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Guy A. Lewis
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Managing Editor
Jim Donovan

Technical Editor
Nancy Bowman

Internet Address
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Introduction

Bruce G. Ohr, Chief
Organized Crime and
Racketeering Section
Criminal Division

Organized crime has gone multinational. It is sophisticated, violent, and is coming to a city near you. The past two decades have witnessed an unprecedented rise in the power and reach of international criminal enterprises, representing not only the dark side of globalization, but also a significant threat to economic and political stability in many countries around the world. New "mafias" from Russia, China, the Balkans, Viet Nam, Eastern Europe, and many other areas, have learned the benefits of international finance, easy international travel, and instantaneous wire and electronic communications. As a consequence, criminal enterprises operate worldwide networks engaged in every flavor of corruption and fraud, trafficking in drugs, persons, weapons, and other contraband, while hidden behind layers of front companies and offshore bank accounts. The specter of organized criminals teaming up with international terrorists adds a particularly frightening element to this picture.

As the world's most important market and prize destination for immigrants, the United States long ago lost any immunity it might have had from the depredations of these criminal organizations. While cases have been made against so-called "emerging" organized crime groups for many years, the last five years have seen a rapid rise in the scale and sophistication of criminal schemes across the country, executed by increasingly professional criminals. At a time when law enforcement personnel and budgets are effectively frozen or being cut in the area of organized crime, we find ourselves scrambling to master new areas and shoulder heavier burdens to prosecute larger international cases.

This issue of the UNITED STATES ATTORNEYS' BULLETIN attempts to give you a snapshot of a work in progress as we struggle to understand the new enemies and learn how to use new tools in our fight against international organized crime. The contributors–prosecutors and agents, Americans and foreign partners–bring a wide range of international and organized crime fighting experience to bear on these problems, and offer valuable suggestions on prosecuting cases in this new criminal environment. One of the most important pieces of advice in this issue is how you can use the power and flexibility of the Racketeer Influenced and Corrupt Organizations (RICO) statute against these elusive organizations. My hope is that you will read something in this issue that strikes a chord, pick up a few new tricks, and get interested in pursuing the next potential international case that comes across your desk.

The Organized Crime and Racketeering Section is dedicated to making these types of cases work, and we will be happy to give you whatever support and advice you need in your next case–or we will team up with you to put these guys away.❖

ABOUT THE AUTHOR

❑**Bruce G. Ohr** has served as the Chief of the Organized Crime and Racketeering Section, Department of Justice, since February 1999. From 1991 to 1999, he was an Assistant United States Attorney in the U.S. Attorney's Office for the Southern District of New York, and was Chief of the Violent Gangs Unit in that office from 1998 to 1999. Mr. Ohr was an associate at the San Francisco law firm of Orrick, Herrington & Sutcliffe from 1988 through 1991. ✠

International Organized Crime Center

John DiStasio
Unit Chief
International Organized Crime Center
FBI Headquarters

The International Organized Crime Center (IOCC), was recently established at FBI Headquarters in Washington, DC for the purpose of enhancing the FBI's ability to identify and dismantle global criminal enterprises whose activities and influence threaten United States interests at home and abroad. The creation of the IOCC represents the FBI's continuing commitment to the investigation of all organized criminal activity which affects the United States, regardless of its origin. The twenty-first century has ushered in a new era for organized crime. Organized crime groups, we now know, have expanded their operations on the international scene to an unprecedented degree. In some cases, such as in the Balkans, governments and national institutions have been co-opted and corrupted by these groups. In the Russian Federation and Italy, political and business leaders have been assassinated by individuals associated with organized crime. Recently, the Prime Minister of Serbia, who had pledged to fight corruption and organized crime, was murdered in Belgrade by what Serbian law enforcement figures described as criminal elements. Soon after, a prominent member of the Russian Duma, a strong proponent of rule of law issues, was assassinated in Moscow and organized crime elements are suspected. In Afghanistan, where efforts are underway to decrease acreage devoted to the production of the heroin poppy, the Minister responsible for this program was recently murdered.

International organized crime threatens the national security of the United States in a variety of ways. The globalization of commerce and banking, along with mass migration and international political/economic turmoil, has brought with it additional avenues for criminal profiteering. Organized crime (OC) groups have compromised politicians and business leaders in various post-Communist nations and are using these connections to intimidate the populace and extract profits from the economy. This same economy involves United States market share, welcomes United States foreign aid, and invites United States investment and tourism. In some cases, these groups have penetrated and co-opted national intelligence and military organizations, and in so doing have had an extraordinarily adverse impact upon foreign relations and regional stability. The ability of OC groups to destabilize entire regions, both politically and economically, is growing. Narcotics traffickers, for example, are amassing greater wealth and power worldwide, and are increasingly more likely to incite political unrest and economic subversion in Latin America, Central Asia, and Southwest and Southeast Asia. This directly affects both United States national security and domestic tranquility.

International organized crime seriously threatens the home front, especially in our larger cities where criminal aliens prey upon, and find refuge within, their own large, amorphous, ethnic communities. Organized crime investigations within the FBI have long revealed an upward trend in the number of cases reflecting an international nexus. FBI Special Agents and prosecutors are routinely traveling worldwide in support of these investigations and have become increasingly more reliant upon foreign sources of evidence and witness testimony. Further, the United States Bureau of Prisons advises that the number of foreign born inmates incarcerated for racketeering types of offenses is on the rise. This number includes an increasingly larger proportion of illegal aliens from the Balkans, Central Europe, and Asia.

This situation demands a coordinated response from law enforcement and intelligence agencies in the United States and overseas. The IOCC is intended to provide a focal point for these efforts through intensive collection and analysis of criminal intelligence gathered from all sources worldwide. In conjunction with FBI Legal Attaches (Legats), the IOCC seeks to coordinate investigative and intelligence gathering activities between the FBI and law enforcement agencies overseas. Since close coordination and liaison with the federal law enforcement and intelligence community is absolutely essential, representatives from these agencies will be invited to participate in, contribute to, and profit from, this endeavor. Indeed, active and substantive participation by these agencies is critical to the long-term success of the IOCC, which depends upon both interagency and international cooperation.

The IOCC is presently being staffed with experienced analysts, most of whom possess advanced degrees in fields germane to international issues and transnational criminal activity. Most have been previously employed within the intelligence or defense community. In the near future, four experienced Supervisory Special Agents, (SSAs) will be reporting to the Center. In order to address the global nature of this problem, the IOCC has been divided into two units, and, when fully staffed, each unit will contain a Unit Chief, four SSAs, and twelve Analysts. Responsibility for geographic regions will be divided between the two units.

The IOCC's mission is threefold:

- to serve as the coordination point for United States resources dedicated to investigation and intelligence gathering regarding international OC groups;
- to identify and assess the structure and criminal portfolio of those international OC groups deemed to pose a threat to United States interests; and
- to establish policy and procedures designed to coordinate and support domestic and extraterritorial investigative activities aimed at the disruption, dismantlement, and prosecution of international OC groups and enterprises.

The IOCC will focus upon Eurasian, Italian/Sicilian, Asian, African, Latin American, and Middle Eastern criminal enterprises which have a demonstrated nexus to the United States. Long-established and newly-emerging organized crime groups and enterprises will be prioritized in direct proportion to the threat they represent. With the active participation of foreign and domestic law enforcement and intelligence agencies, strategic and tactical issues related to international organized crime activity, such as money laundering trends, transnational weapons smuggling, trafficking in women and children, large scale financial fraud, and narcotics trafficking, will be routinely reviewed and evaluated. Analytical results will be disseminated within the federal law enforcement and intelligence community and, when appropriate, will be furnished to state, local, and foreign jurisdictions. Emphasis will naturally be upon supporting and expanding those pending United States investigations that reflect a clear connection to foreign criminal organizations. Strategic analysis will be oriented toward identifying short and long-term trends and issues in international organized crime and identifying emerging individuals and organizations.

The IOCC is currently experimenting with numerous analytical models and techniques and is also studying information processing methodologies utilized by other law enforcement agencies, as well as by the private sector. Integrated databases will be established over time and are intended to be as comprehensive as prevailing technology will allow. IOCC SSAs and Analysts will work directly with the field, FBI Legats, and our law enforcement counterparts overseas in support of selected investigations and analytical projects. Selected investigations will be prioritized in close consultation with the field, based upon the nature of the threat represented by the targeted OC group. Analytical projects will focus upon those international OC groups deemed most threatening and most likely to affect United States interests.

Whenever appropriate, analytical products generated by the IOCC will also be furnished to our law enforcement counterparts overseas. Since we seek to maintain a reciprocal and mutually beneficial relationship with foreign law enforcement agencies for purposes of criminal intelligence sharing, the IOCC anticipates the exchange of a significant volume of information. As in the past, this sharing process is intended to develop bilateral and multilateral investigative initiatives and to encourage the exchange of actionable criminal intelligence and evidentiary materials on a regular basis. As is apparent, this is an ambitious objective which will require much effort and a great deal of patient relationship development, both at home and abroad. Numerous problems must be overcome, not the least of which are those related to the vast differences in structure and mission among foreign law enforcement agencies. Our Legats deal with this particular issue on a daily basis, and will provide invaluable guidance and assistance in dealing with our foreign counterparts.

Federal law enforcement agencies in the United States have enjoyed a long period of successful liaison with law enforcement organizations overseas. Drug Enforcement Administration (DEA) Country Attachés and Special Agents are stationed worldwide. They have provided much needed leadership, support, and training, to dozens of countries involved in the counternarcotics effort, particularly in Latin America and Southeast Asia. The FBI's Legats network is currently undergoing a significant expansion in both number of offices and personnel assigned. United States Customs and

Immigration and Naturalization Service (INS) personnel have similarly, and successfully, established themselves overseas, while the United States Secret Service is also represented at several United States embassies abroad. Each and every United States embassy houses Special Agents from the Bureau of Diplomatic Security. Criminal investigators from the United States Agency for International Development are not far behind. The reach of United States law enforcement is long and the potential for information/intelligence gathering is enormous. United States law enforcement representatives are present at the headquarters of Interpol at Lyon, France, and they are also working closely with Europol. The IOCC intends to systematically tap into this vast resource in order to maintain an accurate and ongoing picture of international organized crime activity.

In the vast majority of cases, United States law enforcement has enjoyed excellent cooperation from its counterparts overseas. This is reflected in the growing number of joint investigations now underway around the world. In fact, many types of investigations, especially those involving organized crime and narcotics in the international arena, have engendered a significant level of interdependence between United States and foreign law enforcement agencies. Certain high-profile organized crime investigations could not have been successfully concluded without significant contributions from our overseas counterparts. These long established relationships of trust and confidence will be an invaluable asset to IOCC operations.

Unfortunately, numerous repressive, developing, or impoverished nations in the world today have police forces and judiciaries suffering from high levels of corruption. In certain areas of the world, the rule of law is either weak or nonexistent. This situation can pose serious impediments to cooperation and significant challenges for the IOCC. Since our organized crime investigations involve our most sophisticated investigative techniques and our most sensitive sources, extreme care must be exercised with regard to any disclosures. This is especially problematic when dealing with foreign police agencies which are known or suspected of being widely corrupted. In such cases, prospects for meaningful cooperation are slim and possibly not worth the risk of compromise. Certain United States investigations with an overseas nexus, for example, may involve OC figures who occupy public office, are prominent in business or industry, or who are otherwise influential within a given country. These factors will, of course, be carefully evaluated. Decisions regarding the dissemination or solicitation of criminal intelligence, in a given matter, will be closely coordinated with those close to the investigation. The IOCC will remain extremely vigilant in this regard.

In addition, the interests of advanced nations with close ties to the United States may, at times, not be compatible with United States interests. Therefore, each and every element of criminal intelligence sharing with foreign police agencies will be carefully measured on a reciprocal risk/reward basis. The vital interests of pending investigations will always remain paramount in this process.

IOCC efforts will focus also upon examination of the nexus between international organized crime and international terrorist activities. This timely and important issue warrants close and continuing scrutiny. It is virtually certain that, in some cases, structural links exist between international organized crime and terrorist activity. The IOCC believes that, due to ever decreasing funding sources and declining state sponsorship, it is increasingly likely that terrorist groups will turn to traditional criminal activity in order to finance operations. This view is shared by many in the law enforcement and intelligence community. Moreover, during detainee debriefings in Guantanamo Bay and elsewhere, it became apparent that many of these individuals were involved in criminal activity prior to their recruitment into their respective terrorist organizations. Further, the Taliban's involvement in international drug trafficking has long been known to law enforcement, as have the narcotics trafficking activities of various terrorists groups in Latin America and Southeast Asia.

In addition to drug trafficking, terrorist organizations have been known to participate in alien and contraband smuggling, large scale financial institution fraud, production of fraudulent documents, illegal weapons and military equipment acquisition, extortion in the form of demands for tribute payments, money laundering, tax evasion, robbery, and kidnaping. These activities share the same long-established smuggling routes and networks of corrupt customs officials. Colombian and Filipino terrorist organizations have been regularly involved in kidnaping for ransom activity, while criminal enterprises of Middle Eastern origin appear to have been especially active in contraband smuggling, credit card fraud, financial fraud,

money laundering, and weapons smuggling. Indeed, the above noted criminal activities can, in some cases, be considered as "signature" criminal violations common to both international organized crime and terrorist activity.

Currently, the IOCC is focusing on a variety of international OC issues and groups, and assessments are underway to identify and prioritize the most threatening organized crime groups and criminal enterprises. Emerging Balkan OC groups are of increasing interest, especially those originating in Albania and Kosovo. Ethnic Albanians emigrated in vast numbers during the 1990s and now represent a significant presence throughout Western Europe, Canada, and the United States. As of 2000, an estimated 500,000 ethnic Albanian émigrés resided in the United States and Canada, 400,000 in Germany, and 30,000 in Great Britain. While the vast majority of newly arriving émigrés are honest, hardworking individuals in pursuit of a better life for themselves and their families, a small number are intent on simply transplanting their criminal lifestyles.

Emerging Albanian OC groups present a formidable challenge for Special Agents and prosecutors. Tribal, clannish, and paramilitary, these organizations rival La Costa Nostra (LCN) at the height of its power and influence in terms of their cohesive structure, secrecy, and penchant for violence. Research recently conducted by the LCN/Balkan Organized Crime Unit at FBI Headquarters revealed that, within the past ten years, approximately 3,659 Albanian-born individuals were arrested in the United States. Crimes included a variety of offenses ranging from spousal abuse to murder. Lately, however, these offenses have reflected a significant increase in traditional racketeering activity such as illegal gambling, prostitution, and extortion. In the United States and Europe, Albanian criminal groups are also heavily involved in bank robberies, automobile theft, and theft from interstate shipments, that is, activities that are reminiscent of the LCN early in its criminal evolution. In New York City, Albanian OC groups are occupying territory formerly controlled by long-established, but recently weakened, LCN groups.

These organizations are also heavily involved in worldwide narcotics trafficking, especially heroin. During the past five years, Albanian OC groups have come to dominate the heroin trade throughout Europe. European law enforcement officials advise that more than 80% of the heroin available on the European market has, at some point, been smuggled through the Balkan States. In Germany, Switzerland, Austria, and the Scandinavian countries, it is estimated that approximately 70% of the heroin market is controlled by Albanian OC groups. Further, the majority of these heroin shipments originate in Afghanistan and Central Asia, suggesting the existence of extremely dangerous criminal alliances. It is clear that the Albanian narcotrafficking networks have become so powerful and extensive as to rival long established Turkish and Sicilian networks.

Albanian OC groups have always worked closely with Italian OC figures, particularly in the drug trafficking arena where they have provided couriers and maritime smuggling routes across the Adriatic Sea. Large Albanian communities have been established in Southern Italy where natural linkages have been formed with the Calabrian Mafia and the Sacra Corona Unita. The IOCC, in conjunction with the Organized Crime Section of FBI Headquarters, is working closely with Italian law enforcement officials in sharing sharply focused criminal intelligence on this issue and on Italian/Sicilian organized crime matters in general.

Despite rumors of their demise, LCN continues to represent a serious organized crime problem within the United States and Canada. Strenuous efforts to dismantle these organizations have long been underway and significant progress is being made. Recent FBI investigations have confirmed linkages between United States LCN figures and their counterparts in Sicily and Italy where safe houses have been established and where pliable bankers have been identified and co-opted. High-ranking LCN figures in the United States have been voicing a great deal of frustration over perceived lapses of discipline within their ranks and have sought new recruits and criminal expertise from Sicily and the Italian mainland. In addition, individuals affiliated with the Camorra and `Ndrangheta, two Italian OC groups active in Italy and elsewhere in Southern Europe, have surfaced in the United States and Canada. IOCC resources are being devoted to supporting pending investigations in this area wherever an international nexus has been established.

IOCC resources have also been assigned to support Eurasian OC investigations and IOCC personnel are presently on the ground in Budapest, Hungary in support of the FBI/Hungarian National Police Organized Crime Task Force. Several Russia-based organized crime groups, associates of which are active in the United States and internationally, are of interest to

the IOCC and are the focus of analytical projects. The IOCC is also supporting several pending investigations targeting Asian and Mexican criminal enterprises active in the United States and Canada. In addition to the narcotics trafficking component, these investigations reflect extensive alien smuggling and money laundering activity.

Threats posed by international organized crime will not diminish in the near future. All indications suggest exactly the opposite will happen. The IOCC represents a concerted effort to integrate and coordinate law enforcement and intelligence community resources in order to more effectively address this growing global problem. United States law enforcement agencies, at every level, have shown themselves to be especially skillful in conducting highly complex, long-term, and sophisticated organized crime investigations, both at home and abroad. When possible and when appropriate, domestic investigations with an international nexus should be expanded to include foreign-based subjects. The IOCC intends to actively assist in that process.❖

ABOUT THE AUTHOR

❑**John J. DiStasio** is currently assigned to the International Organized Crime Center at FBI Headquarters as Unit Chief. Previous to this assignment, Mr. DiStasio served in the FBI's New York Division where he supervised an organized crime squad that targeted La Cosa Nostra operations in the greater New York City area.✠

The Focus of the FBI's Organized Crime Program

WK Williams
Chief, Organized Crime Section (OCS)
Criminal Investigative Division
Federal Bureau of Investigation

Reports of the demise of the FBI's Organized Crime Program (OCP) have been greatly exaggerated. To the contrary, the FBI is still fully engaged in combating organized crime groups that affect American society, whether they be national organizations or transnational enterprises.

As a result of the events of September 11, 2001(9/11), the FBI continues to undergo significant change and reorganization to improve its ability to respond to the challenge of terrorism and other issues. The Director's restructuring and realignment of priorities to improve services, and protect the American people, will have no long-term negative effects on the work of the OCP. Moreover, the OCP has not suffered any significant loss of resources. When a major event such as 9/11 occurs, all available resources of the FBI must be harnessed to address that emergency. This will, of course, disrupt and delay some ongoing investigations and prevent or hold in abeyance the initiation of some new investigations. This interruption and diversion of resources is necessary to address more urgent national security matters.

What was not affected by 9/11 was the FBI's commitment and dedication to aggressively combat the efforts of transnational national organizations and criminal enterprises that pose a threat to America's economy, its national security, and its citizens. Investigations have taken place during the past two years against members and associates of La Cosa Nostra (LCN), Italian Organized Crime (IOC), and Russian and Asian organizations, that have resulted in successful prosecution and convictions. For the first time ever, all heads of the major LCN families are incarcerated at the same time. These successes were possible because there was never a loss of focus on the importance of combating the negative influences and effects of organized crime on the daily lives of Americans, even during this very difficult period in American history with its renewed and appropriate focus on counterterrorism matters.

