines for obtaining this information. If you have any questions, please contact Attorney-Advisor Daniel Villegas, EOUSA's Legal Programs staff, (202) 616-6444.

Regulation Reduction Efforts

On September 10, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistant United States Attorneys, and Administrative Officers reporting EOUSA's final actions to reduce internal regulations, in accordance with Executive Order 12861 entitled, "Elimination of One-Half of Executive Branch Internal Regulations." The Executive Order required all executive branch agencies to eliminate not less than 50 percent of their internal regulations to streamline and improve customer service within three years. EOUSA is currently revising the *United States Attorneys' Manual* and eliminating 335 pages in Titles 1 and 3, which will achieve their 50 percent reduction of internal regulations. In addition, policy directives in the areas of Personnel Management, Procurement and Facilities Management, Security Programs, and Financial Management are being reduced through revisions of APHI, the DOSM Handbook, the Financial Management Handbook, and by moving "non-mandatory" reference information to electronic bulletin boards and the USABook Program. The intent of this effort is consistent with EOUSA's overall goal of delegating authorities and decision-making to managers in the field. The Reinvention of Government project found that the burden of processes and procedures were not the result of the statutory authorities that currently exist but were the result of Government agencies adding layers of processes and telling us how to do our jobs. For further information, please contact Assistant Director Theresa Bertucci, Financial Management Staff, (202) 616-6886.

Affirmative Employment Program Plan for Minorities and Women

On August 9, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, Administrative Officers, and EOUSA Senior Staff the Fiscal Year 1996 Affirmative Employment Program Plan Update for Minorities and Women and the Fiscal Year 1995 Accomplishments Report. The Affirmative Employment Program Plan Update reviews actions taken by EOUSA and the Offices of the United States Attorneys (OUSA) in Fiscal Year 1995 and outlines specific actions to be taken in Fiscal Year 1996 to ensure that minorities and women receive equal opportunities to participate in the employment process. The Accomplishments Report summarizes the results of EOUSA/OUSA's efforts during Fiscal Year 1995. If you have any questions, please contact Assistant Director Michael Moran, Equal Employment Opportunity Staff, (202) 514-3982.

Updated List of United States Attorneys

Appendix A is an updated list of United States Attorneys by district.

District of Columbia Assistant United States Attorney Carries Olympic Torch

Assistant United States Attorney Wendy L. Wysong was one of the torchbearers who carried the 1996 Olympic Flame across the United States. Ms. Wysong was chosen because of her contributions to the Alexandria, Virginia, community--in particular her role as a regional leader for the Girl Scouts in Northern Virginia.

Phone Number/Address Changes

Southern District of Mississippi Biloxi Branch Office

The new address is:

808 Vieux Marche
Second Floor
Biloxi, MS 39530

Northern District of Texas Ft. Worth Branch Office

All telephone numbers with the prefix 334 or 885 have been changed to 978. The new main number is (817) 978-3291 and the new fax number is (817) 978-3094.

Office of Legal Education

USABook Corner

The Publications Unit is pleased to announce the publication of the latest volume in the OLE Litigation Series, *Federal Prosecution of Homicide Cases*. The core of the book is Robert Lipman's comprehensive "Checklist for Investigating and Prosecuting Murders Committed by Criminal Organizations," supplemented with hundreds of pages of forms and sample court documents. Copies of this book were distributed at the Homicide Conference in Los Angeles in September, and each district will be receiving copies for their libraries. The USABook version of this book will be available in mid-October.

USABook disks were distributed to System Managers in September. If you don't have USABook version 1.14 on your computer, contact your system manager.

We have been visiting United States Attorneys' offices soliciting ideas and comments, and have picked up some exciting ideas for future publications. If you have questions or ideas for future works, or are interested in contributing as an author, contact Assistant United States

Attorney David Nissman, (809) 773-3920 or AVISC01(DNISSMAN).

OLE Projected Courses

OLE Director Janet Craig is pleased to announce projected course offerings for the months of October through December 1996 for the Attorney Generals' Advocacy Institute (AGAI) and the Legal Education Institute (LEI). Lists of these courses are on page 58.

AGAI

AGAI provides legal education programs to Assistant United States Attorneys (AUSAs) and attorneys assigned to Department of Justice (DOJ) Divisions. The courses listed are tentative; however, OLE sends Email announcements to all United States Attorneys offices (USAOs) and DOJ Divisions approximately eight weeks prior to the courses.