Looking ahead, the OCP will continue to focus its efforts on transnational national organizations and criminal enterprises whose criminal activities pose a threat to the United States. The FBI will direct its OCP resources toward four distinct groups of transnational national organizations, or criminal enterprises: 1) traditional, well-entrenched organizations such as the La Cosa Nostra and Italian Organized Crime; 2) Eurasian organizations that have emerged since the fall of the Soviet Union; 3) Asian Criminal enterprises, and 4) African Criminal Enterprises. Emerging from within the aforementioned organizations is the specter of Albanian organized crime figures. The FBI OCP will direct specific intelligence gathering and investigative strategies toward Albanian organized crime in an effort to prevent the establishment of a firm foothold within the United States. A second reason for concern is the developing relationship and interaction between Albanian organized crime groups and some LCN families. Additionally, several foreign law enforcement and intelligence entities have expressed concern about the presence of Albanian organized crime in their countries and its nexus to the United States.

In order to combat the emerging criminal activity of Albanian organized crime and other transnational national organizations and criminal enterprises, the OCS will enhance intelligence sharing with foreign counterparts where appropriate and permissible by law, and where there exists a nexus to the United States. Additionally, there will be an effort to identify common investigative targets and initiate joint investigations with foreign counterparts.

Undeniably, transnational national organized crime is an immediate and increasing concern of domestic and international law enforcement and intelligence communities. Therefore, it is important to establish and maintain effective liaison relationships and working partnerships with domestic law enforcement counterparts and prosecutors. It is equally important to establish and maintain effective liaison and partnerships with foreign counterparts where the leadership or direction of transnational criminal enterprises are foreign-based. Without this valuable liaison and partnership, the investigation stops at the borders and allows the criminal enterprise to gain an advantage by exploiting these boundaries. Our efforts to pursue and maintain positive relationships will be to deny criminal enterprises this advantage.

The focus and mission of the OCP is the disruption and ultimate dismantlement of transnational, national organizations, and criminal enterprises that pose the greatest threat to American society. This will be accomplished through sustained, coordinated investigations, the utilization of criminal and civil provisions of the Racketeering Influenced and Corrupt Organizations (RICO) statute, and the use of sophisticated investigative techniques.

Finally, the focus on transnational national organizations, and criminal enterprises will be characterized by vitality and passion. All techniques and tools available under the law will be used to thwart such criminal activities. We will engage our foreign counterparts to share intelligence and seek opportunities for joint investigations. Additionally, the OCP will focus on increasing multi-division and multi-district investigations in a coordinated effort to dismantle transnational national organizations and criminal enterprises. The OCS looks forward to working in partnership with the prosecutors and Department of Justice attorneys in this endeavor.❖

ABOUT THE AUTHOR

❑**WK Williams** has been Chief of the FBI's OCS since January 2003. Mr. Williams was the Assistant Special Agent in Charge of the Jacksonville Division from 2000 to 2003. He has served two tours at FBI Headquarters. Additionally, he served in the Las Vegas and San Francisco Divisions, where he worked traditional organized crime, gang investigations, and served as an undercover agent. In the San Diego Division, he supervised a drug squad targeting Mexican and Colombian Drug Cartels, from 1995 to 1997.✠

The FBI's Legal Attache (Legat) Program

Susan M. Curtis
Special Agent (Ret.)
FBI Headquarters

Joyce McClelland
Analyst, Office of International Operations
FBI Headquarters

I. Legat history

In 1939, President Franklin D. Roosevelt placed the responsibility for investigating espionage, sabotage, and other subversive activities, with the Federal Bureau of Investigation (FBI), the Military Intelligence service of the War Department (MID), and Other Naval Intelligence (ONI). A Presidential Directive designated the FBI as responsible for coordinating and disseminating intelligence and security information to other federal agencies, and on June 24, 1940, the Special Intelligence Service (SIS) was established. In connection with the SIS, the Bureau dispatched Special Agents (SAs) to various countries throughout the Western Hemisphere, primarily for intelligence gathering purposes. In 1941, the U.S. Ambassador to Colombia requested the assignment of a SA to the U.S. Embassy in Bogota. Bogota proved to be the forerunner of what eventually became the FBI's Legal Attache Program. In 1942, SAs assigned to U.S. embassies were carried on the diplomatic roster and given the tile of Legal Attaché by the State Department. As the need for intelligence information pertaining to World War II diminished, SAs assigned to posts in Europe, Canada, and Latin America, began acting in a liaison and/or training capacity.

In 1947, the SIS closed its offices and turned over its work, jurisdiction, and files, to the newly established Central Intelligence Group, presently known as the Central Intelligence Agency. At this time, the FBI's Legal Attaches continued to maintain liaison with foreign police, intelligence agencies, and offices in other U.S. agencies.

Over the next few decades, the Legal Attache Office became a permanent presence in many U.S. Embassies, with openings and closings of Legat Offices as investigative demands and crime trends changed.

The following offices were opened prior to Fiscal Year (FY) 1991:

- Bangkok
- Berlin
- Bern
- Bogota
- Bridgetown
- Brussels
- Canberra
- Hong Kong
- London
- Madrid
- Manila
- Mexico City
- Ottawa
- Panama City
- Paris
- Rome
- Tokyo

From FY 1992 to the present, the FBI more than doubled the number of Legat offices and its staffing levels serving abroad.

The following offices were opened during the years 1992 through 2002:

- 1992 - Athens, Caracas, and Vienna;
- 1994 - Moscow and Santiago;
- 1996 - Cairo, Islamabad, and Tel Aviv;
- 1997 - Buenos Aires, Kiev, Pretoria, Riyadh, Tallinn, and Warsaw;
- 1999 - Ankara, Brasilia, Copenhagen, and Lagos;
- 2000 - Almaty, Bucharest, New Delhi, Prague, Seoul, and Singapore;
- 2001 - Amman, Nairobi, and Santo Domingo; and
- 2002 - Beijing

Using the successes produced in all fields of international crime and counterterrorism, the Legat offices, working in conjunction with FBI domestic offices and the host nation counterparts, continued its expansion plan. By the end of FY 2002, the FBI had forty-five Legal Attache Offices worldwide and a Liaison Office in Miami, providing coverage for over 200 countries, territories, and island nations. The FBI's process for opening Legat offices and allocating resources is based on comprehensive planning, which identifies criminal activity in the United States with a nexus to a foreign country. In addition, each office is established through mutual agreement with the host country and is situated in the U.S. Embassy or U.S. Consulate in that country.

The FBI has authority to open Legat Offices in the United Arab Emirates, Georgia, Malaysia, Morocco, and Yemen, in the coming year.

II. Law enforcement initiative

There are three key elements to the FBI's international law enforcement initiative.

- The FBI must have an active overseas presence that fosters the establishment of effective working relationships with foreign law enforcement agencies. There is a well-documented history of Legal Attaches who have drawn upon their investigative experiences and backgrounds and enlisted the cooperation of foreign law enforcement on innumerable cases, which led to the arrest of many U.S. fugitives and the solving of serious U.S. crimes.
- Training foreign law enforcement officers in both basic and advanced investigative techniques and principles is a powerful tool for promoting cooperation. For decades, the FBI's National Academy Program has fostered comity with international, state, and local law enforcement agencies.
- Institution building is necessary to help establish and foster the rule of law in newly democratic republics. Establishing a rule of law promotes greater confidence of the citizens and stability in these new governments. Fostering the development of democratic principles in these countries will not only protect the United States' interests and citizens in those countries, but also bring stability to regions which have been fraught with strife throughout history.

III. Legal Attache Program

The 126 Special Agents and seventy-four professional support employees assigned to the Legat offices work in support of the FBI's domestic law enforcement mission. It is the responsibility of the Legal Attache to pursue international aspects of the FBI's investigative mandates through established liaison with principal law enforcement and intelligence/security services in foreign countries, and to provide a prompt and continuous exchange of information with foreign law enforcement and intelligence agencies.

Since September 11, 2001, the FBI has reorganized to effectively meet the challenges of the nation's war on terrorism. In May 2002, FBI Director Mueller established ten priorities for the FBI. The Legat Program actively supports the FBI's top two priorities: protect the United States from terrorist attacks, and protect the United States against foreign intelligence operations and espionage. International terrorism and counterintelligence matters are the highest priority of most of the FBI's forty-five Legat offices. The Legat Program represents a vital component in the FBI's counterterrorism efforts. It is primarily through the Legat Program that the FBI coordinates investigative efforts and shares information with international law enforcement and intelligence partners.

A Legat presence throughout the world has enhanced the FBI's ability to bring investigative resources to bear quickly in the aftermath of terrorist acts. Legats assist in the investigations of terrorist acts under U.S. extraterritorial jurisdiction and international law, coordinate with foreign authorities to arrange rendition of terrorists, and provide investigative assistance to foreign law enforcement organizations as requested. For example, in response to the events of September 11, 2001, Legat offices facilitated the rapid deployment of approximately 700 FBI personnel overseas. Legats also assisted in the investigation of the October 2002 shooting of U.S. AID Officer Laurence Foley in Amman, the bombing earlier this year of a disco in Bali, and the recent bombing of the airport at Davo City in the Philippines where twenty-one people were killed, including one American.

The FBI has also provided a steady stream of Temporary Duty (TDY) Agents and support personnel to the most active Legat offices, with as many as eighty individuals circulating among FBI Legat offices at any given time.

Each Legat is the FBI Director's personal representative in the foreign country where he/she resides or where he/she has regional responsibilities. Their job is to respond to the FBI's domestic and extraterritorial investigative needs as effectively as possible. Since FBI agents do not have traditional law enforcement powers overseas, they must rely upon strong, reciprocal partnerships with their foreign counterparts. Legats are responsible for building these relationships on behalf of all FBI agents. By focusing on one country or several nations in a given area, Legats are able to maintain regular, often face-to-face contact with foreign officials, and to thoroughly familiarize themselves with the investigative practices and protocols of their assigned countries. These efforts are critical to cultivating and facilitating timely support for the Bureau's overseas investigations. Though Legats spend a majority of their time pursuing leads for agents in the United States, they strengthen bonds with foreign authorities by sharing information and offering FBI assistance in cases that may have a nexus to this country.

Extraterritorial operations by the FBI are limited to investigations and inquiries concerning alleged criminal activity which impacts, or potentially impacts, the United States or a person protected by U.S. law. Types of international criminal activities include terrorism; organized crime; financial fraud and economic crime; money laundering; kidnaping/extortion; child pornography; and computer intrusions. FBI Agents do not have arrest powers, subpoena powers, or the authority to conduct investigations in other countries without the approval of the host country. The FBI has the obligation to ensure that all investigations are conducted in a manner which respects the sovereignty of the country in which it is being conducted and thus, effective liaison is essential. All operations conducted overseas are done in strict accordance with the U.S. State Department Chief of Missions' directives and the guidelines promulgated by the Attorney General regarding overseas law enforcement activities.

Investigations in foreign countries are conducted through host country liaison contacts developed and maintained by the Legat. Each host country determines the kinds of investigative activity which can be conducted independently by a Legat. Many host governments permit the informal exchange of police-to-police information (record checks, public record acquisition) between Legat and local law enforcement, but forbid more involved investigation, such as interviews of individuals.

Investigative assistance from a foreign country may be obtained through letters rogatory or a mutual legal assistance treaty (MLAT) request. Letters rogatory are the customary method of obtaining assistance from overseas in the absence of a treaty or other agreement. A letter rogatory is a request from a judge in the United States to a judicial officer in a foreign country asking for compulsion of testimonial, documentary, or other evidence, or effecting service of process. Letters rogatory generally include background information, the facts of the case, an articulation of the assistance requested, the text of the statutes, and a promise of reciprocity. Such letters are prepared by the U.S. Attorney's Office and the U.S. Department of Justice's Office of International Affairs in coordination with the FBI field office, FBI Headquarters, and the appropriate Legat. The United States has entered into an increasing number of MLATs, which have the force of law, and define the obligation to provide assistance, the scope of assistance, and the contents of the requests with specific countries. The MLATs shorten the letter rogatory process and provide a direct, formal procedure for making and receiving requests between justice ministries. As a general rule, any type of investigative assistance which would require a compulsory process to accomplish in the United States (federal grand jury subpoena, search warrant, court order) must be sought employing a letter rogatory or MLAT request.

All FBI field offices have sought Legat assistance in covering investigative requests, with the largest portion coming from major metropolitan offices. More than 80 percent of the current case load handled by the Legats is in direct support of domestic FBI investigations, covering not only leads, but organizing the arrest and extradition of wanted criminals to the United States. International extradition is the formal process by which a person found in one country is surrendered to another country for trial or punishment. The process is regulated by treaty and conducted between the U.S. Government and the government of a foreign country. It differs considerably from interstate extradition or interstate rendition. Extradition, in most instances, may be granted only pursuant to a treaty. Responsibility for extradition matters lies with the Department of Justice (Department) and the Department of State. Legats cannot execute arrests in foreign countries.

The forty-five Legat offices are supported by the Office of International Operations (OIO) at FBI Headquarters (FBIHQ). The mission of the OIO is to provide a centralized and critically essential infrastructure to support the Legats. As mentioned earlier, Legats are the principal element in the FBI's overall international counterterrorism and anticrime mission, and the OIO provides FBIHQ-based operational investigative analysis, training, budget, personnel, and facilities support mechanisms. This centrally located and managed entity enables the Legats, working with and through their foreign counterparts, to detect and disrupt international crime and terrorism organizations. This ultimately prevents the victimization of U.S. citizens and interests, both domestically and abroad, by terrorist groups. By centralizing the FBI's International Program, the FBI provides a single point of contact for all FBI missions, initiatives, and investigations abroad supported by and through the Legat Program. The OIO is comprised of the following:

- International Operations Units I and II which are responsible for Legat operations in Europe/Africa and the Western Hemisphere/Asia respectively;
- the International Operations Administrative Unit which handles all administrative support for the Legat offices, including personnel, housing, transportation, and training of personnel; and
- the Protocol Affairs Unit which is responsible for all official foreign dignitaries who visit FBI Headquarters and its executive management, as well as the Director's Office. The Protocol Affairs Unit is also responsible for obtaining required diplomatic and official passports and visas to facilitate the foreign travel of all FBI personnel.

IV. International training programs

Training foreign law enforcement officers is particularly critical to combating international crime. It provides an opportunity for FBI personnel to cultivate relationships with foreign law enforcement officials that can be utilized by both parties in the pursuit of international criminal investigations. To date, the FBI has trained approximately 50,000 law enforcement and judicial officers representing 150 countries.

Legal Attaches help identify suitable candidates among their foreign police contacts to attend the FBI's National Academy program. Thereafter, mid-level managers from state, local, and foreign police agencies receive training at the FBI Academy in Quantico, Virginia. Graduates of the National Academy form a collegial national and international network. Approximately 10 percent of each class comes from overseas. Legal Attaches maintain close contact with foreign graduates of the National Academy, seeing them regularly, holding regional retraining sessions annually, and routinely dealing with them on cases/matters of mutual interest.

Through a program and concept of in-country training, the FBI conducts one and two-week schools, which are designed to meet a country's particular training needs. The schools concentrate on subjects such as basic and advanced police operations, technical skills, ethics, and internal police controls. Senior FBI agents serve as instructors, bringing their knowledge and expertise to these programs. These training programs enable foreign police entities to advance their abilities to investigate matters such as money laundering, bombings, bank fraud, fugitives, drug trafficking, and crime scene investigation.

Under the auspices of the Department of State's Antiterrorism Training Assistance program, and working with the Department of Defense, the FBI has also developed three training courses which attempt to counter threats of concern to the United States. These three courses include: Major Case Management, Terrorism Crime Scene Management, and the Criminal Justice Executive Forum. Each two-week course provides senior level law enforcement officials with leadership management, and organizational concepts and experiences, that are critical to the direction of national law enforcement agencies and to the coordination of multiagency crisis management and strategy.

Both the United States trainers and foreign law enforcement students benefit from these programs. Using case studies based on current investigations, the FBI demonstrates effective and principled law enforcement techniques. In return, the FBI receives valuable information from foreign police officers who are intimately familiar with the criminal organizations that the FBI is investigating. Finally, law enforcement training provides an extremely cost-effective method of opening channels of communication that dramatically extend the number and scope of the FBI's international contacts.

V. International Law Enforcement Academies (ILEA)/initiatives

The ILEA Budapest (Hungary) was opened in April 1995 under the leadership and supervision of the FBI. Modeled afer the FBI's National

Academy, the ILEA Budapest is a full service police training academy designed to assist the newly independent states of the former Soviet Union. The Academy offers a core eight-week management course, five times per year, and numerous specialty courses throughout the year. There are three or four countries participating at any given time. Since its inception, ILEA Budapest has trained 1,879 students from over twenty-five countries in the eight-week management course, and an additional 6,748 students from over twenty-six countries in the specialty courses.

The ILEA Bangkok (Thailand) opened in June 1999 under the leadership of the Drug Enforcement Administration. The FBI provides instructional support within the six-week core curriculum. The ILEA Gaborone (Botswana) is under the leadership of the Federal Law Enforcement Training Center. The FBI provides instructional support to ILEA Gaborone in the following areas: counterterrorism, public corruption, intelligence analysis, criminal investigative techniques, and forensics.

The OIO provides leadership and support for other international crime control initiatives, such as the following:

- **Southeast European Cooperative Initiative (SECI):** SECI is a U.S. initiated plan to address post-Cold War issues in Eastern Europe. It is a mini-Marshall Plan for Central Europe and the Balkans that recognizes a host of problems facing the region, including transborder crime and trafficking in human beings. The twelve countries included in SECI are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Macedonia, Moldova, Romania, Slovenia, Turkey, and Yugoslavia (Serbia and Montenegro).

  The FBI has been involved in SECI since 1998 when the Bureau was formally requested by the Department of State (DOS) to provide assistance and expertise in the development of anticrime task forces throughout the SECI region. At its inception, one agent was assigned to assist in the development of the center and its regional task forces. Since that time, the FBI has expanded its manpower and remains committed to this worthwhile initiative, concentrating primarily in the area of human trafficking.

  In October 2000, the SECI AntiCrime Center (SECI Center) was established in Bucharest, Romania, to address transborder crime, primarily organized crime, drugs, and trafficking in humans. The SECI Center serves as a clearinghouse for information and intelligence sharing for SECI, and is staffed by an elected management team derived from law enforcement officials from each of the twelve member countries, as well as observers from the United States and Western Europe (Great Britain, Italy, Germany, and Austria). It further contains leadership, management, and administrative elements, as well as liaison officers (police and customs) from each of the twelve countries. Additionally, an observer or liaison officer, from the (nonmember) United States and supporting Western Europe countries are present at the Center. Interpol and the World Customs Organization are permanent observers.

- **Budapest Project:** This was initiated as a coordinated effort between the Governments of the United States and Hungary to address the increasing threat of Eurasian organized crime in Russia and Central/Eastern Europe. It is focused on specific, ongoing cases and intelligence gathering in cooperation with the Hungarian National Police. To date, the project has enjoyed success with the arrests of at least four subjects, and the targeting of members of organized crime affiliated with the Semion Mogilevich Organization based in Moscow.

- **Linchpin Initiative:** In May 1999, Operation Linchpin was established to facilitate the sharing of information and operational leads, both domestic and foreign, between the law enforcement and intelligence community. Linchpin focuses on significant international criminal groups, for example, Eurasian, Italian, and Asian organized crime. Several law enforcement and intelligence agencies, including the FBI, are involved in sharing intelligence at regularly scheduled Linchpin meetings.

- **Project Millennium:** The FBI, along with law enforcement agencies from twenty-three countries, have provided Interpol with the names and profiles of thousands of Eurasian organized crime subjects in order to establish a worldwide database that allows participating countries to cross-reference and coordinate leads involving Russian and Eastern European organized crime members.

- **United States–Mexico Fugitive Initiative:** An initiative with the FBI, the Department,

and the Mexican government, designed to improve procedures for obtaining provisional arrest warrants for fugitives that have fled to the United States from Mexico.

- **United States–Canada International Fugitive Initiative:** The Department, FBI, United States Marshals Service (USMS), Royal Canadian Mounted Police (RCMP), Toronto Police Service, and Immigration and Naturalization Service (INS) exchange intelligence and improve efficiency in locating/apprehending fugitives who flee to the United States from Canada and to Canada from the United States.
- **The International Securities and Commodities Working Group:** This Group was established to bring together individuals, primarily Legats and their counterparts, who deal with international markets, to discuss ways to effectively coordinate investigations relative to the United States and international financial markets.
- **Plan Colombia:** The Department and the FBI are assisting Colombia in developing a comprehensive program to investigate kidnaping. This program will include the establishment of a Colombian law enforcement task force consisting of specially trained investigators. When appropriate, the task force will work closely with the FBI, particularly in cases involving U.S. nationals. The Department has also tasked the FBI with implementing a comprehensive training initiative designed to train law enforcement and military personnel from Colombia in antikidnaping investigative methods and procedures.
- **Canadian Eagle:** This is a joint initiative between the Canadian law enforcement agencies and the FBI, which targets unscrupulous Canadian telemarketers victimizing citizens of the United States, particularly the elderly. The FBI has placed two agents in Montreal, one agent in Vancouver and one agent in Toronto to work with the RCMP and other police agencies to identify, investigate, and prosecute these individuals.
- **The High Intensity Financial Crimes Area Task Force (HIFCAs):** This task force is a congressionally mandated approach to addressing complex and egregious money laundering conspiracies in a task force environment. HIFCAs have been established in the New York/Newark, Los Angeles, San Juan, Phoenix, El Paso, and San Antonio Divisions. Applications for designation have been made by the San Francisco and Chicago Divisions.
- **International Outlaw Motorcycle Gang Investigators Alliance:** Michigan area FBI, RCMP, and U.S. law enforcement agencies coordinate investigations, exchange intelligence, and analyze trends regarding motorcycle gangs and their criminal activities.
- **Interpol Project Rockers:** With respect to Outlaw Motorcycle Gangs (OMG), the FBI's Criminal Investigation Division, through the Violent Crimes and Major Offenders Section (VCMOS), Safe Streets and Gang Unit (SSGU), participates in the Interpol Project Rockers Annual Conference and takes part in the Project Rockers Steering Committee. Representatives from Europe, Australia, and Canada also participate. The goal of the meetings centers on efforts to evaluate and strengthen the international cooperation between the countries that are affected by criminal activities of OMGs and their members.
- **Project Stocar:** This is an FBI/Criminal Justice Information Services/Interpol initiative to share and exchange data regarding international vehicle theft.

VI. Statute additions due to an increase in international crime

The passage of additional statutes by Congress has led to greater responsibilities for the FBI and provides us with the legal justification for our presence overseas. Some of the recent additions include:

Title 18 U.S.C. §§

- 1589, 1590, 1591, 1592 Trafficking in Persons;
- 2339C Prohibitions Against the Financing of Terrorism (Suppression of the Financing of Terrorism Convention Implementation Act of 2002);
- 2332f Bombings of Places of Public Use, Government Facilities Public Transportation Systems and Infrastructure Facilities (Terrorist Bombings Convention Implementation Act of 2002);
- 1993 Terrorist Attacks and Other Acts of Violence Against Mass Transportation Systems (USA Patriot Act 2001);

- 2339 Harboring or Concealing Terrorists (USA Patriot Act 2001);
- 175B Biological Weapons; Select Agents (USA Patriot Act 2001);
- 2339A Providing Material Support to Terrorism (Antiterrorism and Effective Death Penalty Act of 1996);
- 2339B Providing Material Support or Resources to Designated Foreign Terrorist Organizations (Antiterrorism and Effective Death Penalty Act of 1996);
- 2332C Use of Chemical Weapons (Antiterrorism and Effective Death Penalty Act of 1996);
- 956 Conspiracy to Kill, Maim, or Injure Persons or Damage Property in a Foreign Country (Antiterrorism and Effective Death Penalty Act of 1996);
- 32 Aircraft Sabotage;
- 37 Violence at International Airports;
- 1119 Foreign Murder of US Nationals;
- 1204 International Parental Kidnaping;
- 2280 Violence against Maritime Navigation (Violent Crime Control and Law Enforcement Act of 1994);
- 2281 Violence against Fixed Maritime Platforms (Violent Crime Control and Law Enforcement Act of 1994).

Title 49 U.S.C. §§

- 46502 Air Piracy;
- 46504 Interference with Flight Crew Members and Attendants;
- 46505 Carrying a Weapon or Explosive on an Aircraft;
- 46507 False Information and Threats.

Title 31 U.S.C. §

- 5332 Bulk cash smuggling into or out of the United States (USA Patriot Act 2001)❖

ABOUT THE AUTHORS:

❑**Susan M. Curtis** recently retired from the FBI after serving twenty-seven years, including more than sixteen years of international experience. In addition to serving at FBI Headquarters, Mrs. Curtis served as Legal Attache in Canberra, Australia for three years.

❑**Joyce McClelland** has been with the FBI for over seventeen years. She has been an Analyst in the Office of International Operations for over six years with an emphasis on Eastern European criminal activities, and a focus on human trafficking.✠

International Aspects of Criminal Immigration Enforcement

Michael Surgalla
Criminal Division, Domestic Security Section
United States Department of Justice

Arthur Norton
Criminal Division, Domestic Security Section
United States Department of Justice

I. Introduction

A Taiwanese "snakehead" (slang for alien smuggler) brings boatloads of undocumented migrants from China to Guatemala, holding them hostage before arranging further passage to Texas. An Iranian national based in Ecuador smuggles Middle Easterners into the United States by air, using stolen European passports. A Salvadoran smuggling organization trucks hundreds of Central Americans, including many young children, across three countries under harsh conditions en route to California.

These are examples of the types of international smuggling organizations that target the United States as a favored destination of illegal aliens. Organized alien smuggling threatens to undermine the sovereignty and security of

transit and destination countries alike. Frequently, the health and safety of migrants are threatened as well. The phenomenon of international alien smuggling also poses complex challenges to the law enforcement and intelligence communities.

The purpose of this article is threefold:

- to highlight alien smuggling as a national law enforcement priority;
- to describe interagency and international cooperation in the context of maritime interdiction and immigration-related investigations; and
- to present an overview of the structure and immigration-related work of the new Domestic Security Section within the Criminal Division.

II. Alien smuggling as a national law enforcement priority

Prior to the 1990s, prosecution of alien smuggling and other immigration offenses was not perceived, on a national level, to be a high law enforcement priority. Criminal enforcement of immigration laws took a back seat to other concerns, including organized crime and racketeering, narcotics, public corruption, and white collar crime. Mass migration incidents involving Cuba and Haiti, for example, the 1980 Cuban "Mariel Boatlift," created major immigration enforcement problems, but were regarded mainly as civil or administrative in nature.

A series of high-profile, maritime alien smuggling episodes involving migrants from the People's Republic of China, however, captured the attention of both the government and the general public. Between 1991 and mid-1993, maritime smuggling incidents involving Chinese migrants gave rise to at least a dozen federal criminal prosecutions. Perhaps the incident that focused the Department of Justice's (Department) attention on alien smuggling as a major criminal law enforcement problem was the June 6, 1993 tragedy in which the *M/V Golden Venture*, carrying approximately 300 illegal Chinese migrants, ran aground near a beach in Queens, New York. Ten migrants drowned as they attempted to swim ashore. One day later, in a separate incident, New York City police rescued thirteen illegal migrants from China who were being held captive by suspected gang members, pending payment of smuggling fees.

Our experience with the Chinese boat cases suggested that the character of alien smuggling had changed. Once regarded as the province of small-time criminal entrepreneurs, alien smuggling had become a significant organized criminal activity that generated enormous sums of money with little risk to smugglers. It became apparent that stronger laws were needed to increase penalties and provide adequate investigative and prosecutorial tools to combat this conduct. Over several years, the Department sought, and Congress enacted, legislation that significantly enhances our ability to enforce criminal immigration laws.

The statutory maximum penalties for alien smuggling, passport fraud, visa fraud, and related offenses were increased. In addition, the United States Sentencing Commission increased the Guidelines applicable to these offenses. Alien smuggling-related offenses were added to the list of crimes for which court-authorized interception of wire, oral, or electronic communications may be obtained. (18 U.S.C. § 2516). The same crimes were added to the list of Racketeer Influenced and Corrupt Organizations (RICO) predicate offenses. (18 U.S.C. § 1961(1)). These offenses also come within the definition of specified unlawful activity (SUA) for purposes of the money laundering statute. (18 U.S.C. § 1956). Moreover, these offenses are now within the scope of the civil and criminal forfeiture statutes. (18 U.S.C. §§ 981, 982). Finally, in connection with undercover investigations, Congress increased authority to use certain practices, including operating businesses. (8 U.S.C. § 1363a).

Since 9/11, there has been increased recognition that immigration issues are part of the fight against terrorism, both in terms of using immigration prosecutions as a tool against suspected terrorists and, more broadly, in terms of ensuring that United States authorities know who is entering the country. As part of the ongoing post-9/11 review, laws, practices, and policies, are being reevaluated.

Further, as will be discussed more specifically in the context of particular investigations, other countries are increasingly willing to cooperate with the United States in immigration-related investigations and prosecutions. Informal methods of bilateral law enforcement cooperation, including information sharing, targeting, investigating, and expelling wanted persons to the United States, and permitting United States law enforcement to operate undercover in foreign territory, have led to the disruption or dismantling of a large number of smuggling organizations. Formal cooperation, including the availability of extradition for alien smuggling and related offenses, is increasing as well.

III. Interagency and international cooperation

A. Framework for international cooperation

The negative impact caused by organized alien smuggling is not unique to the United States experience. Other destination countries, among them Canada, Australia, the United Kingdom, and Italy, have identified alien smuggling as a potential threat to their national security. Many countries that are used by smuggling organizations primarily as transit points have become alarmed as well. Enlisting cooperation from a third category of countries, the so-called "sending states," to combat international alien smuggling is proving to be more difficult. Certain sending states reap significant financial benefits from emigration through the remittance of money by their nationals living abroad. Other countries use emigration as a political safety valve. Some of the countries that traditionally have not seen illegal migration in negative terms, however, are becoming cognizant of the problems caused by smuggling organizations, including corruption, erosion of the rule of law, and physical harm to migrants.

In November 2000, the United Nations concluded an important new multilateral law enforcement treaty. The United Nations Convention against Transnational Organized Crime (TOC) is designed to promote international cooperation by defining terms such as "organized criminal group," and requiring parties to criminalize certain conduct. Specifically, parties must criminalize participation in an organized criminal group, money laundering, corruption, and obstruction of justice.

TOC has three optional protocols:

- For purposes of this article, the pertinent instrument is the "Protocol against the Smuggling of Migrants by Land, Sea and Air" (Smuggling Protocol).
- A second protocol concerns trafficking in persons, a related, but separate form of criminal activity generally involving force, fraud, or coercion.
- The third protocol deals with firearms trafficking. (The United States has signed the main convention and the protocols on smuggling and trafficking, but has not signed the firearms protocol.)

The TOC become activated ninety days after the fortieth country has deposited its ratification with the United Nations. The Smuggling Protocol also requires forty ratifications, but cannot enter into force prior to the effective date of the main convention. (Presently, approximately thirty-three countries have ratified or acceded to the main convention, and approximately twenty-one have done so with respect to the Smuggling Protocol.)

The Smuggling Protocol is significant in that it will require parties to criminalize alien smuggling, document fraud, and related conduct, at least insofar as such acts are committed for gain by organized criminal groups. In conjunction with the main convention, the Smuggling Protocol should bolster longstanding efforts by the United States to encourage other countries to extradite fugitives who are accused of alien smuggling and related offenses. For more than a decade, the United States Government has sought to ensure that immigration crimes and related offenses, such as document fraud, are deemed to be extraditable offenses under new bilateral extradition treaties. In addition, the Smuggling Protocol will provide an international framework for cooperation in combating the smuggling of migrants by sea.

B. The United States approach to maritime interdiction of illegal aliens

For many years, aliens from Cuba, Haiti, the Dominican Republic, the Bahamas, and other Carribean countries, have used maritime smuggling routes to enter the United States illegally. Increasingly, aliens from other parts of the world have been availing themselves of the same smuggling routes and services. The primary destinations for these smuggling activities have been, and continue to be, south Florida, Puerto Rico, and the United States Virgin Islands.

With the proliferation of the smuggling of Chinese nationals in the early 1990s, the preferred destinations included ports on both the east and west coasts of the United States, as well as Hawaii and Guam. On June 18, 1993, just twelve days after the *M/V Golden Venture* episode, the government's policy with respect to the problem of alien smuggling was addressed by a Presidential Directive.

Presidential Decision Directive 9 (PDD-9) noted that the recent increase in Asian criminal syndicate smuggling of Chinese nationals illegally into the United States is a matter of serious concern. Accordingly, the following alien smuggling policy was adopted and, to a substantial degree, this policy remains in effect today.

> The U.S. government will take the necessary measures to preempt, interdict and deter alien smuggling into the U.S. Our efforts will focus

> on disrupting and dismantling the criminal networks which traffic in illegal aliens. *We will deal with the problem at its source, in transit, at our borders and within the U.S. We will attempt to interdict and hold smuggled aliens as far as possible from the U.S. border and to repatriate them when appropriate.* We will seek tougher criminal penalties both at home and abroad for alien smugglers. We will seek to process smuggled aliens as quickly as possible. At the same time, we will also attempt to ensure that smuggled aliens detained as a result of U.S. enforcement actions, whether in the U.S. or abroad, are fairly assessed and/or screened by appropriate authorities to ensure protection of bonafide refugees. (emphasis added)

WEEKLY COMP. PRES. DOC., Alien Smuggling, (June 1993).

As the primary maritime law enforcement agency, the United States Coast Guard has responsibility for enforcing immigration laws at sea. The Coast Guard conducts patrols and coordinates with other components of the Department of Homeland Security (DHS), the Department, other federal agencies, and foreign countries, to interdict undocumented migrants at sea before they reach the United States, its territories, and possessions.

Because migrant interdiction at sea may adversely affect foreign relations, interdiction operations often require consultation with interested federal agencies. Such interagency consultations are conducted pursuant to another Presidential Directive (January 19, 1978), and are generally referred to as the "PD-27 process." This process imposes procedures on federal agencies for dealing with various types of nonmilitary incidents that could have an adverse effect on United States foreign relations. Typically, these situations concern foreign-flagged vessels involved in alien or drug smuggling. In practice, the PD-27 process involves interagency telephone conferences convened at the agency headquarters level for proposing courses of action, and obtaining interagency concurrence and coordination. WEEKLY COMP. PRES. DOC., Procedures for Dealing with Non-military Incidents (Jan. 1978).

Maritime migrant smuggling often involves foreign-flagged vessels that are overcrowded and unseaworthy. In these situations, the Coast Guard's initial intervention may be necessary simply to ensure migrant safety. If the available facts indicate that a violation of our immigration laws is occurring, the Coast Guard, through the PD-27 process, will seek interagency consensus on a course of action. Typically, the first step will involve a diplomatic approach to the flag country, seeking authority to board the vessel and investigate.

If flag-country authorization is obtained, and a determination made that the vessel is involved in alien smuggling, the resulting course of action will depend on the particular circumstances in each case. For example, is the flag state willing and able to accept responsibility for the vessel and the migrants? Can the vessel be diverted to a third country from which the migrants can be repatriated to their countries of origin? Have any of the migrants expressed protection concerns so as to require preliminary screening interviews by asylum officers? Has there been a violation of our immigration laws that merits prosecution?

The decision whether to pursue a criminal prosecution often depends on investigative interviews conducted by government immigration officers and attorneys on board the smuggling vessel or in foreign countries. These interviews identify the targets of the investigation and determine which migrants may be suitable to be brought into the United States as material witnesses. When a decision to prosecute is made, venue for the offense often is governed by 18 U.S.C. § 3238 (offenses not committed in any district). In some cases, the district where the defendant is first brought will control. In others, venue will be in the District of Columbia.

C. International investigative resources

One difficulty often encountered in international smuggling and document fraud investigations is that the major targets may reside outside the United States. Complicating matters further is the fact that even large-scale alien smugglers tend to operate through loose networks of affiliates that rarely fit traditional hierarchical models of organized crime.

In order to develop prosecutable criminal cases against principals in international alien smuggling organizations, the United States must have an effective investigative capability in various parts of the world. Prosecutors should be aware of the investigative resources that are available for this purpose. Exact capabilities will vary by country, but United States law enforcement agents and prosecutors stationed at United States embassies and consulates often have excellent working relationships with their counterparts. Frequently, United States law enforcement personnel posted abroad can obtain information or evidence informally. If formal mutual assistance is needed, for example, if the

evidence was not obtained in an admissible form, the information or evidence gathered informally may provide the basis for drafting a formal request.

Circumstances and practices differ from country to country. Consult the Office of International Affairs (OIA) for specific advice regarding informal and formal mutual legal assistance, as well as issues regarding extradition and possible alternatives to extradition.

Department of Homeland Security

On March 1, 2003, the Immigration and Naturalization Service (INS) was abolished and its functions were transferred to the Department of Homeland Security (DHS). The former INS functions have been generally divided among three new bureaus:

- the Bureau of Immigration and Customs Enforcement (ICE);
- the Bureau of Customs and Border Protection (CBP); and
- the Bureau of Citizenship and Immigration Services (CIS).

At publication time, DHS is in the process of making organizational and policy decisions concerning its allocation of overseas resources. Please note, however, that ICE is primarily responsible for investigating criminal violations of the Immigration and Nationality Act and related provisions of the United States Code. Presently, DHS has three primary international offices, located in Mexico City, Rome, and Bangkok. Each of these offices operate several satellite offices that have enforcement/investigative capability.

Currently, the Mexico City office operates satellite offices in Mexico, Guatemala, Ecuador, Cuba, Jamaica, Peru, Panama, Haiti, El Salvador, and Honduras. The Rome office supervises satellite offices in Turkey, Greece, Denmark, Germany, Pakistan, South Africa, the United Kingdom, Spain, Russia, Kenya, India, and Austria. Satellite offices for the Bangkok District are located in China, Vietnam, Hong Kong, the Philippines, Korea, and Singapore.

Bureau of Diplomatic Security

The Bureau of Diplomatic Security (DS) is the security and law enforcement arm of the Department of State. One of its components is the Diplomatic Security Service. Special Agents of DS have concurrent investigative jurisdiction with respect to passport and visa fraud offenses. Each year, DS investigates more than 4,000 passport and visa fraud violations around the world. Many of these investigations are related to other crimes, such as drug trafficking, international organized crime, alien smuggling, and other serious offenses.

Federal Bureau of Investigation

Of course, the FBI also has an extensive system of Legal Attachés (Legats), who are located at United States diplomatic posts throughout the world. The FBI is most involved in smuggling and other immigration investigations that appear to relate to national security and organized crime.

IV. Domestic Security Section

The Domestic Security Section (DSS) is the newest of the Criminal Division's component sections. DSS was established in November 2002, and was assigned the functions of the former Alien Smuggling Task Force (ASTF), a Criminal Division entity that was created by the Attorney General in February 2000 for the purpose of ensuring that the Department took a comprehensive approach to the problem of alien smuggling. DSS also was assigned supervisory responsibility for the federal violent crime and immigration crime statutes that previously were assigned to the Terrorism and Violent Crime Section (TVCS). (The remaining part of TVCS was then renamed the Counter Terrorism Section, to reflect its mission concerning terrorism-related investigations, prosecutions, and policy.)

The merger of the Criminal Division's responsibilities for immigration crimes and federal violent crimes into a single section permits DSS to focus on investigations, prosecutions, and policy issues, that have a direct bearing on the domestic security of the United States. (DSS responsibility concerning violent crimes unrelated to immigration is beyond the scope of this article.)

With respect to alien smuggling, DSS is involved in policy, operational, and training matters. The section works with all pertinent components of the Department, as well as other Executive Branch agencies, including the Department of Homeland Security, the National Security Counsel, the Department of State, and the intelligence community. DSS also provides a central point of contact for United States Attorneys' Offices (USAOs) that handle alien smuggling cases. The section provides legal advice, coordinates multidistrict cases, acts as liaison between USAOs and other parts of the government, litigates cases on its own, and provides litigation assistance to USAOs in appropriate cases, and within resource limits.