LEI

LEI provides legal education programs to all Executive Branch attorneys, paralegals, and support personnel. LEI also offers courses designed specifically for paralegal and support personnel from USAOs. OLE funds all costs for paralegals and support staff personnel from USAOs who attend LEI courses. Approximately eight weeks prior to each course, OLE sends Email announcements to all USAOs and DOJ Divisions requesting nominations for each course. Nominations are to be returned to OLE via FAX, and then student selections are made.

Other LEI courses offered for all Executive Branch attorneys (except AUSAs), paralegals, and support personnel are officially announced via quarterly mailings to Federal departments, agencies, and USAOs. Nomination forms are available in your Administrative Office or attached as Appendix B. They must be received by OLE at least 30 days prior to the commencement of each course. Notice of acceptance or non-selection will be mailed to the address typed in the address box on the nomination form approximately three weeks prior to the course. Please note that OLE does not fund travel or per diem costs for students attending LEI courses.

Office of Legal Education Contact Information

Address:	Bicentennial Building, Room 7600 600 E Street, NW Washington, DC 20530	Telephone: FAX:	(202)616-6700 (202)616-7487

Director . . . . Janet Craig, AUSA, SDTX
Deputy Director . . . . David W. Downs
Assistant Director (AGAI-Criminal) . . . . Dixie Morrow, AUSA, MDGA
Assistant Director (AGAI-Criminal) . . . . Mary Jude Darrow, AUSA, EDLA
Assistant Director (AGAI-Civil and Appellate) . . . . Jeff Senger, Civil Rights Division
Assistant Director (AGAI-Asset Forfeiture
and Financial Litigation) . . . . Tony Hall, AUSA, Idaho

Assistant Director (LEI) . . . . Donna Preston
Assistant Director (LEI) . . . . Eileen Gleason, AUSA, EDLA
Assistant Director (LEI-Paralegal and Support) . . . . Donna Kennedy

AGAI Courses

Date	Course	Participants
	October	
17	Dispute Resolution/Enhanced Negotiations Circuit Workshop	AUSAs, DOJ Attorneys
21-25	FBI/White Collar Crime	AUSAs, DOJ Attorneys
21-11/1	Civil Trial Advocacy	AUSAs, DOJ Attorneys
22-24	Asset Forfeiture Dual-Level Support Staff	Support Staff
31-11/1	Professional Responsibility Officers	AUSAs, DOJ Attorneys
	November	
6-8	Public Corruption Symposium	AUSAs, DOJ Attorneys
13-15	Dispute Resolution/Enhanced Negotiation	AUSAs, DOJ Attorneys
19-21	Asset Forfeiture for Criminal Prosecutors	AUSAs, DOJ Attorneys
19-22	Complex Prosecutions	AUSAs, DOJ Attorneys
19-22	Violent Crime and Juvenile Offenders	AUSAs, DOJ Attorneys
	December	
3-5	Use of Computers in Litigation	AUSAs, DOJ Attorneys
3-6	First Assistant United States Attorneys	FAUSAs
3-6	Civil Rights (Civil)	AUSAs, DOJ Attorneys
9-12	Criminal Tax Institute	AUSAs, DOJ Attorneys
9-12	Grand Jury Coordinators	USAO Grand Jury Clerks
10-12	Constitutional Torts	AUSAs, DOJ Attorneys
10-12	Selected Topics for FLU Agents	FLU Agents

LEI Courses

Date	Course	Participants
	October	
1	Federal Rules of Civil Procedure	Agency Attorneys
2-4	Environmental Law	Agency Attorneys
7-11	Basic Paralegal (Agency)	Agency Paralegals
9	Freedom of Information Act Update	Agency Attorneys
15-16	Freedom of Information Act for Attorneys And Access Professionals	Agency Attorneys
17	Privacy Act	Agency Attorneys
18	Ethics for Litigators	Agency Attorneys
28-11/1	Legal Research and Writing Refresher (Agency)	Agency Attorneys/Paralegals
	November	
6	Introduction to Freedom of Information Act	Agency Attorneys
6-8	Discovery	Agency Attorneys
18-22	Experienced Legal Secretaries	USAO/DOJ Support Staff
19-20	Freedom of Information Act for Attorneys and Access Professionals	Agency Attorneys
21	Privacy Act	Agency Attorneys
25	Advanced Freedom of Information Act	Agency Attorneys
26	Freedom of Information Act Administrative Forum	Agency Attorneys
	December	
3-4	Agency Civil Practice	Agency Attorneys
6	Legal Writing	Agency Attorneys/Paralegals
9	Appellate Skills	Agency Attorneys

Computer Tips

Moving Text from Window to Window

This month the title of the column changes from "WordPerfect Tips" to "Computer Tips." As the Department changes over from EAGLE to PHOENIX and users migrate from DOS to WINDOWS and GROUPWISE, it is important to think about our computer systems as an integrated whole. Many of the programs will use the same key strokes and will share data.