DSS' responsibility with respect to immigration enforcement has a significant interagency and international dimension. For example, DSS serves as the cochair of the Interagency Working Group on Smuggling and Trafficking (IWG) under the auspices of the National Security Council. The IWG, in turn, has worked with enforcement and intelligence agencies on various projects, including efforts against major alien smugglers residing abroad.

In the aftermath of the 9/11 terrorist attacks, DSS has worked with USAOs, INS and its successor agencies at DHS, the FBI, the United States Coast Guard, and the intelligence community in an effort to identify and target organizations and networks that smuggle aliens deemed to present special security threats to the United States.

Some recent cases that DSS has prosecuted jointly with various USAOs are described below.

United States v. Feng, Crim. No. H-01-544 (S.D. Tx. 2001)

Feng Kan-Yen, a/k/a Kenny Feng, was a Taiwanese snakehead whose organization assisted in smuggling United States-bound, undocumented Chinese migrants to Latin America by boat. Feng, in affiliation with other smugglers, transported migrants from China to the coast of Guatemala, where the human cargo would be offloaded and held in Guatemalan safe houses pending payment of smuggling fees. Those who paid the demanded fee would be referred to other smugglers who specialized in overland travel to the United States. Those who did not pay risked murkier fates.

For example, the family of one female migrant paid $15,000 to have her smuggled into the United States. In 1998, upon her arrival in Guatemala, the woman learned that her fee had skyrocketed to $40,000. Feng held the woman in Guatemala for more than fifteen months. When she still could not pay the higher fee, she was sold to Mexican smugglers, who brought her into Texas. From there, she was delivered to another Taiwanese smuggler named Chen Yung Ming. Still unable to pay the full $40,000, the woman learned that she was to be sold yet again, this time to smugglers in New York City.

In June 1999, in Houston, the victim broke her back while attempting to escape through a second story window. Her cooperation from a hospital bed quickly led to the arrest of Chen Yung Ming and two cohorts, who were indicted on charges of alien smuggling and hostage taking. Chen Yung Ming was convicted of hostage taking and sentenced to twenty-seven years, while his two codefendants were convicted of alien smuggling and received lesser sentences.

The investigation continued and ultimately Feng Kan-Yen was expelled by El Salvador, one of several countries in which he resided. Feng was arrested in Houston, and in 2001, pled guilty to conspiracy to commit hostage-taking.

United States v. Jose Delgado-Garcia, Crim. No. 02-293-01 (D.D.C. 2003)

In May 2003, four Ecuadorian nationals were convicted for their roles as crewmen on the Jose Alexander II, a fishing vessel of Ecuadorian registry. Spotted by a United States Navy helicopter, the vessel was intercepted in international waters by the United States Coast Guard on June 10, 2002, while transporting almost 200 undocumented Ecuadorian migrants. The migrants were being smuggled to the United States, for which each had paid a fee of up to $8,500.

The vessel was dangerously overcrowded and there were no medical supplies or lifesaving equipment on board. The food and water available to its passengers were insufficient for the journey. Passengers had access to one toilet, and conditions on the boat during its fifteen days at sea quickly became unsanitary. Witnesses described perilous encounters at sea that instilled fear and near panic among the passengers. On one occasion, a huge whale circled their overcrowded and unstable vessel several times. Near the Galapagos Islands, the captain scared off approaching pirates by firing his gun.

When located, the boat was en route to a location off the coast of Guatemala to rendezvous with smaller vessels that were supposed to transport the migrants to Guatemalan territory. From there, the migrants were to be picked up by other associates of the smuggling operation, in order to continue their journey over land through Mexico to the United States. The captain of the vessel, Jose Delgado-Garcia, received a mandatory minimum sentence of five years. His three codefendants, who cooperated, received lesser sentences.

United States v. Assadi, 223 F. Supp. 2d 208 (D.D.C. 2002)

Iranian national Mohammed Hussein Assadi was convicted in October 2002 of conspiracy to commit alien smuggling and encouraging or inducing aliens to come to the United States. Assadi's specialty was arranging the smuggling of aliens from the Middle East through Latin America into the United States via commercial

airline flights. Assadi's organization would obtain stolen, photo-substituted European passports for use by his customers. Often, these passports had been issued by countries whose nationals did not require United States entry visas. When necessary, Assadi would go so far as to alter the appearance and mannerisms of his customers to make them appear more European.

Like many alien smugglers, Assadi used bribery to ensure that local airport and immigration officials did not prevent the departure of his customers aboard flights to the United States. The aliens were instructed by Assadi to destroy travel documents during flight, to make themselves known to immigration officials upon arrival in the United States, and to make an immediate request for asylum. Assadi exploited the common knowledge that lack of sufficient detention space would result in the release of most of his clients during the asylum review process, thereby achieving his objective of getting them into the country.

As a result of good intelligence and cooperation between the United States and foreign authorities, Assadi was arrested and ultimately expelled by Colombia to Iran. During a scheduled stop in Miami, he was arrested in connection with the indictment that had been filed earlier that day.

United States v. Parada Campos, Crim. No. 02-305 (D.D.C. 2003)

Berta Rosa Parada Campos headed an alien smuggling organization that operated in a number of countries, including her native El Salvador. The Campos organization moved hundreds of aliens, including many children, from Central America to the United States. Most of her customers were from El Salvador, Honduras, and Guatemala. The organization would transport aliens in stages, from El Salvador to Guatemala, from Guatemala to Mexico, and finally from Mexico to the United States.

The typical smuggling fee was $5,000 per person. Aliens were transported in various types of motor vehicles under dangerous conditions, often with inadequate food or water. Further, the organization smuggled large numbers of unaccompanied minors, some as young as five years old. Ultimately, as a result of cooperation between the United States and several Central American countries, Campos and her key associates were detained in Central America and the United States. Some members of the organization were expelled from the arresting country and then arrested in the United States. Cooperation between countries continued during the investigation and prosecution, including taking measures to protect threatened witnesses. Ultimately, Campos and several coconspirators pled guilty in the United States to alien smuggling and related charges. El Salvador is continuing to prosecute remaining members of the organization of whom we could not obtain custody.

V. Conclusion

In recent years, the fight against organized international alien smuggling has emerged as a national law enforcement priority. The terrorist attacks of 9/11 underscored the need to redouble efforts to secure our borders. Many countries other than the United States have recognized similar needs, and there are ongoing efforts to improve international cooperation against alien smuggling and related offenses. As part of the post-9/11 reorganization of the Department of Justice, the Criminal Division has created the Domestic Security Section. Part of the DSS mission is to coordinate the Department's efforts to combat alien smuggling and related crimes.

Alien smuggling networks are, by definition, international in scope. Wherever possible, we should attack all parts of the network, not just those parts operating in the United States. The Domestic Security Section stands ready to provide a range of assistance, including assisting with informal requests for information or contacts that might help a particular case, providing legal analysis, or providing litigation assistance in appropriate situations. DSS also is eager to hear any suggestions, problems, or successes, encountered by United States Attorneys' Offices.❖

ABOUT THE AUTHORS

❑**Michael Surgalla** has been an attorney with the immigration component of the Domestic Security Section (formerly, the Alien Smuggling Task Force) since 2000. He has worked for the Department of Justice since 1987, serving first as a trial attorney in the New York District of the Immigration and Naturalization Service. In 1989, he joined the Criminal Division's Office of International Affairs, where he specialized in Asian organized crime matters and participated in the negotiation of seven law enforcement treaties and executive agreements.

❑**Arthur Norton** has been employed by the Department of Justice since 1970. From 1970 to 1974, he was a Special Agent with the FBI. Since

1974, he has worked as an attorney in the Department's Criminal Division. Currently, he is assigned to the Criminal Division's Domestic Security Section.✠

The International Prisoner Transfer Program

Paula A. Wolff
Chief, International Prisoner Transfer Unit
Office of Enforcement Operations
United States Department of Justice

I. Introduction

The International Prisoner Transfer Program has been in existence since 1976, however, it remains a program about which most federal prosecutors have little understanding. This article will provide an overview of the program, including its history, rationale, and benefits; discuss how the transfer determination is made, including the criteria that the Department of Justice (the Department) uses when making a transfer determination; set forth how the transferred sentence is administered in the receiving country; and discuss the role of federal prosecutors in the transfer program.

II. What is the International Prisoner Transfer Program?

The International Prisoner Transfer Program permits the United States and its treaty partners to return a foreign national, who is sentenced and imprisoned in their country, to the prisoner's home country to serve the time remaining on his sentence. Ten separate treaties, as well as federal implementing legislation, 18 U.S.C. §§ 4100-4115, provide the legal authority for the program. *See* USAM §§ 9-35.010, 9-35.100; Criminal Resource Manual §§ 731-740. For additional information, see http://www.usdoj.gov/criminal/oeo.

The transfer program works in two directions. First, a country may receive its national from a foreign country which has convicted and sentenced the national for committing a criminal offense. Second, and this is the type of transfer of most interest to United States Attorneys' offices (USAOs), a country may return foreign nationals who have been convicted and sentenced for a crime to their home country to serve their sentences. The country sending or transferring the foreign national is referred to as the "sentencing country," whereas the country receiving the prisoner and administering the transferred sentence is referred to as the "receiving" or "administering country."

The transfer program was initiated in November 1976, after the bilateral Treaty on the Execution of Penal Sentences between the United States and Mexico entered into force. Treaty on the Execution of Penal Sentences, Nov. 25, 1967, U.S.-Mex., 28 U.S.T. 7399. Since signing the Mexican Treaty, the United States has entered into bilateral prisoner transfer treaties with seven other countries and has acceded to two multilateral conventions, the Council of Europe Convention on the Transfer of Sentenced Persons (the COE Convention), and the Inter-American Convention on Serving Criminal Sentences Abroad (the OAS Convention). In addition to the United States, fifty-one countries are parties to the COE Convention. The United States also has transfer treaty relationships with the governments of Hong Kong, the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. In total, the United States has a prisoner transfer relationship with over sixty countries. Although it is unlikely that the United States will enter into any new bilateral prisoner transfer treaties, it is almost certain that, in the future, additional countries will accede to the COE and OAS Conventions, thereby increasing the number of countries with which the United States has a transfer treaty relationship.

Most of the prisoners the United States has transferred to foreign countries have been convicted in federal courts. It is these cases in which the USAOs have an interest. States can and do participate in the transfer program, although not

as actively as the Department would like. Currently, all states, except Delaware, have legislation that permits them to transfer foreign nationals to their home country. When a foreign national is in a state prison, he must first obtain the approval of the state before his application can be reviewed and approved by the Federal Government.

III. Benefits of the International Prisoner Transfer Program

A question frequently raised about the transfer program focuses on the motivation for the United States to participate in the program. Skeptics wonder what benefit the United States realizes by transferring a criminal, who has violated United States laws, to his home country and, conversely, why the United States would want to receive Americans from a foreign government when they have committed serious crimes in those countries.

The United States first considered entering into prisoner transfer treaties in the early 1970s. This was in response to reports that some Americans imprisoned abroad had been convicted in unfair judicial proceedings or had been subjected to torture and inhumane conditions while confined in a foreign prison. The United States, likes most other countries, is protective of its citizens and is concerned about poor or unfair treatment accorded its nationals in other countries. As the United States began to explore the prisoner transfer option, it recognized that genuine rehabilitation and eventual reintegration of a prisoner into his home society were much more likely to occur when the prisoner served his sentence in his own country where he would be near his family, friends, and a familiar culture. In addition, the United States realized that the imprisonment of foreign nationals created a significant administrative burden on its prison staff by requiring the prisons to adapt their practices and procedures to prisoners having differing languages, customs, cultural backgrounds, and dietary requirements. The United States believed that prisoner transfer could reduce this burden. Moreover, the United States recognized that confining the nationals of another country created diplomatic tension with the foreign country and that returning the foreign national to his home country would reduce this tension.

As the United States began to participate in the prisoner transfer process, it also recognized that there were two other significant benefits to the program. Normally, after a foreign national completes the service of a sentence in the United States, he is referred to the Immigration and Naturalization Service (INS) for deportation or removal proceedings. Frequently, after the removal order has been issued, such prisoners are returned to their home country, without notification to the home country of their arrival, and without providing the home country with any pertinent information about the individual, such as the specifics of the criminal conduct in which the individual engaged or any continuing risks that the individual might pose. As a result, the home country often knows nothing about the person released into its midst and, thus, is unable to take precautionary steps to ensure the safety of its populace or to assist the former prisoner with receiving necessary medical or rehabilitative assistance, or with his reintegration into its society.

In many instances, therefore, prisoner transfer is preferable to traditional removal. When a prisoner is transferred, the United States provides the receiving country with detailed information about the prisoner, including official accounts of the criminal conduct committed. Unlike the removal of a former prisoner, a transferred prisoner is placed directly in the custody of law enforcement officials from the receiving country. This transfer procedure permits the receiving country to monitor the activities, address any treatment or rehabilitative needs, assist in the eventual reintegration of the prisoner into society, and take appropriate steps to protect society from the prisoner. This last benefit is particularly significant for certain types of repeat or predatory offenders, such as sexual offenders. Many countries, such as Canada, have systems to monitor these offenders, and to provide notice to communities when such an offender is living in their neighborhood.

Although not a factor motivating the negotiation of the transfer treaties, the United States recognizes that these agreements also create an economic benefit to the both Federal Government and the state governments participating in the transfer program, by reducing the number of prisoners confined within their prisons. Over twenty-seven percent of all federal prisoners are foreign nationals and states also have significant foreign populations. It is very expensive to imprison an individual. On the federal level, the average yearly cost for imprisoning one prisoner is over $22,000. Some states, such as California, incur even higher annual costs. For every prisoner transferred, the federal or state government recognizes a savings equal to the cost of imprisoning that person for the period remaining on the sentence.

IV. The administration of the Transfer Program and the making of the transfer decision

Title 18 U.S.C. § 4102 authorizes the Attorney General to act as the central authority for the international prisoner program. The Attorney General has delegated his authority to the Office of Enforcement Operations (OEO) in the Criminal Division. 18 U.S.C.§ 4102; 28 C.F.R. §§ 0.64-1, 0.64-2. Within OEO, the International Prisoner Transfer Unit (IPTU) is responsible for the daily administration of the program. IPTU also receives considerable assistance from the Federal Bureau of Prisons (BOP) in various stages of the transfer process.

The workload of the IPTU continues to increase each year. For example, in Fiscal Year 2002, the IPTU processed 1600 transfer applications and transferred 455 prisoners. Of these applications, the Department approved 609 applications and denied 915 applications. The remaining 76 applications were withdrawn. The majority of these applications came from foreign nationals who committed drug offenses. Although most of the transfer requests came from Mexican nationals, a significant number of requests came from nationals from other countries, especially Canada and the Netherlands. The number of transfer applications is expected to increase significantly due to the continual addition of new transfer treaty partners, and the new state transfer cases that are expected as a result of the IPTU's aggressive state outreach program.

Under the international prisoner transfer program, a prisoner does not have a "right" to transfer to his home country, nor can the sentencing country force the prisoner to transfer. Indeed, transfer is discretionary and requires the consent of the sentencing country, the receiving country, and, perhaps most critically, the consent of the prisoner. Although the United States approves virtually all transfer applications submitted by Americans imprisoned abroad, it approves less than fifty percent of all transfer applications submitted by foreign nationals. The overall approval rate is lowered significantly by the large number of Mexican nationals who apply for transfer. The lower approval rate for Mexican nationals is attributed to two main factors. First, the transfer treaty with Mexico prohibits the transfer of domiciliaries and many Mexican nationals satisfy the treaty domiciliary test by having lived in the United States for over five years. Second, the United States knows that Mexico applies a number of restrictive criteria–most notably, that the remaining sentence cannot exceed five years–and will deny applicants who do not satisfy these criteria.

Each transfer application presents a unique set of facts that must be evaluated on its individual merits. For the Department to approve a transfer application, it must first determine that the case satisfies the requirements of the applicable treaty and federal implementing legislation. *See* 18 U.S.C. §§ 4100-4115. The basic requirements that must be satisfied by all successful applicants are as follows:

- The prisoner must be convicted and sentenced;
- The prisoner, sentencing country, and receiving country must consent to the transfer;
- The prisoner must be a national of the receiving country;
- A minimum period of time must be remaining on the sentence, typically at least six months;
- The judgment and conviction must be final with no pending appeals or collateral attacks;
- No charges or detainers may be pending against the prisoner in the sentencing country; and
- Dual criminality must exist (the crime of conviction must also be a crime in the receiving country).

Depending on the applicable treaty, there may also be additional requirements.

In addition to the treaty and statutory requirements, the IPTU has developed a set of guidelines that assists in the evaluation of each transfer request. These guidelines focus on four broad areas, with the first being the likelihood of social rehabilitation. One of the major goals of the transfer program is to return the prisoner to his home environment where, hopefully, there is familial and peer support, for in this type environment the prisoner has the best chance of successful rehabilitation and reintegration into society. In addition, since most foreign national prisoners are deported when they are released from custody, it may not make sense to allow them to remain in a foreign prison where they must adjust to a society different from the one to which they will ultimately be deported. To assess the likelihood of social rehabilitation of the prisoner, the IPTU examines various factors that include:

- the strength of the prisoner's family and other social ties to the sentencing and receiving countries;
- whether the prisoner accepted responsibility for his criminal conduct;

- cooperation with law enforcement;
- the criminal history of the prisoner;
- the seriousness of the offense;
- the role of the prisoner in the offense;
- the presence of aggravating and mitigating circumstances; and
- the prisoner's remaining criminal ties to the sentencing and receiving countries.

Thus, a first time offender who had a minor role in a criminal offense and has strong family and social ties in the receiving country is a much stronger transfer candidate than a career offender who has family in the United States and has lived here for many years.

The second focus of the guidelines, and one of particular interest to the USAOs, is on law enforcement concerns. These include:

- the seriousness of the offense, including if public sensibilities would be offended by the transfer;
- any public policy issues that would be implicated by the transfer;
- the possibility that the transfer would facilitate the prisoner's renewed association with his criminal associates in his home country;
- possible sentencing disparity in the home country (of greatest concern for the most serious offenses);
- whether law enforcement or the prosecutor need the prisoner for pending or future trials, investigations, or debriefings; and
- the existence of unpaid fines, assessments, and restitution.

The third major concern that is examined is the likelihood that the prisoner will return to the United States. Allowing a foreign national to serve his remaining sentence in his home country makes sense only if the prisoner will remain in his own country after release. A fundamental reason for the transfer is the belief that rehabilitation is most likely to occur in the prisoner's home environment, an objective that would not be realized if the prisoner returned to the sentencing country. A number of factors are considered in making this determination, including:

- the strength of the prisoner's ties to the United States;
- the strength of the prisoner's ties to his home country;
- the location of the prisoner's family;
- previous deportations and illegal entries; and
- previous prisoner transfers.

With respect to this last factor, it is the policy of the Department to deny all transfer requests if the prisoner participated in a previous prisoner transfer.

The final concern, which arises infrequently, is whether the transfer presents any serious humanitarian concerns. Such concerns typically involve the terminal illness of the prisoner or a close family member. Although humanitarian concerns are never viewed in isolation, it is possible that when compelling humanitarian concerns are present, a transfer will be granted unless outweighed by other negative variables.

V. Administration of the sentence in the foreign country

When a prisoner is transferred, the responsibility for administering the sentence belongs exclusively to the receiving country. The sentencing country, however, retains the power to modify or vacate the sentence, including the power to grant a pardon. Under most of the treaties, the receiving country will continue the enforcement of the transferred sentence. Such continued enforcement will be executed under the laws and regulations of the receiving country, including any provisions for the reduction of the term of confinement by parole, conditional release, good-time release, or otherwise. The United States Parole Commission determines the projected release date for the sentences of all returning Americans. Under the French and Turkish bilateral treaties and the COE Convention, the receiving country has the additional option of converting the sentence, through either a judicial or administrative procedure, into its own sentence. When a sentence is converted, the receiving country substitutes the penalty under its own laws for a similar offense. The receiving country, however, is bound by the findings of facts insofar as they appear from the judgment, and it cannot convert a prison term into a fine or lengthen the prison term. Only a few countries have elected to convert transferred sentences.

Some erroneously assume that when a sentence is transferred, the prisoner will always serve the same period of time in prison in his home country that he would serve if he remained in the United States. As a practical matter, however, the actual time that the transferred prisoner spends in prison in the receiving country may be less than he

would have served in the sentencing country. This disparity appears most often in transfers to Canada and many European countries, especially in drug cases. Information provided to the Department indicates that most transferred Mexican nationals are serving sentences which closely approximate the sentences they would have served had they remained in the United States. Furthermore, due to recent changes in Mexican law, Mexican prisoners who have committed drug offenses frequently discover that, because of the difference in prison credits awarded, they will spend a longer period of time in custody in a Mexican prison than if they had remained in the United States.

Although it is possible that some transferred prisoners may serve less time in prison, such a result is neither unexpected nor inconsistent with the goals of the transfer program. The United States and its treaty partners recognized at the time they entered into these international agreements that the administration of the sentence by the receiving country, which involves criminal laws unique to that country, could result in the prisoner serving less prison time than if he remained in the sentencing country. These same countries, however, were willing to accept this result in return for the ability to have their foreign nationals transferred. It is important to realize that it is not unusual for a returning American to serve less time in an American prison than he would have served if he had remained incarcerated in the sentencing country. Thus, it would place the United States in an awkward diplomatic position to accept this benefit for its citizens, yet object to a transfer of a foreign national because he might experience a similarly beneficial sentencing outcome.

VI. Role of the United States Attorneys' offices in the Transfer Program

Generally, the USAO may be faced with issues surrounding the prisoner transfer program at two distinct phases of the criminal process. The issue of possible prisoner transfer may arise during plea negotiations or, most commonly, at the postsentencing phase of the case when the transfer application is being processed. It is not uncommon, during plea negotiations, for a foreign national to ask the USAO to guarantee that he will be transferred in return for a guilty plea. Because the discretion to grant or deny transfer requests is vested in the Attorney General, the USAO does not have the power to make this promise. The USAO, however, can represent that it will support the application or that it will not oppose the application. *See* USAM § 9-35.100.

The second occasion when USAO involvement in the transfer program may arise is during the processing of the transfer application. To ensure a thorough, fair, and principled review of each application, the IPTU collects and evaluates pertinent information from various sources, including input from law enforcement agencies. Among the most important information that the IPTU collects for each case are comments from the prosecuting USAO. Soon after receiving the case, an IPTU analyst will fax an inquiry sheet to the USAO seeking its views on the requested transfer, and asking if there are any pending appeals or collateral attacks. The form also provides space for comments and the USAO is always free to submit additional documentation to support its views. As noted by former Assistant Attorney General Michael Chertoff, it is critical that the USAO provide timely responses to these inquiries. *See* Memorandum to all USAOs, dated August 7, 2002, from Michael Chertoff, Assistant Attorney General. The IPTU, recognizing the strong interest that the USAOs have in the cases they have prosecuted, carefully reviews all comments that the USAOs submit, and considers these comments to be critical information in rendering its transfer decision.

Over the years, many USAOs have provided thoughtful and informative responses to IPTU inquiries. The IPTU considers legitimate law enforcement concerns raised by USAOs very seriously, and in most situations, these concerns will cause denial of the transfer request. Problems arise, however, when the USAO fails to provide case-specific reasons for opposing the transfer, and instead registers only generic complaints about the program. Such complaints typically express a general dislike of the program, a belief that the prisoner should serve his sentence in the United States, an unsupported belief that the prisoner will return to the United States and commit a new offense, a concern that the prisoner will serve a shorter term in the foreign country, or a distrust of the integrity of the foreign prison system.

As discussed above, standing alone, the fact that the prisoner may serve less time in a foreign prison does not usually justify denying a transfer request. Nor are concerns about the integrity of the prison systems of our treaty partners a basis to deny a transfer request. Since the majority of the transfer requests come from Mexican inmates, some USAOs have voiced concerns about the integrity of the Mexican prison system. Although, problems have existed in the Mexican criminal justice system, the current government has taken substantial steps to combat and reduce corruption.

From the information available to the Department, there appears to be little or no support to substantiate the view that transferred prisoners are able to buy or negotiate a lesser sentence in Mexico. To reduce the potential for corruption, Mexico generally limits its transfer approvals to low security, first-time offenders who are from low-to-middle socioeconomic class, and who have no connection to a drug cartel or organized crime. Mexico has instituted this policy because it believes that such inmates, due to their lack of resources and connections, are less likely to be in the position to take advantage of any corruption existing in the system.

The Department has little information that would substantiate the belief that a transferred prisoner will return to the United States and commit new crimes. It has been our experience that offenders who are transferred to distant locales, especially to countries in Europe or Asia, are unlikely to reappear in the United States following their release from confinement abroad. Although there is no guarantee against recidivism for any category of offender, the possibility that a foreign national will return to the United States following completed service of sentence at a prison in his home country can be greatly minimized by ensuring that inmates obtain removal orders from United States immigration judges prior to transfer, and by limiting approvals to those candidates who have strong family ties to their home countries and who have minimal or no prior criminal records. The IPTU, in conjunction with the INS, ensures that all Mexican nationals have a removal order before their transfer to Mexico.

Finally, a blanket policy of objecting to transfer without a substantial basis to do so would be inconsistent with the treaty obligations of the United States. The treaties and conventions governing the transfer of prisoners express a foreign policy determination of the United States that prisoner transfer should be available to foreign nations incarcerated here, just as it should be available to American nationals incarcerated abroad.

VII. Conclusion

The United States has participated in the International Prisoner Transfer Program for over twenty-five years during which time qualified foreign nationals have been returned to their home countries to serve their remaining sentences. As more countries accede to the two existing prisoner transfer conventions, and as states within the United States become more active participants in the program, it is expected that the number of transferred foreign nationals will increase. Although transfer is not appropriate for all inmates, the prisoner transfer program does offer significant rehabilitative, law enforcement, and diplomatic benefits in many cases.❖

ABOUT THE AUTHOR

❑**Paula A. Wolff** has been Chief of the International Prisoner Transfer Unit in the Criminal Division of the United States Department of Justice since September 2000. She was a Trial Attorney in the Terrorism and Violent Crime Section from 1996 to 2000, and in the General Litigation and Advice Section from 1986 to 1996, where she was Acting Deputy Chief from 1994-1996.✠

Disclosure of Law Enforcement Information to the Intelligence Community Pursuant to the Patriot Act

J. Kenneth Lowrie, Deputy Chief
Organized Crime and Racketeering Section
Criminal Division

Prior to the enactment of the USA PATRIOT Act, formally, the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism of 2001, Pub L. No. 107-56, 115 Stat. 272, there were numerous barriers to the sharing of information between the law enforcement and intelligence communities. With the enactment of the PATRIOT Act and the Homeland Security Act of 2002, however, the rules for sharing information between the law enforcement and intelligence communities have been substantially modified and relaxed.

Of particular importance to federal prosecutors are Sections 203 and 905 of the PATRIOT Act. Section 203 permits disclosure, by any federal investigative or law enforcement officer or attorney for the government, of any "foreign intelligence information" obtained during the course of a criminal investigation, to any other federal law enforcement, intelligence, protective, immigration, national defense, or national security official, to assist the receiving official in the performance of his or her duties. Section 905 makes mandatory the expeditious disclosure of foreign intelligence information obtained during the course of a criminal investigation. The mandatory disclosure pursuant to Section 905 is subject to certain guidelines which were promulgated by the Attorney General on September 23, 2002. Copies of those guidelines can be obtained by contacting the Publications Unit, Office of Legal Education in Columbia, South Carolina.

These changes are of particular importance to federal prosecutors when dealing with information relating to matters occurring before a grand jury, which are subject to the secrecy requirement of Fed. R. Crim. P. 6(e), or to the special provisions relating to the disclosure of evidence obtained through the interception of communications pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. § 2517). The investigation of cases involving international organized crime will almost always yield evidence that fits within the definition of "foreign intelligence or counterintelligence information," as that term is defined in Section 3 of the National Security Act of 1947 (50 U.S.C.§ 401(a)), or "foreign intelligence information," as defined in Fed. R. Crim. P. 6(e)(D)(iii) or 18 U.S.C. § 2510(19). Consequently, when engaged in an investigation involving international organized crime, AUSAs and Department of Justice (Department) attorneys should remain alert to the development of such information. In the usual case, disclosure of Title III and other information obtained during the course of a criminal investigation to the intelligence community will be accomplished by the investigative agencies.

Disclosure of grand jury information, however, will always involve a federal prosecutor. Before **any** disclosure of grand jury information, AUSAs and Department attorneys should seek the latest advice regarding not only what constitutes "foreign intelligence information" to be disclosed to the intelligence community, but also the procedures for such disclosure. If the prosecution relates to international organized crime, government attorneys should consult with a member of the Organized Crime and Racketeering Section (OCRS) whose responsibilities involve international matters. Those OCRS attorneys responsible for international matters are listed elsewhere in this material under OCRS contact numbers.

With regard to the disclosure of matters occurring before the grand jury to the intelligence community, Fed. R. Crim. P. 6(e)(D)(ii) requires that within a reasonable time after the disclosure the court be notified, under seal, of the disclosure and the "departments, agencies, or entities" to which the disclosure was made. It is not required that the court be notified of the identities of intelligence community persons to whom disclosure is made. Indeed, disclosure of the

identities of such persons would be highly inappropriate. Whenever such a notice is filed with the court, a copy of the notice should be sent to Jack Geise, Associate Director of the Office of Enforcement Operations of the Criminal Division.

Please note that the foregoing is not meant as an all-inclusive notice or instruction. Rather, it is meant to alert the reader to changes that may significantly affect the prosecutor's course of action in international investigations. Moreover, it is strongly advised that any government attorney involved in an international organized crime case contact an OCRS International Program attorney regarding the procedures to be followed in the application of the PATRIOT Act **before** any disclosure of grand jury material to the intelligence community.❖

ABOUT THE AUTHOR

❑**J. Kenneth Lowrie** has been an attorney with the Department of Justice since 1969. He is a former member of Organized Crime Strike Force Units in St. Louis, Missouri and Chicago, Illinois and a former Assistant U.S. Attorney for the Eastern District of Michigan and the Northern District of Illinois. ✠

Investigating Financial Crime Emanating from Russia: A Russian and an American Perspective

Vitor Filippov, Colonel (Retired)
Special Regional Police Office of the Russian Far East

Jennifer Shasky
Trial Attorney
Organized Crime and Racketeering Section

I. Introduction

What began as an attempt by a Russian investigator and an American prosecutor to write a joint article on investigating financial crime emanating from Russia quickly became something quite different, perhaps something more insightful than the originally intended subject matter. It became readily apparent that the differences in our political and economic histories bring vastly different perspectives on what constitutes a financial crime. It was also apparent that understanding these differences was an essential first step to effective communication on the topic.

To highlight the differences in perspective, this article has been divided into two sections. The first section contains the perspective of Viktor Filippov who, until his recent retirement, was a Colonel in the Russian MVD (a national law enforcement agency similar to the FBI). His office was located in the Russian Far East, in the city of Khabarovsk. Colonel Filippov offers his thoughts on both financial crime emanating from Russia and law enforcement cooperation between Russia and the United States. The second section of the article contains my perspective, that of a U.S. prosecutor, on the same issues.

II. A Russian perspective:

Since the beginning of the 1990s, considerable changes have occurred in the Russian economy, the primary feature of which has been development of international trade. Under the Soviet system, only state-owned organizations were allowed to engage in international trade, and there were many state bureaucracies regulating which ones could do so. In the early 1990s, however, changes in Russian legislation relaxed these rules and Russian businessmen began to establish ties with foreign companies.

Additional political and economic changes led to the situation today in which Russian businessmen and companies have access to free market societies around the world, making it possible to open accounts at foreign banks, establish foreign corporations, purchase foreign real estate, and so on. Almost immediately, these emerging possibilities were exploited by organized crime groups and corrupt public officials.

Further complicating an already unstable situation was the fact that great attention was paid to dismantling the old, repressive law enforcement system of the Soviet days, including radically changing the Criminal and Criminal Procedure Codes. Russian legislation could not keep pace with the rapid and simultaneous transformations of both the economy and Russian law enforcement agencies. As might be expected, criminals were quick to exploit the situation and manipulate loopholes in the law for their own enrichment. Russian law enforcement agencies (primarily the General Procuracy, MVD, and Tax Police) have spent the last decade trying to deal with the fallout from these changes and, in the process, have accumulated considerable experience investigating criminal cases involving international trade and the flight of criminal proceeds from Russia to other countries.

III. Common methods for getting criminal proceeds out of Russia

A. Importation schemes

It is important to note that, under Russian law, both banks and the government organization known as the Currency Control Agency, are required to regulate currency transfers abroad. A businessman who wants to import goods into Russia must go to a bank with a signed import contract and notify the bank that he would like to purchase goods from his partner abroad. The bank is required by law to provide a copy of the contract to the Currency Control Agency (failure to do so can result in a fine or revocation of the bank's license). Upon receiving the contract from the businessman, the bank will send the requisite funds abroad. Within three months, according to the Currency Control Law, the businessman must bring customs documents to the Currency Control Agency proving either that he received the imported goods, or that his money was returned to the Russian bank. Failing to produce such documents is a violation of Article 193 of the Russian Criminal Code (Failure to Return Currency from Abroad) and is punishable by a maximum of three years imprisonment.

Yet, despite the possibility of criminal prosecution under Article 193, importation schemes are the most common method for illegally transferring funds out of Russia. These schemes, simple in theory, work as follows:

A Russian businessman, or one of his friends or relatives, establishes a front company in a foreign country, preferably the United States. The front company will play the part of the U.S. partner. To further disguise his intentions, the Russian businessman might hire a U.S. citizen who is willing to play the part of the president of the U.S. company. This individual is typically someone who emigrated from the Soviet Union and obtained U.S. citizenship some years ago. The Russian businessman then creates a bogus contract between his Russian firm and the purported U.S. partner, indicating that he intends to import items, such as food, clothing, or medicine, from the United States. He presents the bogus contract to the bank, a copy of which is forwarded to the Currency Control Agency, and the bank then sends the specified currency abroad. The Russian businessman never presents the bank with customs documents indicating that he received the goods from abroad. After 180 days have passed, the Currency Control Agency will send an inquiry to the bank. Upon learning that the bank has neither received the requisite customs documentation, nor the return of the funds, the Currency Control Agency refers the matter to the MVD for investigation. The Russian businessman makes a formal report to the MVD indicating that he made a mistake in entering into a partnership with the U.S. partner. He states that the U.S. partner took the Russian businessman's money without ever delivering the agreed upon goods. Moreover, he reports, he cannot possibly recover his money as he has no leverage over the crooked U.S. partner. So, by this simple ruse, the Russian businessman transfers funds to a bank account in the United States over which either he or trusted associates have access.

The cases investigated by Russian law enforcement agencies have revealed that this scheme is used primarily to transport funds earned by criminal activity. In using the scheme, Russian criminals exploit the fact that neither Russian law enforcement nor the Currency Control Agency has the ability to determine whether a purported U.S. company and its owners actually exist.

To further evade Russian law enforcement, individuals who commit such financial schemes typically follow the criminal proceeds and emigrate to the United States. For example, in one case pursued by my former office, a Russian citizen was investigated for criminal tax violations and an embezzlement scheme involving fraudulent bookkeeping. As the investigation proceeded, the individual feared he would be arrested. In response, he established a front company in the United States and signed a bogus import contract for the delivery of food to the Russian Far East. He then transferred approximately $1 million to the United States and fled Russia. Thereafter, he obtained a green card to remain in the United States. This case involves an unfortunate

and common scenario in Russia in which businessmen seek employment with the intent to embezzle as much money as possible from their employer before fleeing abroad.

This scheme has also been used by corrupt public officials who, as part of their official duties, are responsible for allotting funds to purchase foreign goods. In these cases, the public official uses trusted associates to establish front companies in the United States. The public official then causes the transfer of funds to the United States under the guise of purchasing goods from the U.S. company for importation into Russia. Of course, the corrupt official simply embezzles the funds. One of the more notorious examples involved the embezzlement of public funds by a deputy governor of one of the Russian Far East territories. This official caused more than $1 million to be transferred to the United States using this scheme. He then emigrated to the United States and, according to a local Russian newspaper, purchased a villa in the Los Angeles area, a photograph of which was pictured in the article.

B. Fraudulent loans

Another related scheme involves obtaining a loan from a bank, claiming that the funds will be used to pay for goods to be imported into Russia. These borrowers have no intention of paying back the loan to the bank. Likewise, the bank employee responsible for extending the loan knows it will never be repaid. This is because the bank employee is usually involved in the scheme from the very beginning, and receives a kickback for his or her participation. The borrower, in the meantime, typically follows the money and emigrates abroad. Often, the borrower is part of a criminal group. Once the borrower emigrates, he establishes various front companies and bank accounts to be used by the group for additional fraud schemes. These groups are able to obtain considerable sums of money through such serial activity.

C. Re-exportation

This is an import-export scheme that typically involves oil exportation. Here, a Russian businessman establishes a Russian firm under the guise that it will be used to export oil. The firm then rents a tanker for oil delivery and obtains the requisite customs documents indicating the oil will be *exported*. A tanker loaded with oil leaves a Russian port as if it is sailing to a foreign port. Instead, the vessel sails to another Russian port and the captain presents fraudulent customs documents indicating that the oil is being *imported* into Russia. The purported buyer of this oil (who is acting in concert with the Russian firm and the captain) is then permitted to transfer funds to a foreign bank to pay for the oil. By using this scheme, the perpetrators are able to send money abroad and provide the requisite documents to the bank and Currency Control Agency indicating that oil was delivered to Russia, and thereby avoid any referrals from the Currency Control Agency to the MVD.

In one such scheme, Russian law enforcement investigated a series of cases in which firms established in the Russian city of Vladivostok were pretending to transport oil to South Korea. In fact, the firms' tankers changed course at sea and went to the Russian city of Kamchatka. The captains displayed fraudulent customs documents indicating that the oil had been bought in South Korea by a Kamchatka company. The investigation revealed that in furtherance of this scheme, the perpetrators sent funds, via banks in Singapore and Switzerland, to a U.S. bank account. The primary difficulty for investigators in this case was obtaining the U.S. bank records. The records did not arrive within the allotted investigative period, under Russian law, and when they did arrive were not in a form admissible in Russian courts. As a result, the suspects went free.

D. Transferring money abroad using credit cards

Often, a person transfers criminally derived funds out of Russia by merely placing those funds in a Russian bank and then withdrawing them abroad, using a credit card. Under Russia's money laundering law, an individual may only take $10,000 out of the country when he goes abroad and must complete a customs document at the time of departure indicating the amount being taken. By using a credit card, however, the individual can illegally evade this reporting requirement, passing quietly through customs with merely a credit card in his pocket.

This activity might be uncovered with the aid of a provision in Russia's money laundering law obligating Russian banks to report deposits of more than 600,000 rubles (approximately $19,000) to the Financial Monitoring Committee (similar to FinCen in the United States) as suspicious activity. However, crucial time is often lost in these cases. A criminal typically opens a credit card account the day before he flees abroad. By transferring money, via the credit card, he is able to immediately establish a bank account in the new country. In the meantime, the Financial Monitoring Committee must first obtain a report of

suspicious activity from the bank. Once the Financial Monitoring Committee examines the information, it is forwarded to the MVD because the Financial Monitoring Committee does not have criminal investigators. To obtain foreign assistance, the regional office of the Foreign Monitoring Committee must go through its headquarters. This means, for instance, that the Far East Regional Monitoring Committee is not permitted to communicate directly with FinCen or U.S. prosecutors' offices on the West Coast, but must first go through Moscow. As a result, there are many cases in which individuals have been able to transport considerable sums of criminal proceeds abroad before Russian law enforcement arrives on the scene.