This month's tip illustrates the power of windows. Windows makes it easy to move text from one application to another. There are three steps: mark, save to clipboard, and paste. This allows you, for example, to move a section of text from a word processing document into an Email message, or move text from an Email message into your Groupwise appointment calendar.

Marking and saving text in a windows session: Move the **mouse** cursor to the beginning of the text you want to mark, and press and hold down the left mouse button. Then move the mouse cursor to the end of the section, and release the mouse button. If you want to *copy* the marked text to the clipboard ("copy and paste"), press <Ctrl>C. If you want to *move* the text, press <Ctrl>X.

Marking and saving text in a DOS window: For DOS programs operating under windows (e.g., WordPerfect for DOS 5.1, USABook, TELUS), the marking process is slightly different. If the program is operating "full screen" you must first shrink it to a window by pressing <Alt><Enter> (the same command is used to toggle the application back to full screen). Then, move the **mouse** cursor to the button on the upper left corner of the DOS window, and press the left mouse button to bring up a menu. Select **Edit**, and then **Mark**. Use the **mouse** cursor to highlight the text by clicking and holding the left mouse button at the beginning of the section, and moving to the end of the section before releasing the mouse button. Then press <Enter> to copy the text into the clipboard (you can only copy from DOS windows; cutting is not supported).

Pasting the text into a windows session: Open the window, and move the **blinking** cursor to the point where you want to insert the text. Then press <Ctrl>V (this is easy to remember, since the letter V looks like a wedge shaped insertion tool).

Pasting text into a DOS window: Once again, you need to use <Alt><Enter> to toggle from full screen to a window. Move the **blinking** cursor to the spot where you want to insert the text. Click on the upper left button to bring up the menu, and select **Edit** and **Paste**.

DOJ Highlights

Appointments

Waxman New Deputy Solicitor General

On September 19, 1996, Attorney General Janet Reno announced that Seth Waxman, who served for more than two years as Associate Deputy Attorney General, is now Deputy Solicitor General.

Klein to Become Acting Assistant Attorney General for Antitrust

On August 12, 1996, Attorney General Reno announced that Joel I. Klein will become the Acting Assistant Attorney General for the Antitrust Division upon the departure of Anne K. Bingaman. Mr. Klein has been the Principal Deputy Assistant Attorney General in the Division since April 1, 1996. Klein came to the Division from the White House Counsel's office where he served from 1993 to April 1995 as Deputy Counsel to the President. Prior to that, he was in private practice with the Washington law firm Klein, Farr, Smith & Taranto. He is considered one of the nation's leading appellate advocates and has practiced law for more than 20 years.

Inspector General Bromwich Announces Appointments

On September 12, 1996, Inspector General Michael R. Bromwich announced that Glenn A. Fine was selected as the Director of the Special Investigations and Review Unit (SIRU). Fine is a graduate of Harvard College and Harvard Law School, a Rhodes Scholar, and a former Assistant United States Attorney for the District of Columbia. Since January 1995, he has been Special Investigative Counsel to the Inspector General, leading several important investigations, including the review of crimes of violence against the United States Attorney in Miami and other reviews requested by Congress or high-level Department officials. He will be responsible for handling special reviews and investigations conducted by the OIG.

Bromwich also announced that three senior attorneys with substantial investigative and prosecutorial experience as Federal prosecutors will be part of Mr. Fine's immediate staff in the SIRU: Suzanne Drouet, Leonard Bailey, and Tamara Kessler. Ms. Drouet will serve as Counselor to the Inspector General and Mr. Bailey, as Special Counsel. Their duties will include those previously performed by David Frederick, who has taken a position in the Solicitor General's office. Earlier this year, Mr. Bromwich hired Tamara Kessler as Special Investigative Counsel.

Civil Rights Division Reassignments

Jessica Ginsburg is Acting Deputy Chief for matters in the Fifth and Eleventh Circuits while Karla Dobinski directs the National Church Arson Task Force Operations Team. Steven Dettelbach is Acting Deputy Chief for matters in the Fourth, Sixth, Seventh, and Eighth Circuits pending Tom Perez's return.

New Addresses

Treasury Department's Judgment Fund Group

The Judgment Fund Group of the Treasury Department's Financial Management Service moved from the General Accounting Office building to:

Judgment Fund Group

Department of the Treasury
Financial Management Service
Prince George's Metro Center 2
3700 East West Highway
Mailstop 6D37
Hyattsville, MD 20782

Main Justice

The new address for the Main Justice building is:
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Civil Rights Division

Cases Challenging Affirmative Action Programs Implemented by Educational Institutions

The Civil Rights Division is interested in identifying cases in which plaintiffs are challenging affirmative action programs implemented by educational institutions, e.g., cases challenging minority scholarship programs or affirmative action programs governing admission to colleges or graduate schools. United States Attorneys who learn of such cases in their districts should notify Deputy Assistant Attorney General Isabelle Katz Pinzler at Email SS62(A$PINZ); P.O. Box 65808, Washington, D.C. 20035-5808; or (202) 514-6715.

Sixth Anniversary of the Americans with Disabilities Act

On July 26, 1996, the Civil Rights Division's Disability Rights Section published Enforcement Highlights of the Americans with Disabilities Act, an ADA Guide for Small Businesses, and an ADA Homepage information sheet. The ADA homepage is located at http://www.usdoj.gov/ert/ada/adahoml.htm on the Internet's World Wide Web. For copies or more information about the ADA, please call their Information Line at 1(800) 514-0301.

VMI Continues Exclusionary Practices

On September 10, 1996, Assistant Attorney General Deval L. Patrick, Civil Rights Division, issued a statement regarding the refusal of the Virginia Military Institute to accept applications for admission from women, as it does from men, despite a recent Supreme Court ruling. On June 26 of this year, the U.S. Supreme Court said Virginia must provide women the same type of unique educational opportunity it provides men at VMI. (See *USAB*, Vol. 44, No. 4, August 1996, pg. 32.) In motions filed on September 10 in the Court of Appeals for the Fourth Circuit and in the U.S. District Court in Roanoke, the Department said the Commonwealth must craft a remedy to end its practice of denying equal educational opportunities to women. In the meantime, the Justice Department said that Virginia must take no steps to impede women from

applying to VMI. In a press statement, Deval Patrick said," . . . after more than six years of litigation, and more than two months after the Supreme Court's decision, VMIs admissions office continues doing business as usual by not accepting applications from women." In its motions, the Department asked the Appellate Court to remand the case to the District Court to enjoin the school from continuing its exclusionary practices. The court papers were filed after informal efforts by the Justice Department to resolve the matter were unsuccessful.

Criminal Division

Supreme Court's Decision on Double Jeopardy

On July 25, 1996, Asset Forfeiture and Money Laundering Section Chief Gerald E. McDowell, Criminal Division, forwarded a memo to United States Attorneys; Director, EOUSA; Director, U.S. Marshals Service; Director, FBI; Administrator, DEA; Commissioner, INS; Chief Postal Inspector, U.S. Postal Inspection Service; and Commissioner, FDA concerning the Attorney General's views on the recent Supreme Courts decision on the application of the Double Jeopardy Clause to civil forfeitures and its effect on the future of the forfeiture program. Mr. McDowell stated that the Attorney General was extremely pleased that the Court recognized the historic role of civil forfeiture in taking the profit out of crime. The decision in *United States v. Ursery* restores the flexibility needed to use this important tool of law enforcement for these and other purposes when criminal forfeiture is unavailable or unsuited to the facts of a given case.

Over the past two years, there has been a marked decline in the use of asset forfeiture. The rate of seizures in the current fiscal year is 40 percent below what it was in 1994, which means that hundreds of millions of dollars were left in the hands of criminals. To the extent that this decline is attributable to the confusion and distraction caused by the double jeopardy issue, that problem is now behind us. The Attorney General expects all Department agencies to make full and vigorous use of the asset forfeiture laws.

The Attorney General recognizes that double jeopardy was not the only reason for the decline in the use of forfeiture. There have been other adverse court decisions and problems that can only be addressed through legislation. The Department is committed to continuing to press Congress to enact the necessary changes to the forfeiture statutes as soon as possible.