E. Bogus charitable funds

Another method used to transfer illegal proceeds abroad is for a group of Russian businessmen to establish a bogus charitable fund in the United States, as well as a U.S. bank account. Once established, the businessmen, who live in the same Russian territory (political jurisdiction), make regular charitable contributions to the fund. Then, when the fund accumulates a fair amount of capital, a high-ranking public official from their territory is announced to be the charity's "Man of the Year" and is awarded a large sum from the charitable fund. In other words, the businessmen pay a bribe to the public official and the funds are already conveniently located outside the country in a U.S. bank account.

IV. Russian criminals prefer the United States

Why do Russian criminals prefer to use the United States to perpetrate their crimes and why do they prefer to flee to the United States afterwards? From my perspective and experience, there are some important reasons for this phenomenon.

The primary reason Russian criminals prefer the United States is because they know Russian and U.S. law enforcement agencies do not effectively exchange information. This is partly due to the distrust that is a legacy of the Cold War and partly due to the overly bureaucratic mechanisms in both countries for sending and receiving information.

For example, the MVD, when investigating a criminal case in the Russian Far East, must send requests for foreign assistance to the General Procuracy, International Department, in Moscow, as many as nine time zones away. The request is sent to the U.S. Department of Justice, Office of International Affairs, in Washington, DC, and then to the relevant U.S. investigator or prosecutor. It is usually fourteen months between the time a question is first asked and an answer is received. This is a serious problem for Russian investigators who, under Russian law, have on average only three to six months to complete an investigation or terminate it. Even when a Russian investigator receives an answer from his U.S. colleagues, it often does not contain enough information and he has to send another request. Often, the investigation ends before the Russian investigator can obtain the requisite evidence from the United States. As a result, as noted above, there are cases in which the charges had to be dismissed and the accused went free.

Another problem is that the United States and Russian legal systems differ on issues of both substantive and procedural criminal law. As a result, each side faces difficulties making requests of the other that are both understood and capable of being fulfilled. For example, Russia and the United States have different procedures concerning witness interviews. Under Russian law, a Russian investigator can conduct a witness interview only after a Russian criminal case has been opened, or if he receives a formal request under the mutual legal assistance treaty (MLAT). Consequently, an informal request for mutual legal assistance (such as a request from the FBI Legal Attaché) must provide a basis for the investigator to initiate a Russian criminal case, or there must already be a Russian case open. Otherwise, the investigator can only ask the witness to voluntarily write a statement, in his own words, to be passed to the United States. It often seems that U.S. prosecutors do not realize this difference in procedural law when making requests to Russia.

Compounding the problem is the fact that there is no agreement between Russia and the United States for extradition. As a result, the majority of Russian criminals consider the United States a paradise. After committing crimes in Russia, they can go to the United States and be beyond the reach of Russian law enforcement. Many of them, once escaping to the United States, continue to engage in fraud schemes with their friends and relatives back in Russia and continue to use U.S. banks as cover. Moreover, once they obtain U.S. citizenship, it is easier for them travel to other countries and organize more complicated fraud schemes, using several jurisdictions, to conceal their activities.

Oftentimes, when Russian prosecutors or law enforcement agents send requests to the United States asking for assistance, the accused tells U.S. law enforcement that he is being pursued by Russian organized crime groups, corrupt public

officials, or corrupt law enforcement officials. The accused claims that the Russian law enforcement request is an attempt to further these aims. He or she then seeks political asylum in the United States, claiming to be an honest businessperson. In doing so, the accused purposely exploits prejudices that are a legacy of the Cold War.

V. Obtaining assistance from Russia

Under the terms of the MLAT, it is mandatory for the Russian government to provide public information to U.S. prosecutors and investigators. On the other hand, production of nonpublic information is discretionary.

One type of publicly available information in Russia is the information that corporations and other legal entities provide to the Russian Government as part of the mandatory registration process. Specifically, this information includes the name, address, and telephone number of the legal entity; the nature of the business activity; the names of the officers; and any arrest record of the officers. It includes information about legal entities established in the United States by Russian citizens because Russian citizens have a duty to register such entities with the Russian Government. Similarly, information about completed criminal cases is also publicly available in Russia. Such information includes identifying information for the defendants, description of the committed crime(s), criminal links, and the sentence imposed by the court.

Law enforcement agencies maintain additional information on suspected criminals that typically is not publicly available. U.S. prosecutors and investigators *may* be able to obtain this information, but its production is discretionary under the terms of the MLAT. The information includes the criminal record of a particular individual; the names and other identifying information of his relatives and friends; the criminal group with which he is associated; description of real estate and other expensive items owned; and the name(s) of Russian law enforcement agencies that may have information on the individual.

Sometimes, U.S. prosecutors send requests to Russia asking whether a certain specified individual is a member of an organized crime group or involved in corruption. As in the United States, the terms organized crime or corruption are not legal designations although they are used in common parlance, official speeches, and both academic and newspaper articles. Over the last ten years, there have been some attempts to include them in the law, but such attempts have been unsuccessful. Therefore, having received such inquiries from the United States, Russian investigators do not know how to respond and may even be prohibited from doing so. Russian law enforcement agencies, however, are not prohibited from detailing an individual's criminal history, from identifying whether the individual was part of a criminal group (as opposed to an organized crime group), or from identifying the membership of the group.

VI. An American perspective

This portion of the article both supplements and responds to the matters raised by Colonel Filippov. It sets forth reasons financial crime emanating from Russia can be a U.S. problem; provides additional information why Russians might choose to send criminal proceeds to the United States; discusses other schemes for concealing proceeds sent to the United States; briefly mentions some of the U.S. statutes that might apply to this conduct; and, finally, addresses the issue of cooperation with Russia.

VII. Criminal proceeds from Russia as a U.S. problem

Unfortunately for the United States, criminal proceeds from Russia tend to bring crime with them. As Colonel Filippov notes, Russian criminals often send money to the United States, emigrate here, and then continue to perpetrate new cross-border fraud schemes with associates in Russia. Both the original transfer of criminal proceeds to the United States, and any additional cross-border activity likely violate U.S. laws, such as money laundering, the transfer of stolen property, and wire fraud, become a U.S. law enforcement problem.

The investigation and prosecution of these violations of U.S. law serves the vital interests of every federal judicial district, even though much of the underlying criminal activity may have occurred in Russia. For instance, the money laundering laws protect the integrity of the U.S. financial system and discourage corruption of financial-services providers. Similarly, laws prohibiting the transfer of stolen property discourage criminals from fleeing to the United States with their stolen property. Consequently, the prosecution of such cases not only prevents the defendant from establishing a foothold for continued criminal activity in the prosecuting district, but also is a powerful

deterrent against future criminal activity in the United States.

Investigation and prosecution of these crimes also serve the national interests of the United States. Such prosecutions demonstrate the country's commitment to serving as a responsible member of the international community by not allowing the United States to be a haven for criminals. It also gives the United States leverage in requesting reciprocity from Russia on similar cases. Finally, these prosecutions discourage criminals from fleeing to the United States with huge sums of criminally-derived money, which can be used to corrupt our public officials, law enforcement officials, and government and industry regulators.

VIII. Reasons Russians send criminal proceeds to the United States

Individuals sending criminal proceeds out of Russia use the air of legitimacy provided by the United States to conceal the money's illegal origin. They know that money sent to offshore havens, such as the Isle of Mann, or high crime jurisdictions, such as Colombia, attracts additional law enforcement and regulatory scrutiny. To avoid this unwanted scrutiny, money movers send criminal proceeds to countries with active foreign trade and reputable financial systems like the United States. After all, a law enforcement official is less likely to question a Russian import contract with a U.S. company than the same contract with a company in the Isle of Mann.

Thus, to achieve an air of legitimacy, money movers often use the United States as a temporary destination for criminal proceeds that they ultimately intend to send to offshore havens or other suspicious locales. For example, a money mover might wire transfer criminal proceeds from Russia to a bank account in the United States with the intent it remain there for a short time. The money mover would then transfer the criminal proceeds to his desired locale, such as the Isle of Mann. In this scenario, the receiving bank on the Isle of Mann is unlikely to find funds originating from the United States suspicious. Likewise, a Russian law enforcement official is less likely to question a money transfer from Russia to the United States than a transfer to the Isle of Mann, particularly if the money mover provides the official with an import contract. By inserting one extra wire transfer through the United States, the money mover gives the proceeds an air of legitimacy, and creates an extra layer between the money and its original source.

IX. Additional schemes for moving criminal proceeds to the United States

A. Import and export schemes

Import and export schemes, also referred to as overinvoicing and underinvoicing schemes, are the most popular method for moving money out of Russia. Since at least the late 1970s, Soviet and then Russian, officials have used import/export schemes extensively to profit personally from Russia's vast supply of raw materials. Over the years these schemes have spread so that they can now be found in trades of a wide variety of commodities, perpetrated by both government officials and private entrepreneurs. One attractive attribute of these schemes is their relative simplicity.

Using the export of vodka from Russia to the United States as an example, an export (or under-invoicing) scheme would work as follows. The Russian exporter agrees to sell 100,000 bottles of vodka to the U.S. importer at a price of $20 per bottle of which $5 will go to Mr. X and $15 will go to the Russian export company. Two contracts are then created for the transaction. The first contract is accurate and reflects that the U.S. company will import 100,000 bottles of vodka paying $15 per bottle to the Russian export company plus an additional $5 per bottle to Mr. X. A second contract is then created for presentation to Russian customs and tax officials and/or shareholders in the Russian export company. It states that 100,000 bottles of vodka will be sold to the U.S. import company for $15 per bottle and does not mention the $5 per bottle to go to Mr. X. The Russian export company sends the vodka to the United States and in return the U.S. company pays $1.5 million to the Russian export company and $500,000 into the foreign bank account of Mr. X.

An import (or overinvoicing) scheme is the flip side of the export scheme and would work as follows. A Russian importer agrees to buy 100,000 cartons of cigarettes from a U.S. exporter for $15 per carton. The Russian importer and U.S. exporter also agree that an additional $5 per carton will be paid by the Russian importer to Mr. X. Once again, two contracts are created for the single transaction. The first contract is accurate and states that the Russian importer will buy 100,000 cartons of cigarettes and pay $20 per carton, $15 of which will go to the U.S. exporter and $5 of which will go to Mr. X. The second contract states that the Russian importer will buy 100,000 cartons of cigarettes at $20 per carton and does not further delineate the transaction. The Russian importer takes the second contract to his bank and on the

basis of this contract is authorized to send $2 million abroad to the U.S. exporter. The U.S. exporter then sends $500,000 to Mr. X as specified in the first contract.

In a real export or import scheme, Mr. X would likely be a Russian government official who was bribed to authorize the trade, a director of the Russian import-export company who is embezzling proceeds from his own company, or a Russian organized crime group that controls the Russian import-export company.

Given the important role of barter in the Russian commodities trade during both the Soviet and post-Soviet periods, it is not surprising to learn that import and export schemes are also used to exploit the barter system. An example of an import scheme within the barter system is alleged in the indictment of the former Prime Minister of Ukraine, Pavel Lazarenko. *United States v. Pavel Ivanovich Lazarenko*, Docket No: CR 00-0284-MJJ, Second Superseding Indictment (N.D. Cal., July 19, 2001). The indictment alleges that the hard currency proceeds from the sale of metal products and raw materials exported from Ukraine, which were meant to be used to purchase cattle for a government-owned farm in Ukraine, known as the Naukovy State Farm, were used to purchase the cattle, but at a fraudulently overvalued price.

The indictment states that over a two-year period approximately $38 million in proceeds from the sale of metals and raw materials were deposited into the account of a Netherlands dairy company which was to supply the cattle. Approximately $13 million of the proceeds were used to purchase cattle and other supplies for the Naukovy State Farm. The rest of the money was sent from the account of the Netherlands dairy company to accounts under the control of Lazarenko and his cronies. In order to conceal their activities, members of Naukovy State Farm and the Netherlands dairy company falsified contracts, substantially overvaluing the cattle supplied to Naukovy State Farm. As a result, it appeared that all of the $38 million in metals and raw material proceeds were used to purchase cattle for Naukovy State Farm, a simple import scheme.

One of the vulnerabilities of import and export schemes, from a detection standpoint, is the need for two different contracts. There is always a risk that the real contract will be given to law enforcement authorities, thereby revealing the scheme. One way that money movers have minimized this risk is to install a non-Russian middleman company. Using the examples above, a Russian exporter would sell vodka to the middleman company for $15 per bottle and the middleman company would sell it to the U.S. importer for $20. The $5 difference would accrue to the middleman company which is really an alter ego of Mr. X (this is also known as transfer pricing). Under this scenario, there are still two different contracts but now there are three parties. One contract is between the Russian company and the middleman company. The other contract is between the middleman company and the U.S. company. The middleman and Russian companies can claim that the funds remaining with the middleman company are its legitimate fees for conducting the trade. The U.S. company can claim, truthfully or otherwise, that it did not know the nature of the relationship between the Russian and the middleman companies.

One additional method in which import and export transactions are used to illicitly move money involves the nonfulfillment or untimely fulfillment clauses in the import/export contract. Here, a clause is entered in the contract in which the Russian party agrees to pay exorbitant penalty fees for nonfulfillment or late fulfillment of its contractual obligations. The Russian party then purposely fails to fulfill its contractual obligations within the time specified and pays the penalty to the other foreign party. The penalty money is then forwarded to the bank account of the intended beneficiary.

B. Fictitious services schemes

A fictitious services (also known as intangible services) scheme exploits the ambiguity of intangible services, such as marketing, consulting, insurance, or legal advice, and the difficulty in verifying their fair price. It can be a stand-alone scheme or one part of a larger import or export scheme.

For example, in a simple stand-alone scheme, a Russian criminal wanting to move illegal proceeds out of Russia might pretend to purchase an intangible service, such as consulting, from a U.S. company. The U.S. consulting company would actually be a front company and an alter ego of the Russian criminal, so that payments for the purported consulting services are actually payments into a U.S. bank account he/she controls.

Alternatively, a fictitious services scheme could be combined with one of the export or import schemes delineated above. Under this scenario, a Russian exporter might sell 100,000 bottles of vodka to a middleman company for $15 per bottle ($1.5 million total). The middleman company then sells the 100,000 bottles of vodka to

a U.S. importer for $20 per bottle ($2 million). The middleman company now has $500,000. To provide the Russian government and shareholders with a seemingly legitimate reason for the expenditure of the $500,000, the middleman company would claim that it was paid $100,000 for putting together the trade; $200,000 went to ABC Marketing for an advertising campaign conducted in the United States on behalf of the vodka exporter; $150,000 went to XYZ Law Firm for legal counseling; and $50,000 went to 123 Consulting for consultation provided on international trade issues. In reality, none of these services would have been performed, but their intangible nature makes this difficult to verify. The middleman company is able to provide sham contracts, invoices, and other paperwork, to give it an air of legitimacy. In actuality, all of the above-named firms would be front companies established in offshore zones that have favorable incorporation and bank secrecy laws making it difficult, if not impossible, to establish the true beneficiary of the funds sent to each firm.

Such schemes can be, and are employed in a wide variety of circumstances from the simple to the sophisticated. The common feature among all fictitious services schemes is that the services are ostensibly provided to an individual or company in Russia (the place where the money is currently located) by an individual or company located outside Russia (in the desired destination for the money).

C. Exorbitant interest rate schemes

Another scheme for moving criminal proceeds out of Russia is the exorbitant interest rate scheme. Here, the individual who wants to move money out of Russia (debtor) obtains a loan from a foreign individual or entity (creditor). As with the import and export schemes, there are two contracts for the same loan. One contract governs the actual loan terms and the other contract is a phony set of paperwork containing an inflated interest rate. The debtor presents the phony contract to a Russian bank and government officials as justification for sending the inflated sum of money abroad. Once the money is sent to the creditor, it refunds the difference between the actual interest rate and the inflated interest rate to the debtor by sending the refund to the debtor's foreign bank account.

This scheme can be used for various purposes. A Russian company manager might use it to embezzle funds from his own company. A Russian company might use the scheme to pay bribes into a government official's foreign bank account. An organized crime group might use the loan payments as a means to send criminal proceeds abroad. An individual might use the scheme merely as a mechanism to move legally earned income abroad.

As with import and export schemes, the perpetrator of an exorbitant interest rate scheme may insert a middleman between the debtor and creditor so that the creditor does not have the appearance of complicity in the scheme. This would be especially important if the creditor is a legitimate U.S. or Western European bank.

X. U.S. criminal laws that may apply

U.S. criminal laws are implicated by the schemes discussed in this article. Although deciding which laws apply to a particular case will depend on the facts of the case, some statutes to consider include the following:

A. National Stolen Property Act (18 U.S.C. §§ 2314-15)

The National Stolen Property Act prohibits the transportation and receipt of money obtained by theft or fraud in interstate or foreign commerce. *See* 18 U.S.C.A. §§ 2314 and 2315. This prohibition includes money obtained by fraud or theft in a foreign country which is then brought to the United States. *See e.g., United States v. Braverman*, 376 F.2d 249 (2d Cir. 1967); *United States v. Rabin*, 316 F.2d 564 (7th Cir. 1963). U.S. prosecutors have used the National Stolen Property Act to charge individuals for some of the money movement schemes described herein. For example, the United States has charged former Ukrainian Prime Minister, Pavel Lazarenko, with violations of § 2314 for sending money to the United States that he obtained via import schemes. *United States v. Pavel Ivanovich Lazarenko*, Docket No: CR 00-0284-MJJ, Second Superseding Indictment (N.D. Cal. July 19, 2001).

B. Wire Fraud (18 U.S.C. § 1343)

The wire fraud statute prohibits the use of wire communications in interstate or foreign commerce in furtherance of a fraud scheme. *See* 18 U.S.C.A. § 1343. The jurisdictional element of a wire fraud offense would be met if the count charges a wire communication (monetary wire transfer, fax, telephone call) between the United States and a foreign country. *See United States v. Kim*, 246 F.3d 186, 188 (2d Cir. 2001) (U.S. citizen engages in foreign fraud furthered by wires into or out of the United States); *United States v. Goldberg*, 830 F.2d 459, 464 (3d Cir. 1987) (telephone call from United States to Canada causes transfer of fraud proceeds from Canada to Bahamas); *United States v. Gilboe*, 684 F.2d 235, 237-38 (2d Cir. 1982) (non-resident alien uses wires into and out of the

United States to perpetrate fraud and obtain proceeds of fraud). The wire fraud victim can be located outside the United States and can even be a foreign government. *United States v. Trapilo*, 130 F.3d 547, 551 (2d Cir. 1997). Accordingly, the wire fraud statute is a valuable tool to consider in contemplating transfers of criminal proceeds from Russia to the United States.

C. Federal Money Laundering Statutes (18 U.S.C. §§ 1956-57, 1960)

Sections 1956 and 1957 of the federal money laundering statutes prohibit financial transactions with funds derived from certain specified unlawful activity (SUA), listed in Section 1956. Most of the enumerated SUA's are U.S. offenses. The SUA's also include, however, certain foreign offenses found in § 1956(c)(7)(B), which may be used in a money laundering charge if the financial transaction occurs, in whole or in part, in the United States. This list of foreign predicate offenses was expanded in 2001 with the enactment of the USA PATRIOT Act. One of these new foreign predicate offenses that might apply to a case involving funds from Russia is found in subsection (B)(iv): "bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official." Pub. L. No. 107-56, 115 Stat. 272.

Section 1960 of the federal money laundering statutes prohibits the operation of unlicensed money transmitting businesses. The definition of money transmitting includes monetary wire transfers on behalf of the public. It contemplates the scenario confronted in the Bank of New York case. In that case, Lucy Edwards, a Bank of New York employee, and Peter Berlin, her husband, pled guilty to a conspiracy to violate Section 1960. *United States v. Peter Berlin* Docket No: CR 99-914 (S.D.N.Y. February 16, 2000). In doing so, they admitted their role in helping two Russian banks conduct unauthorized and unregulated banking operations in the United States. The two Russian banks made repeated monetary wire transfers (totaling more than $7 billion) through three Bank of New York accounts. Edwards and Berlin conceded that the purpose of the wire transfers was to launder money and operate a back-channel method for secretly transferring funds into and out of Russia. Since they had never received a license to operate such a business, they pled guilty to the conspiracy charge.