Enforcement of Forfeiture Statutes for Currency Reporting Violations in the Ninth Circuit after *United States v. Bajakajian*

On July 26, 1996, Asset Forfeiture and Money Laundering Section Chief Gerald E. McDowell, Criminal Division, forwarded a memo to United States Attorneys; Director, EOUSA; Director, U.S. Marshals Service; Director, FBI; Administrator, DEA; Commissioner, INS; Chief Postal Inspector, U.S. Postal Inspection Service; and Commissioner, FDA concerning the May 20, 1996, United States Court of Appeals for the Ninth Circuit ruling that the criminal forfeiture of currency involved in a reporting violation under 31 U.S.C. § 5316 is unconstitutional because it violates the Excessive Fines Clause of the Eighth Amendment. *United States v. Bajakajian*, 84 F.3d 334 (9th Cir. 1996). This decision questions the constitutionality of any civil or criminal forfeiture for a currency reporting violation under any of the most commonly used currency

reporting statutes. Mr. McDowell's memo was intended to provide interim guidance regarding the enforcement of the forfeiture provisions of the currency reporting laws in the Ninth Circuit pending further judicial review of this decision.

The first part of the memorandum discusses the holding in Bajakajian, the second part discusses the impact of the Ninth Circuit's decision on the future use of forfeiture as a sanction for currency reporting violations and proposes alternative means for enforcing the statutes, and the third part discusses the impact of Bajakajian on pending litigation. If you would like a copy of the memo, please contact the *United States Attorneys' Bulletin* staff, (202) 514-3572.

Grand Jury Secrecy Requirements in the Wake of *United States v. Forman*, 71 F.3d 1214 (6th Cir. 1995).

On August 29, 1996, Acting Assistant Attorney General John C. Keeney, Criminal Division, sent a memo to United States Attorneys and Criminal Division Section Chiefs stating that Federal Rule of Criminal Procedure 6 (e) (2) prohibits "an attorney for the Government" from disclosing matters occurring before a grand jury, except as otherwise provided in the rules. Federal Rule of Criminal Procedure 54 (c) defines the term "attorney for the Government" to mean the "Attorney General, an authorized assistant of the Attorney General, a United States Attorney, and an authorized Assistant of a United States Attorney. . ." In *United States v. Forman*, 71 F.3d 1214 (6th Cir. 1995), the court of appeals held that a Tax Division attorney who gained access to grand jury materials but was not assigned to review the materials or to participate in the grand jury proceedings was not "an attorney for the Government" subject to the general rule of secrecy in Rule 6 (e) (2). The *Forman* decision may have unintended consequences for the day-to-day operations of the Department and the United States Attorneys' offices because it creates some uncertainty over whether Department attorneys and Assistant United States Attorneys may informally consult with one another regarding grand jury investigations.

Office of Justice Programs

AGAC Subcommittee on Justice Programs Holds Meeting at OJP

Assistant Attorney General Laurie Robinson
Office of Justice Programs

OJP was pleased to host the August 22, 1996, meeting of the Attorney General's Advisory Committee's Subcommittee on Justice Programs. Subcommittee members were briefed by several OJP and bureau representatives regarding research and program initiatives of interest to United States Attorneys.

For example, Bureau of Justice Statistics (BJS) staff discussed their new publication, *Comparing Case Processing Statistics*, which explains the incomparability of case processing statistics across Federal agencies. An interagency effort is underway to reconcile the differences in statistics reported by Federal criminal justice agencies and facilitate the comparison of criminal case processing statistics. In addition, BJS maintains the Federal Justice Statistics Program, which provides uniform case processing statistics across different stages of the system and tracks

individual defendants from one stage to another. Copies of the report can be requested from the National Criminal Justice Reference Service at 1(800) 732-3277.

Representatives from the National Institute of Justice (NIJ) and the National Criminal Justice Reference Service (NCJRS) discussed their capability to provide on-line criminal justice information through the Internet. NIJ staff are providing a similar briefing at the LECC Coordinators Conference in October. NIJ is also exploring ways to provide United States Attorneys' offices with periodic updates on new services and information available through NCJRS.

NIJ also briefed the Subcommittee on the proposed expansion of the 23 Drug Use Forecasting Program (DUF) sites to 75 Arrestee Drug Abuse Monitoring (ADAM) Program sites, including rural and suburban jurisdictions. This expansion will enable NIJ to accurately track and monitor national trends in drug use among arrestees, as well as provide individual communities with local estimates of drug use. Along with the expansion in the number of sites, NIJ will involve local drug policy makers and criminal justice agencies such as the United States Attorneys' offices, local law enforcement, and drug treatment providers in the planning and operation activities of each ADAM site. These local partners will help to identify locally relevant research questions for incorporation into the ADAM program.