The Bank of New York case is noteworthy because investigators in other districts have noticed similar wire transfer patterns in their local banks, and because changes to Section 1960 have made such cases easier to prosecute. The USA PATRIOT Act amended Section 1960 to relax the scienter requirement so that it is no longer necessary to prove that the defendant knew of the licensing requirement or that it is illegal to operate a money transmitting business without one. It also added a new offense in subsection (b)(1)(C), prohibiting the operation of money transmitting businesses known to involve funds derived from a criminal offense or funds intended to promote unlawful activity. These changes, together with new implementing regulations issued by FinCEN in 2002, will make it easier for prosecutors to pursue these cases.

D. Some additional statutes

A prosecutor confronted with one of these cases should also consider the following additional statutes: 15 U.S.C. § 78dd-1 (Foreign Corrupt Practices Act); 18 U.S.C. § 545 (Smuggling goods into the U.S.) and other customs offenses; 18 U.S.C. § 1001 (False statements); 18 U.S.C. § 1341 (Mail fraud); and, tax offenses.

XI. Effective cooperation with Russia

Transnational financial crimes are difficult enough to investigate and prosecute without involving a non-English speaking foreign country with whom we have had a difficult and complex relationship for more than eighty years. The following tips may be useful in promoting cooperation with Russia.

A. Do not be distracted by differences in economic and political principles

Colonel Filipov's perspective exposed the fact that the Russian viewpoint on sending funds abroad is quite different from the U.S. viewpoint. Russia still has several regulations restricting the free movement of capital. In other words, Russian citizens cannot just send funds abroad if they wish to do so. First, they must have a reason, such as a contract for importing goods. Then, their reason must be substantiated to the government with documentary evidence.

This notion of limiting economic free will is so contrary to the capitalist notion of the efficiency of free markets and the cultural values that Americans have built around this principle, that it is easy to lose focus on Colonel Filippov's point. That is, the schemes described by Colonel Filippov are being used by corrupt public officials and criminal groups in Russia to transfer criminal proceeds (proceeds of bribery, extortion, embezzlement, fraud, theft) to the United States. Thereafter, the criminals flee to the United States.

They then help their friends and relatives in Russia send their criminally derived funds to the United States.

It is important that U.S. prosecutors not allow their differences in political and economic viewpoints to cloud their judgment in determining whether there is a viable U.S. prosecution. After all, a case that a Russian prosecutor might charge as a failure to return currency from abroad, a violation of Article 193 of the Russian Criminal Code, might involve violations of the U.S. statutes prohibiting international transportation of stolen property, wire fraud, or money laundering.

B. Focus on facts, not characterizations

Characterizations of facts often lead to communication problems. For instance, if a Russian prosecutor describes an episode as a "failure to return currency from abroad," he risks losing the attention of his U.S. counterpart. If a U.S. prosecutor describes an episode as "organized crime" or "corruption," he risks alienating his Russian counterpart.

Such communication failures seem to be related more to mutual bias, suspicion, and cultural differences, than anything else. The cure is to focus on the facts of a particular case and avoid legal characterizations. Often, these characterizations do not translate between legal systems. Also, note that the expressions "organized crime" and "corruption" are politically charged. Russia has been accused of being a criminal state full of organized crime and corruption, an accusation about which its people are sensitive. In these cases, it is important to avoid characterizations and focus on the particular facts of the case.

C. Keep in mind the Russian perspective on mutual legal assistance

Colonel Filippov's perspective demonstrates the feelings a U.S. prosecutor may confront in a Russian counterpart on the issue of mutual legal assistance. It is not uncommon to meet a Russian investigator who states that either one of his cases, or his colleague's cases, was dismissed because assistance from the United States did not arrive in time. As might be expected, these individuals are not particularly receptive to U.S. requests for assistance or complaints about inadequate assistance from Russia. Consequently, U.S. investigators and prosecutors should be prepared to deal with this issue in their interactions with Russian counterparts.

Indeed, the mutual legal assistance relationship between Russia and the United States is complicated. Both sides have experienced frustrations. Both sides have elements of their cooperation that could improve. Primarily, however, the relationship is complicated by the difficult political relationship between our countries. Political issues unrelated to a particular case or even the administration of justice can, and do, interfere with cooperation at times.

The best way to avoid problems is to consult those who know the most about the present political currents and the status of cooperation at any particular time: for example, U.S. law enforcement officials (attachés) stationed at the U.S. Embassy in Moscow; the U.S. Department of Justice, Office of International Affairs (OIA), located in Washington, D.C.; and the U.S. Department of Justice, Resident Legal Advisor, stationed at the U.S. Embassy in Moscow.

The Federal Bureau of Investigation, the Bureau of Immigration and Customs Enforcement, and the Drug Enforcement Administration, each have an attaché stationed at the Embassy who functions as liaison with local law enforcement agencies. They can initiate contact with their Russian counterparts and provide invaluable advice on how best to proceed in obtaining investigative cooperation. They may even be able to obtain some of the publicly available information, mentioned by Colonel Filippov, without the need for a mutual legal assistance request. Keep in mind that each of the federal law enforcement agencies represented at the U.S. Embassy has its own separate counterpart on the Russian side, as well as its own unique relationship with each counterpart. Thus, it may be helpful to involve the attaché from more than one agency.

If you will need evidence from Russia for trial, contact OIA as soon as possible. The OIA attorneys can advise you on the format for requests to Russia under the Mutual Legal Assistance Treaty. Be prepared to wait several months for a response to an MLAT request.

D. Consider the alternatives to extradition

The United States does not have an extradition treaty with Russia. Even if an extradition treaty were to be negotiated, Russia is prohibited from extraditing its own citizens under the terms of the Russian Constitution. There are, however, alternatives to extradition worth considering.

First, it is possible for INTERPOL to issue a red notice for a U.S. subject. The red notice will alert law enforcement officials around the world that the United States has an outstanding arrest warrant for the subject. Information on red notices

is available to a variety of law enforcement officials and, most significantly, to those stationed at border and immigration checkpoints. Additionally, several countries recognize the red notice as a legitimate arrest warrant and will arrest U.S. subjects, allowing the United States to institute extradition proceedings. Although, Russia will not extradite a subject to the United States, another country may. Therefore, if the U.S. subject decides to leave Russia and travel to a third country, the red notice could be invaluable. To learn more on how to obtain a red notice, contact INTERPOL-USNCB, which houses individuals detailed from all of the major federal criminal investigative agencies, in Washington, DC.

Second, under Russian law, the Russian government can prosecute Russian citizens who commit crimes in the United States. In fact, Russian prosecutors can use evidence from the United States to do so. This means that, if a subject flees to Russia and there is little reason to believe the subject will ever leave Russia, it may still be possible to obtain a prosecution. OIA and the Department Resident Legal Advisor have been working closely with the Russian General Procuracy to develop procedures for referring such cases to Russia. Contact OIA to learn more about this option.

E. Remember the path has already been forged

Several U.S. investigators and prosecutors have investigated financial crime emanating from Russia, dealt with their Russian counterparts, and successfully prosecuted cases. They are a great resource for information. Among other things, they can introduce you to their contacts, provide names of expert witnesses, and sample indictments. Contact the Organized Crime and Racketeering Section for assistance in finding investigators and prosecutors who have worked similar cases.

Useful Contact Numbers

Organized Crime & Racketeering Section
202-514-3594

Office of International Affairs
202-514-0000

INTERPOL-USNCB
202-616-9000

Office of FBI Legal Attaché, Moscow
011-7-095-728-5020

Office of Customs Attaché, Moscow
011-7-095-728-5215

Office of DEA Country Attaché, Moscow
011-7-095-728-5218

DOJ Resident Legal Advisor, Moscow
011-7-095-728-5357

XII. Conclusion

Since the early 1990s, financial crime emanating from Russia has been a problem plaguing our financial system. We can expect the problem to become more entrenched as new groups of Russian criminals emigrate to the United States to aid their associates in Russia in committing financial crimes. With the experience gained by U.S. investigators and prosecutors over the last decade, it is now time to make a concerted effort in this area so that the United States is no longer a favorite destination for Russian criminals and their proceeds.❖

ABOUT THE AUTHORS

❑**Vitor Filippov** is a retired colonel of the Russian MVD with more than twenty years of service. He spent eleven of his years in the MVD with the Special Regional Police Office (RUBOP) of the Russian Far East, which was an elite office dedicated to the investigation of organized crime. Before retiring in 2002, Colonel Filippov was the Chief of the International Section at the RUBOP. In this capacity, he supervised transnational criminal investigations and communication with foreign law enforcement agencies. He is a member of the Russian Criminologist Association, has published articles in Russia on a variety of criminology topics, and most recently has specialized in studying the money laundering activities of Russian organized crime groups.

❑**Jennifer J. Shasky** is a Trial Attorney in the Organized Crime & Racketeering Section of the Criminal Division, where she focuses on transnational crime. Her casework has included several matters involving transnational financial crime emanating from Russia, the countries of the former Soviet Union, and countries considered to be offshore havens. Ms. Shasky has extensive experience in the region. Prior to joining the Organized Crime & Racketeering Section, she spent her time in the Criminal Division working on criminal justice reform projects with Russian prosecutors and MVD officials.✠

The Russian Connection: Sex Trafficking into the United States and What the United States and Russia Are Doing About It

Thomas Firestone
Assistant United States Attorney
Eastern District of New York
Detailed as Department of Justice Resident Legal Advisor and Deputy Chief, Law Enforcement Section
United States Embassy, Moscow, Russia

I. Introduction

In January 2002, the United States Embassy in Moscow received a letter about an upcoming American production of Nikolai Gogol's "The Marriage." The letter was from Lev Trakhtenberg, who identified himself as the President of a United States based entertainment company that had produced more than twenty shows in the United States and was hosting a Russian drama group in its upcoming United States tour. To this end, Trakhtenberg asked the Embassy's Consular Section to expedite the processing of visas for all members of the drama group. The letter seemed innocent enough, but according to a recent indictment, it was actually part of a scheme by Russian gangsters to import sex slaves into the United States.

The phenomenon of Russian-speaking women working as prostitutes overseas has become so common that prostitutes are simply called "Natashas" in many countries. Many of them were seduced by false promises of high-paying work in the West, Middle East, and in rich Asian countries, only to find themselves trapped in involuntary sex slavery once they arrived. According to annual State Department reports, both Russia and the United States are involved in this tragic slave trade, Russia as a major source country, and the United States as a major destination-country for human trafficking.

Over the last few years, the United States and Russia have made significant efforts to combat this problem. Russia has made legislative attempts to criminalize trafficking and the United States has vigorously prosecuted Russian trafficking organizations pursuant to the Violence Against Women and Trafficking Victims Protection Act in 2000 (the 2000 Act). The 2000 Act facilitates the prosecution of trafficking cases through several measures, including the creation of new trafficking-related crimes with enhanced penalties, and the establishment of new visa classifications enabling trafficking victims to avoid deportation and to assist law enforcement in the identification and prosecution of traffickers.

This article examines three United States prosecutions of Russian trafficking organizations. Broader lessons about the mechanisms used by traffickers to coerce their victims into slavery, and the instruments used by Russian and American law enforcement to cooperate in their prosecution, are drawn from these cases. The article further discusses Russian legislative efforts to address the problem (with United States technical assistance) and explores the implications of such legislation for future prosecutorial cooperation.

A. *United States v. Virchenko*, No. A01-013 CR (D. Ak. Feb. 22, 2001)

The first United States case successfully prosecuted under the 2000 Act was *United States v. Virchenko*. According to court documents, Virchenko worked as a dance instructor in the Russian region of Krasnodar and lured his unwitting students into becoming trafficking victims by inviting them to perform traditional Russian folk dances at a nonexistent festival in the United States called "Russian Winter in Alaska." Several young students accepted. Virchenko's American associate meanwhile persuaded the Anchorage Mayor's Office to issue official invitations to Virchenko and his students. Upon their arrival in the United States, Virchenko locked the students in a room in a remote location. Virchenko and his associates took their passports and told them that the festival had closed, but that they still owed him travel costs of $1,500. He told them that the only way to repay him was by dancing nude in a strip club. Isolated, without money, travel documents, or knowledge of the English language, the women had no choice but to agree. Eventually they were rescued by the Immigration and Naturalization Service (INS).

Pursuant to the United States-Russian Mutual Legal Assistance Agreement (MLAA) and the assistance of the Department of Justice's (Department) Office of International Affairs (OIA), American law enforcement officials traveled to Russia to interview witnesses and collect evidence, which they used to successfully prosecute Virchenko and his accomplices. In 2001, Virchenko was sentenced to thirty months incarceration.

The *Virchenko* case presents one model of a trafficking scheme–a limited conspiracy using deception to recruit women from a poor area, then forcing them into involuntary labor in the sex industry by taking advantage of their dependence and cultural isolation in the destination country.

B. *United States v. Gufield*, No. 98 CR. 435 (E.D. N. Y. Mar. 31, 1998), *aff'd* 242 F.3d 268 (2d Cir. 2000)

A different kind of trafficking scheme is evident in the case of *United States v. Gufield*. The Gufield/Kutsenko "Brigade" was an extraordinarily violent gang that operated in New York City in 1997 and 1998. At its height, the Brigade consisted of approximately fifteen members and associates, most of them emigrès from the former Soviet Union, who maintained ties with New York's traditional La Cosa Nostra (LCN) families. Under the leadership of boss Dmitri Gufield, the Brigade engaged in a wide variety of criminal activity, including kidnaping, arson, forced debt-collection, extortion, and fraud. According to testimony, however, Gufield's main goal was to import hundreds of women from the former Soviet Union and corner the market on prostitution in New York City.

Gufield's trafficking scheme was relatively simple. He and his confederates bought women from criminals in the former Soviet Union and smuggled them into the United States using black-market travel documents. Once in the United States, victims were locked in a Brooklyn basement and threatened and beaten unless they worked as prostitutes. They were also told that their relatives in the former Soviet Union would be harmed if they resisted.

The scheme was foiled when the FBI arrested members of the gang for unrelated crimes. Two members cooperated and revealed all the gang's criminal activity, including the trafficking scheme (which was halted before it reached the massive proportions envisioned by Gufield). Because the case was prosecuted prior to the passage of the 2000 Trafficking Act, the members of the Brigade were indicted for a number of trafficking-related crimes, including kidnaping, extortion, and Mann Act violations, but not for trafficking *per se*. Eventually, all pled guilty. Gufield himself was sentenced to twenty years incarceration, while other gang members received lesser sentences.

In contrast to the scheme in *Virchenko*, which relied primarily on deception, the *Gufield* case offers an example of a diversified criminal enterprise relying on ties to organized crime to obtain women and illegal travel documents for exit from the source country, and on violence and threats to control the women in the destination country.

C. *United States v. Trakhtenberg*, No. 02-CR-638 (D.N.J., Filed Aug. 20, 2002)

Somewhere between *Gufield* and *Virchenko* is the *Trakhtenberg* case, which is, at the time of this writing, being prosecuted in the District of New Jersey. According to court documents, Trakhtenberg and his coconspirators recruited victims through ads placed in a local newspaper in the Russian city of Voronezh. The ads offered high-paying work in New York strip clubs, but specifically stated that no sex would be involved. As a cover for the operation, Trakhtenberg and his associates created phony entertainment companies in the United States and phony theatrical companies in Russia. The American companies then issued formal invitations to the Russian companies, which were used to obtain United States visas in Russia. Before departing for the United States, the recruiters made the women provide them with the names and addresses of their relatives in Russia "in case of emergency."

Once the women arrived in the United States, the defendants took their documents and locked the women in an apartment guarded by an organized crime associate. The defendants took the women to work at a strip club every day and took most of their earnings as well, which, they said, were being passed on to their organized crime associates in Russia. The women were warned that efforts to escape or refusal to surrender their earnings would result in harm to their families in Russia.

Thus, the *Trakhtenberg* case presents a third model of a Russian trafficking organization. As in *Virchenko*, but in contrast to *Gufield*, the traffickers appear to have limited their criminal activity to trafficking and were not part of a diversified criminal organization. As in *Virchenko*, to recruit their victims, they relied on deception of women in a poor area of Russia. In contrast to

Virchenko, but like *Gufield*, they had connections to organized crime and used these connections to intimidate their victims into working as sex slaves.

These three cases are typical and collectively reveal Russian trafficking by a wide range of criminal organizations employing various recruiting and enslavement techniques, ranging from elaborate deception to crude violence. Because the nature of trafficking enterprises is fluid and varied, effective antitrafficking legislation must address this variety of structure, organization, and technique.

II. Russian legislation

Since October 2002, the Russian government has been engaged in an ambitious effort to address Russia's trafficking problem by drafting criminal legislation that will give investigators and prosecutors the necessary legal tools to combat it. This effort is more significant than the passage of the 2000 Act because, absent a specific antitrafficking law, Russian investigators lack the power to initiate an investigation, protect trafficking victims, or maintain statistics reflecting the frequency of trafficking. Draft legislation, however, which is expected to be adopted before the end of 2003, would remedy this situation.

At the heart of the bill is the new crime of "trafficking in persons," defined as "recruitment, transportation, transfer, receipt, harboring, extortion, blackmail, fraud, abuse of the conditions of vulnerability of the victim, corruption in the form of payments, benefits, and also abuse of trust" with the goal of "exploitation of a human being." As in a case like *Gufield*, involving organized crime, the statute carries a maximum penalty of life imprisonment. The law also contains several provisions designed to capture trafficking schemes in which proof of the means described above may be lacking or difficult to obtain. For example, almost every trafficking scheme involves confiscation of victims' travel documents to prevent their escape. Many schemes also involve use of false documents in source countries. The draft legislation criminalizes both the destruction and theft of identity documents, as well as their creation and alteration for purposes of trafficking. To prevent traffickers from using confidential information about victims' families to intimidate them, as in *Trakhtenberg*, the law also criminalizes the disclosure of victims' confidential information. The law contains provisions relating to debt bondage, slave labor, recruitment into prostitution, trafficking in minors, the use of blackmail, and drug dependency, to coerce a person into performing sexual acts, as well as separate articles relating to victim and witness protection. Collectively, these provisions will provide Russian investigators and prosecutors with the tools they need to combat human trafficking. How well they use them can only be determined once the law is passed and implemented.

III. United States-Russian mutual assistance in combating trafficking

Just as the crime of trafficking requires close cooperation between criminals in source and destination countries, combating it requires equally close international cooperation between law enforcement agencies. As in the *Virchenko* case, Russian investigators have helped American prosecutors collect the evidence necessary to prosecute traffickers. Equally significant, the United States has aided Russia's current legislative effort. Specifically, the State Department's Bureau of International Narcotics and Law Enforcement (INL) has provided most of the political and financial support for the legislative project, while the Department's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) has provided much of the legal expertise. As the Department's Resident Legal Adviser in Russia during the period in which the legislation was drafted, I worked closely with the Duma Working Group and offered assistance in developing the draft law and plan implementation strategies. As a result of these efforts, the State Department, in its annual 2003 AntiTrafficking Report, officially upgraded Russia's status from "Tier III" (defined as countries making no significant efforts to comply with minimum international antitrafficking standards) to "Tier II" (defined as countries making significant efforts to comply with those standards). This upgrading had great significance for Russia because, absent a presidential waiver, the 2000 Act mandates the termination of United States nonhumanitarian, nontrade-related assistance to countries on Tier III as of the date of the 2003 Report. In Russia's case, the amount of United States assistance is well over $100,000,000.

The anticipated passage and implementation of Russia's antitrafficking legislation will also help United States law enforcement combat trafficking. The Mutual Legal Assistance Treaty (MLAT) between the United States and Russia, which supplanted the earlier MLAA, contains a provision that allows the requested state (Russia) to refuse assistance if the crime being investigated by the requesting state (United States) is not also a crime in the requested state. The criminalization of trafficking in Russia will provide United States prosecutors with a solid basis for seeking legal assistance from their Russian counterparts in these

cases. It also will provide United States prosecutors with a basis for asking Russia to prosecute traffickers who cannot be extradited to the United States due to the absence of an extradition treaty. (Russian law specifically provides for the prosecution, in Russia, of Russian nationals who commit crimes in a foreign country, if the foreign country makes an appropriate request). Finally, if the law passes, Russian law enforcement will begin to investigate and prosecute trafficking organizations. Pursuant to the MLAT, United States law enforcement, through OIA, will be able to obtain all of the evidence gathered by the Russians in a form that is admissible in United States courts.