BJA Director Nancy Gist discussed how United States Attorneys can become more involved with justice programs and grants in their districts. She explained that, while United States Attorneys' offices cannot directly receive grants, they can collaborate with eligible potential grantee agencies in their districts. For example, United States Attorney Eric Holder, District of Columbia, partnered with the Asian-American Bar Association and George Washington University to receive grant funds to produce a video--"No More Violence: Reclaiming Our Communities"--which educates the Asian-Pacific community on the criminal justice system and encourages witnesses and victims to cooperate with the judicial process. Used extensively in the D.C. community, this videotape is now available to other United States Attorneys' offices.

In response to a request from Subcommittee members, BJA is reviewing technical assistance and training resources available to United States Attorneys and determining how we can more effectively communicate information on specific subjects and speakers and the experiences of districts that have used that particular training.

With regard to the Violence Against Women Act (VAWA) STOP grant funds, several states have been slow in moving their FY 1996 funds to the subgrant stage in the process. While this may be uniquely characteristic of the first year of the program's funding and may improve next year, I would appreciate your encouragement in moving the process forward in your state. For information about where your state is in the distribution process, contact VAWA Grants Program Director Kathy Schwartz at (202) 307-6026.

I would like to thank Subcommittee Chair Mike Dettmer and the rest of the members of his Subcommittee for providing the opportunity to enhance our communication. I encourage the Subcommittee to hold its future meetings at OJP. We will continue to work through the Subcommittee and with all of you to ensure that you remain aware of OJP resources available to your districts.

BJA to Work with United States Attorneys to Combat Church Arson

In late August, BJA Director Nancy Gist sent a letter to United States Attorneys in the 13 states whose counties are eligible to receive grants under BJA's Church Arson Prevention Program. An accompanying fact sheet described the program and general guidance concerning the application process. This new program will provide $6 million ($4,600 per county) to prevent church arson in Alabama, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Oklahoma, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

BJA also has pledged to work with United States Attorneys' offices to ensure that grantees receive appropriate technical assistance to maximize the benefit of these one-time grants, which are part of the President's larger National Arson Prevention Initiative. Information on other arson prevention resources is available from the Federal Emergency Management Agency's Clearinghouse for Arson Prevention Resources, which can be reached toll-free at 1(888) 603-3100.

Two More Steps to Fight Violence Against Women

On August 9, 1996, the Department announced that more than $77 million in grants to combat domestic violence and sexual assault were awarded to 30 states and 5 territories to train police, hire prosecutors, provide assistance to victims, and for other purposes. These FY 1996 Violence Against Women STOP grant awards were funded through the Omnibus Appropriations Act signed in April 1996. Among the grantees were California, Ohio, Michigan, Florida, New Jersey, Ohio, and Texas.

New Mexico Tribes Receive VAW Grants

On September 12, 1996, six tribal communities in New Mexico received $279,000 in grants awarded under the STOP Violence Against Indian Women Grant program to establish and expand victim assistance services and law enforcement efforts in their communities. Director of the Department's Violence Against Women Office, Bonnie Campbell, said "In specifying that a certain proportion of STOP program funds go to Native American communities, Congress recognized that for too long this has been an underserved and needy population. We are pleased to reach out to Indian women and help them access community services to address their unique needs."

Homepage for Violence Against Women Office

Effective August 1996, the Violence Against Women Office's homepage on the World Wide Web is: http://www.usdoj.gov/vawo. Their homepage includes:

- *The Domestic Violence Awareness Manual*.
- The text of the Violence Against Women Act, the Jacob Wetterling Sex Offender Registration Act, and Megan's Law.
- National and local resources for victims and survivors as well as information about the National Domestic Violence Hotline [1(800) 799-SAFE or TDD 1(800) 787-3224].

- Speeches made by President Clinton, Attorney General Reno, and Violence Against Women Director Bonnie Campbell on violence against women issues.

- Updates on current activities of the Violence Against Women Office.

The National Institute of Justice Journal

In August 1996, the National Institute of Justice published their *Journal*, previously know as NIJ Reports. The publication announces the Institute's policy-relevant research results and initiatives. Registered users of the National Criminal Justice Reference Service (NCJRS) receive the *Journal* free. To become a registered user, write NCJRS User Services, Box 6000, Rockville, MD 20849-6000, call (800) 851-3420, or Email askncjrs@ncjrs.org.

Immigration and Naturalization Service

INS Targets 487 Worksites Across Central United States

On September 5, 1996, INS Commissioner Doris Meissner announced that a series of worksite enforcement operations at 487 businesses in 13 states throughout the central United States resulted in the arrest of 3,679 aliens from 12 countries. The ongoing operations are part of the Clinton Administration's crackdown on businesses that employ unauthorized aliens. Between July 21 and August 30, INS followed leads obtained from a variety of sources and targeted businesses traditionally associated with illegal employment, such as construction, food processing, and agricultural production. INS investigations of these employers to assess whether they knowingly violated the law could result in substantial fines, possible criminal prosecution, or other penalties.

INS Implements Employment Verification and Law Enforcement Support in Florida

On August 1, 1996, the Clinton Administration announced major initiatives designed to meet Florida's immigration challenges, including the first-ever participation of a state government in an INS pilot program designed to ensure that non-citizen employees are authorized to work in the United States. Florida law enforcement will also have access to the INS Law Enforcement Support Center (LESC) for information on criminal aliens. Florida Governor Lawton Chiles signed an Executive Order, modeled after President Clinton's Executive Order, which denies state contracts and licenses to companies that have knowingly hired illegal workers. INS Commissioner Doris Meissner urges other states to consider similar Executive Orders and she offered assistance in drafting such regulations or legislation. The pilot program, called the Employment Verification Pilot (EVP) is a computer-based INS project that helps employers determine whether their non-citizen employees are legally authorized to work in the United States while protecting the rights of legal immigrant workers. The State of Florida is enrolling a number of agencies employing approximately 95,000 workers in the verification program. Recently, INS announced the first industry-wide agreement with the nation's largest meat packing companies, employing 56,000 workers, to participate in EVP.

Illegal Alien Removals in FY 1996 Exceed Total for FY 1995

On August 29, 1996, the Clinton Administration announced that the number of criminal and other deportable aliens removed from the United States thus far in Fiscal Year 1996 surpassed the total achieved in all of Fiscal Year 1995. Through the first 10 months of this fiscal year, INS has removed 54,362 aliens, exceeding the nearly 50,200 removed in FY 1995. Preliminary figures show that INS removed 4,687 aliens in the month of July, according to INS General Counsel David A. Martin. The July total represents a 17 percent increase over July 1995 and includes 2,677 criminal and 2,020 non-criminal aliens. The overall total thus far this fiscal year is 40 percent greater than the nearly 39,000 achieved during the same period last fiscal year and represents approximately 90 percent of the 62,000 removal target set for this fiscal year.

OJP Documents

OJJDP Produces Publication Series to Help Investigators and Prosecutors Handle Child Abuse and Neglect Cases

Five new guides to help police officers, medical professionals, and social services professionals investigate child abuse cases are now available from the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The guides will assist investigators in determining if a child was abused and in collecting evidence necessary for effective prosecution. The five new guides are entitled, *Recognizing When a Child's Injury or Illness is Caused by Abuse, Photodocumentation in the Investigation of Child Abuse, Battered Child Syndrome: Investigating Physical Abuse and Homicide, Diagnostic Imaging of Child Abuse, and Sexually Transmitted Diseases and Child Sexual Abuse.*

"We lose too many children to child abuse--either through their deaths or through their future violent behavior," said OJJDP Administrator Shay Bilchik. "These guides will help communities save these children and break the cycle of violence."

The guides are the first five of eleven in OJJDP's Portable Guides to Investigating Child Abuse series. Each was written by experts and addresses a different aspect of investigating a child abuse case. For copies of these and future guides in the series, contact the Juvenile Justice Clearinghouse at 1(800) 638-8736.

OJP components also recently released the following publications:

Estimating the National Scope of Gang Crime from Law Enforcement Data, published by NIJ, reports that regardless of the methods used to calculate national estimates on gang activity, there were dramatic increases in gang crime from 1991 to 1993. For a free copy of this recently released document, contact NCJRS at 1(800) 851-3420.

Juvenile Court Statistics 1993, released by OJJDP, addresses the issues facing juvenile courts, the types of offenders that appear before juvenile courts, and the resources that are available to these courts. To obtain free copies of this recently released document, contact the Juvenile Justice Clearinghouse at 1(800) 638-8736.

Ethics and Professional Responsibility

Trial Conduct--Improper Inferences from Defendant's Conduct

OPR investigated judicial criticism of a Federal prosecutor who sought to draw adverse inferences from the defendant's post-arrest silence in violation of *Doyle v. Ohio*, 426 U.S. 610 (1976). The prosecutor repeatedly questioned the defendant about his post-*Miranda* silence and also drew attention to his retention of "a criminal defense attorney." Despite a warning from the court, the prosecutor commented on the defendant's silence in closing argument. The prosecutor explained that he was unfamiliar with the *Doyle* doctrine and had not researched the matter after defense counsel raised it. OPR concluded that the Federal prosecutor had recklessly disregarded his obligation to observe the defendant's constitutional rights.

Threatening Criminal Action in Civil Case

Private counsel asserted that a Federal prosecutor had improperly threatened criminal action against his client in a civil case to induce the client to settle. The prosecutor asked the opposing party in a deposition whether he was aware that the Government was considering a criminal investigation of allegedly forged documents the party had submitted to a Federal investigator. Subsequently, the prosecutor proposed a settlement offer, along with a promise to help resolve the issue of the forged documents. OPR concluded that linking the civil settlement and the possible criminal proceedings was improper.

Alteration of Documents

A law enforcement agent alleged that a Federal prosecutor had instructed the agent to alter a report of an interview so that it included statements the witness had not made. The agent also alleged that the prosecutor had directed him to document selectively pretrial interviews of witnesses to avoid the creation of exculpatory statements. During the trial, the Federal prosecutor requested that the agent be replaced because of a personality conflict. OPR concluded that the agent's allegations were wholly without merit. OPR also concluded that the baseless allegations raised serious concerns about the agent's judgment, bias, and ability to perform his duties. OPR referred the matter to the agents supervisors for appropriate action.

Career Opportunities

The U.S. Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. It is the policy of the Department of Justice to achieve a drug-free workplace and persons selected for the following positions will be required to pass a urinalysis test to screen for illegal drug use prior to final appointment.

Assistant United States Attorney
United States Attorney's Office
District of Utah

The United States Attorney's office (USAO) for the District of Utah is seeking an attorney for an Assistant United States Attorney position in the Salt Lake City office.

This Assistant will serve in a two-year term appointment in an affirmative civil enforcement position, and will work with Federal agencies in developing and litigating cases to recover civil penalties and other funds owed to the United States and to pursue recovery for damages based on fraud, tort, and breach of contract.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year of post-JD experience. At least two years of commercial litigation experience is preferred.

Applicants must submit a current OF-612 (Optional Application for Federal Employment) or resume to:

United States Attorney's Office
Attn: Linda Pearson
350 South Main Street
#B-36 U.S. Courthouse
Salt Lake City, Utah 84101

All resumes must be received or postmarked no later than October 31, 1996. No telephone calls please. Years of experience will determine the appropriate salary level. Relocation expenses will not be authorized.

Experienced Attorneys GS-13 to 15
Environment and Natural Resources Division
Wildlife and Marine Resources Section

DOJ's Office of Attorney Personnel Management is seeking two experienced litigators to handle complex civil and criminal cases in Federal courts under all Federal wildlife laws and laws concerning the protection of marine fish and mammals for the Environment and Natural Resources Division's Wildlife and Marine Resources Section in Washington, D.C. The Section has an opening in both civil and criminal litigation areas.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least three years of post-J.D. litigation experience.

Applicants must submit a current OF-612 (Optional Application for Federal Employment) or resume to:

U.S. Department of Justice
Environment and Natural Resources Division
Attn: Executive Officer
P.O. Box 7754
Washington, D.C. 20044-7754

No telephone calls please. These positions are open until filled but no later than November 8, 1996. Current salary and years of experience will determine the appropriate salary levels. Possible salary range is GS-13 ($52,867-$68,729) to GS-15 ($73,486-$95,531).

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* - Presidentially appointed

The USABulletin Wants You

The theme for the December Bulletin will again be International Legal Issues and the theme for the February USAB will be Civil Issues.

If an article you submitted to us is not in this issue, please look for it in the December 1996 issue.

Your ideas, suggestions, and articles for these two issues would be appreciated. Please contact David Nissman at AVISC01(DNISSMAN) or (809) 773-3920, with ideas and suggestions, or Wanda Morat at AEX12(BULLETIN) or (202) 616-4619, with articles, stories, or any other information for inclusion in future issues. Information for inclusion should be Emailed to AEX12(BULLETIN).

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