United States-Russian cooperation in the area of combating trafficking provides an ideal example of the ways in which source and destination countries can work to cut off trafficking at its source. If such cooperative efforts do not continue and expand, then human trafficking certainly will.❖

ABOUT THE AUTHOR

❑**Thomas Firestone** is an Assistant United States Attorney in the Organized Crime and Racketeering Section, United States Attorney's Office for the Eastern District of New York. In this capacity, he has focused on the investigation and prosecution of Russian organized crime cases. Since May 2002, he has been on detail as the Department of Justice Resident Legal Adviser at the United States Embassy in Moscow, where he also serves as Deputy Chief of the Embassy's Law Enforcement Section.✠

Balkan Organized Crime: The Emerging Threat

Clint Williamson
Senior Adviser to the Iraqi Ministry of Justice
Baghdad, Iraq
Director of Transnational Crime Issues
National Security Council

I. Introduction

In April 2001, I returned to the Department of Justice Criminal Division after spending seven years as a Trial Attorney at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, Netherlands. During my time at the ICTY, I supervised investigations of war crimes committed throughout the former Yugoslavia, but my primary focus was on crimes linked to Slobodan Milosevic and the Serbian leadership in Belgrade. During the course of these investigations, I met with hundreds of individuals who could shed light on the chain of command and the inner workings of the Milosevic government. These included military officers, political officials, intelligence agents, diplomats, and many others who were, in one way or another, linked to the regime.

In the strange world of Milosevic's Serbia, politics, military operations, police activities, and organized criminality, were so intertwined that it was often impossible to separate them. As I developed information on war crimes, I was also able to glean much information on organized crime in the region and those who were involved. I worked closely with intelligence and law enforcement agencies all over Europe on war crimes matters and, invariably, the issue of Balkan organized crime came up. I found that law enforcement agencies were becoming increasingly concerned about the specter of Balkan crime groups and the effects that they were having in their respective countries.

By the time I left the ICTY, it is fair to say that Balkan organized crime (OC) groups were controlling prostitution, drug trafficking, extortion rackets, and contraband smuggling networks, in a number of northern and western European countries. Once they took control of these criminal activities, they introduced a degree of violence which had previously not been seen in most of these states. Naturally, security services all over

Europe took notice and tried to understand how this had occurred in such a short period of time.

II. The changing character of Balkan organized crime

During the last twenty-five years of communist Yugoslavia's existence (1965-1990), its citizens were able to travel rather freely–the only communist state in which this was the case. As a result, hundreds of thousands of Yugoslavs went to western and northern Europe seeking jobs. Over time, large Yugoslav émigré communities were established throughout Europe. As is the case with any ethnic or national group, most were law-abiding. However, some started engaging in criminal activity. The fact that most Yugoslavs retained homes in Yugoslavia, stayed in close contact with friends and family there, and traveled back and forth, made it relatively easy for crime groups to establish networks that stretched from Yugoslavia through most of Western Europe.

From the outset, many of these crime groups operated with the countenance, or even active support, of the Yugoslav state security services. Cooperation between the two took many forms. One of the most disturbing was the practice of contracting criminals to kill enemies of the government who lived abroad. In fact, the man who became the undisputed "crime boss" in Belgrade in the late-1990s rose to prominence doing just that. A more routine cooperative practice involved the security agencies facilitating the flow of drugs or weapons through Yugoslavia to crime groups for sale in Western Europe. As long as the crime groups in Yugoslavia gave the security services their cut of the money, the authorities were willing to turn a blind eye to what they did elsewhere. They could even justify the arrangement as being in the national interest because it created disorder and undermined the democratic states where the groups operated.

Until the early 1990's, the make-up of Balkan OC groups largely mirrored the ethnic make-up of the former Yugoslavia. There were Serbs, Montenegrins, Croats, Bosnians, Macedonians, and Albanians, with Serbs being the most prominent players. In part, this was due to the fact that the Serbs predominated in the security services and protection by those services was crucial to crime groups operating across the Yugoslav borders.

As the ethnic divides in Yugoslavia began to manifest themselves, crime groups tended to split along ethnic lines as well. When war broke out in Yugoslavia in 1991, it was a boon for the criminals, and although they were divided along ethnic lines, they still tended to work together where money was to be made. Tremendous amounts of money were made by trafficking in weapons, smuggling gasoline or cigarettes, or by participating in paramilitary groups which robbed, raped, and murdered innocent civilians. The long-standing relationship between Serbian crime groups and Serbian state security was fully exploited by Milosevic and his coterie. They released convicted criminals from prisons, incorporated them into paramilitary groups, armed them with automatic weapons, and turned them loose on civilian populations in Croatia and Bosnia, and later in Kosovo. By using common criminals, they hoped to establish a certain degree of deniability and distance between themselves and the crimes. It was a slippery slope, though, which effectively resulted in the criminalization of the entire Milosevic regime. Criminalization became complete when economic sanctions were imposed and smuggling became the order of the day.

The governments in Croatia and Bosnia also employed criminal groups in their military efforts, but to a much lesser degree, and it never had the all-encompassing effect that it did in Serbia. Although Croatian and Bosnian crime groups profited from the war, they never rose to the heights, outside their countries, that the Serb groups did, simply because they did not enjoy the same level of state sponsorship.

With so much money at stake and with the freedom to act with virtual impunity, the Serbian criminals became increasingly violent. The murder rate in Belgrade rose rapidly and almost every month, one prominent criminal or another was shot in assassination style killings–almost all of which have remained unsolved for years. Government officials were also among the victims, including a former President of Serbia, the Minister of Defense, the head of the national airline, and the chief of the uniformed national police (who had been a key link between the security services and the OC groups). In a number of the cases, there were credible allegations that the victim was involved in the murky mix of organized criminality, official corruption, and war-time atrocities.

These two factors, the money to be made in war-time Serbia and the internecine fighting between criminals, caused Serb criminals to stay largely focused on Serbia itself. The result was that their crime organizations in Amsterdam, Antwerp, Hamburg, and other cities, suffered. By the time Slobodan Milosevic fell from power in October 2000, the Serbian organized crime presence

outside Serbia was significantly diminished. Many of its most prominent leaders, such as Zeljko Raznatovic, aka "Arkan" (mentioned earlier as the hit-man who became Belgrade's crime boss), were dead. The new leaders, and their government patrons, were too busy making money and protecting their political interests in Serbia to pay much attention to the rest of Europe.

Into this void stepped the Albanians. Although ethnic Albanians from Kosovo and Macedonia had been able to travel abroad under Tito, those from Albania proper had been trapped in the most isolated state in Europe, ruled by a paranoid Stalinist government. Only after the fall of communism in Albania in 1991 were they able to leave. Between 1991 and 2000, thousands of them left and they were joined by the thousands who fled Kosovo in the years leading up to the 1999 war. The result was that the population of Albanian émigré communities mushroomed throughout Western Europe.

Those in OC groups were initially able to take advantage of the shift in drug trafficking routes south from Serbia into Albania. This shift came about because of the wars going on in the rest of Yugoslavia. While the conflict raged in Croatia and Bosnia, the traditional smuggling routes that went from Serbia through those countries were not predictable enough. Consequently, drugs originating in Central Asia and/or Turkey started being transported through Albania instead. With relatives or associates back home in Albania, the Albanian crime groups in Western Europe were able to establish a secure, reliable trafficking network.

The true emergence of Albanians as the dominant ethnic crime group in Western Europe, though, coincided with two cycles of lawlessness in Albania and Kosovo respectively. The first event was the complete breakdown of civil authority in Albania in 1997. In the ensuing period of anarchy, virtually all of the military arsenals were looted, resulting in thousands of automatic weapons being "liberated." This created an unimaginable market for weapons trafficking. The second event was the war in Kosovo in 1998 and 1999. Huge smuggling networks were set up to support ethnic Albanian fighters and tremendous amounts of money were funneled in clandestine ways to the cause. Some organized criminal groups, as had been the case in Serbia, were transformed, part and parcel, into paramilitary groups. Thus, they were in a prime position to benefit from the lawlessness, and again, as in Serbia, they were able to cloak themselves in the flag as patriots who had fought valiantly for their ethnic brethren. This gave them a legitimacy as "freedom fighters" which they exploited to the fullest. These factors provided them the opportunity to strengthen their power in Albania, Kosovo, and Macedonia, and also to enhance their positions wherever there were significant Albanian émigré communities throughout Western Europe.

Before long, prostitution and extortion rackets, drug networks, and cigarette smuggling, which had largely been the province of Serb criminals, came under the control of Albanians. In city after city in Western Europe, the authorities began expressing concerns about the rapid rise of Albanian OC. In my last year and a half at the ICTY, government officials in a number of states repeatedly compared the rise of Albanian OC to the rise of Russian OC which occurred a few years earlier. They differentiated the two by saying that while the Russians had been extremely violent at home (in the former Soviet Union), the high levels of violence had not been exported to the rest of Europe. The Albanians, though, had introduced a degree of violence and ruthlessness which had never been seen in most of the European countries.

Since the Albanian OC presence manifested itself in every European country where there was a significant émigré population, those involved with the issue began to question whether the same thing would occur in the United States. Like European countries, the United States has also seen a huge influx of Albanian émigrés, many of whom had entered the country as refugees or asylum seekers during the 1990s. Additionally, ethnic Albanians in the United States provided substantial financial support to the Albanians fighting in Kosovo, and a brigade of the Kosovo Liberation Army (KLA) actually was composed primarily of Albanians from the New York area. In Europe, the links established between émigré groups and the KLA were exploited by organized crime groups after the war, so it was reasonable to expect that similar developments might materialize in the United States.

When I returned to the United States from The Hague in April 2001, I had a number of meetings with senior officials in the Criminal Division to discuss the possible emerging threat of Balkan–particularly Albanian–organized crime. The leadership in the Criminal Division and at the Organized Crime and Racketeering Section (OCRS) were very interested in getting a clearer picture of how serious the threat actually was and with creating a plan to preempt it before it reached the United States. I was tasked with preparing a

comprehensive interagency threat assessment on Balkan OC. I started work on this in the summer of 2001, but the work was interrupted first by the attacks of September 11 and then by my posting to Kosovo.

My move to Kosovo resulted from the NATO governments' rising concerns regarding the state of lawlessness in the province. It appeared that Albanian OC groups had come to dominate life in Kosovo. In practical terms, this meant that it would be extremely difficult for a stable situation to be established in the province and, therefore, NATO troops would have to be committed for an indefinite period. There was a strong consensus within NATO to bring in a career prosecutor–preferably with a solid background in the region–to head up the Department of Justice for the United Nations Mission in Kosovo (UNMIK). I accepted the post in October 2001. Although Kosovo is a province of Serbia, it has effectively been a UN protectorate since the end of the 1999 war and UNMIK has run the government throughout this period. Thus, as Director of the Department of Justice, I served as the Attorney General of the province, overseeing the courts, the prosecutors' offices, and the prison system, among other things. I was given tremendous latitude to address crime issues, largely because of the very broad mandate under which the United Nations and NATO operate in Kosovo.

One of the problems I encountered upon my arrival was that the UNMIK Department of Justice had no strategy in place for dealing with the organized crime problem, nor had it ever undertaken any large-scale prosecutions of organized crime figures. In short, the Department employed a reactive approach instead of a proactive one. If organized crime figures were arrested for a criminal offense, they might be prosecuted, but the prosecutions took place in isolation as opposed to being part of a coordinated effort to attack the problem.

I immediately sought to make the Department much more proactive. One of the first steps was to establish a close working relationship with the Kosovo Force (KFOR), the NATO peacekeeping forces deployed in the province. With over 32,000 troops and a huge intelligence network in a place the size of Connecticut, KFOR was an invaluable source of information. They had eyes and ears everywhere and could immediately identify the worst of the organized crime figures in any city or town. They had a vested interest in seeing something done about organized crime and became enthusiastic partners in my efforts.

Prior to my arrival, two specialized units had been established within UNMIK Police to address organized crime–the Kosovo Organized Crime Bureau (KOCB) and the Central Intelligence Unit (CIU). There was no prosecutorial counterpart, though, so I set up the Sensitive Information and Operations Unit (SIOU) within the Department of Justice. Michael Dittoe, an AUSA from Miami, led the office and supervised sensitive investigations (organized crime, terrorism, cross-border insurgency cases, etc.), provided expertise in these fields to international prosecutors, and served as the main interlocutor with intelligence services. SIOU soon eclipsed the specialized police units as the driving force behind OC investigations and prosecutions.

Another office that made a huge impact in fighting organized crime was the Judicial Inspection Unit (JIU). Unlike the United States, the judges in Kosovo, as well as the prosecutors, fell under the authority of the Department of Justice. The vast majority of theses jurists were Kosovars (either Albanian or Serbian) and tremendous pressure was exerted on them when dealing with sensitive cases. In some cases, the pressure came in the form of threats, but more often it was in the form of financial inducements. By empowering the JIU to aggressively investigate all allegations of judicial or prosecutorial impropriety, we were able to send a strong signal to jurists that corruption would not be tolerated. This had a huge effect on the public as well and they showed a new willingness to report improper behavior.

Although these steps influenced the behavior of local judges and prosecutors in a positive way, it did nothing to diminish the risks faced by them when handling cases against high-level OC figures. As a result, most of these cases had to be handled by international judges and prosecutors (IJPs). Over the last year, we were able to double the number of IJPs. Although they were originally introduced into Kosovo to handle inter-ethnic cases, by mid-2002 the bulk of their cases involved organized crime. By utilizing them in this way, we were able to bring significant prosecutorial weight against the leading OC figures.

Several months after I arrived in Kosovo, we were able to enact a regulation allowing for the use of covert measures (wiretapping, video surveillance, etc.). The use of these law enforcement tools had previously been prohibited, so this regulation was a big step forward in addressing organized crime. Unfortunately, acquiring the equipment and technical backing

necessary to use these tools was slow in coming. Thus, I was only able to see marginal benefits from the passage of this regulation during my tenure. In the long run, however, the ability to use covert measures should make a significant impact.

All of these steps, and others such as creating a witness protection program, facilitated prosecutions against some of the leading OC figures in Kosovo. We used the "Al Capone approach" and basically prosecuted them for any crimes to which they could be linked. The goal was to get them off the streets for as long as possible and to show that the authorities were in control. Simply by arresting and bringing them into courtrooms, we were able to pierce the veil of impunity that most Kosovars believed surrounded them. This caused more witnesses to come forward and others, who had previously been unwilling to cooperate, to re-think their positions. Cases that were brought initially for war crimes were later expanded to include public corruption and racketeering charges. By the end of 2002, we had initiated prosecutions against a number of the leading OC figures in Kosovo, including the one preeminent crime boss.

Although significant progress was made, the situation in Kosovo is still far from good. After the first arrests, large demonstrations occurred since the defendants were once again portrayed as "freedom fighters." While these public protests died down quickly, those linked to organized crime did everything they could to create a climate of fear and turmoil, in an effort to make it untenable for the Department to pursue other prosecutions. Threats against witnesses were commonplace, attempts were made on some of their lives, and in a few truly tragic cases witnesses were killed. Nevertheless, the prosecutions have gone forward and more cases have been brought. Just as it was in the United States, it will be a long, difficult fight to get organized crime under control.

Kosovo is unique to a certain degree. Since the international community (UN and NATO) has exclusive responsibility for public security, it has been relatively easy to institute reforms there. The need for similar steps in other Balkan states is just as pressing, but the governments in those countries have enjoyed varying degrees of success in their efforts to combat organized crime. During my tenure in Kosovo, I met frequently with my counterparts (Ministers of Justice and Interior) in neighboring states. Most of them recognized the scale of the problem they were confronting and wanted desperately to do something about it. In some cases they did not know what to do, in others they knew but were unable to enact the needed reforms, and in a few cases they were actually able to take meaningful steps which had a positive impact.

The one place where officials were unwilling to acknowledge the scale of the problem was in Serbia proper. While Serbian OC groups lost some of their influence outside the Balkans, their power in Serbia remained undiminished. The groups were so confident of their power that they assassinated Prime Minister Zoran Djindjic on March 12, 2003 and hoped to take outright control of the government. Finally, after years of complacency and complicity with organized crime groups, the outrage generated by this act left the government feeling empowered enough to directly take on the criminal gangs.

This has largely been accomplished through the declaration of a state of emergency which has given the government sweeping police powers. Thousands have been arrested including the Deputy State Prosecutor (who admitted to being paid off by OC groups), the former Chief of Staff of the Army, the former Chief of State Security, and numerous other policemen, judges, and prosecutors, as well as the criminal gang members themselves. The elite police unit responsible for fighting terrorism and organized crime has been disbanded as evidence showed that it was inextricably linked with the biggest OC group, and that some of its officers even participated in Djindjic's assassination. It would be fair to say that in the last two months, more has been accomplished in Serbia in terms of tackling criminality than was accomplished in the past three years.

People in Serbia, and observers in other parts of the world, have been shocked at the extent to which organized crime permeated Serbian state structures. Its presence has undermined any transformation to a truly democratic and functioning state, and although Serbia was perhaps the most glaring example of criminality run amok, organized crime still poses a threat to varying degrees in all of the Balkan states. To get it under control will require continued engagement in the Balkans by the international community, something which is far from certain as attention is diverted to other crisis spots like Afghanistan and Iraq. As long as OC groups are allowed to operate with impunity there, the threat will exist elsewhere in Europe, and perhaps in the United States as well.

III. Balkan organized crime in the United States

It is difficult to determine how serious the Balkan OC threat actually is in the United States. When I started working on the threat assessment in 2001, I found that there were a large number of cases involving Albanian perpetrators across the country. In a number of these cases, the suspects had committed crimes in a manner consistent with organized crime groups. At that point, though, there was little analysis of the links between individuals and groups except in New York, and even there the analysis was limited.

One fact emerged very quickly and that was the difficulty law enforcement authorities have had in penetrating Albanian OC groups. Invariably the suspects refused to cooperate. One agent in New York told me that "these guys will take ten years without blinking an eye rather than say anything against their cohorts." Likewise, a shortage of translators and difficulty in finding translators who did not know the suspects led to a paucity of quality Title III intercepts. As a result, relatively little intelligence was accumulated on the make-up or modus operandi of the Albanian groups.

By 2001, we were starting to see some disturbing trends. Up until that point, Albanian crime "groups" were almost always synonymous with family groups. What we began observing was a newfound willingness of family-based crime groups to include outsiders if they had a special expertise that no one in the family possessed. This showed that the groups were becoming more professional and ambitious, no longer wanting to see limitations placed on their activities simply because of the limitations of family members' skills. As this occurred, Albanians started branching out from signature crimes, such as bank burglaries, and started moving into other arenas.

We also began seeing an increased degree of cooperation between Albanian OC groups and LCN groups, particularly in New York. Albanians, who had traditionally worked as "muscle" for the LCN families, began taking on more meaningful roles, and they started appearing as equal partners with LCN groups in certain criminal enterprises. In several instances, they have even gone into competition with the LCN families, taking over extortion and gambling rackets formerly controlled by the LCN. Significantly, they have done this with relatively little resistance from the LCN who have been unwilling to fight them. We have also seen Albanian OC cases in places like Dallas, Detroit, Phoenix, and even Alaska. There is no doubt that Balkan groups are reaching out to new areas and new types of criminal activity.

In an effort to accurately gauge the extent of the problem, work on the threat assessment that was interrupted in late-2001 has been reinitiated. After my posting to Kosovo and subsequent move to the National Security Council, this has been taken up by OCRS and the FBI Headquarters Organized Crime Unit, both of which have started profiling cases involving Albanian perpetrators across the country. They have already compiled a tremendous amount of information and begun to study links between individuals and groups operating around the United States. Additionally, the Criminal Division and FBI have increased contacts with intelligence and law enforcement authorities in Europe in an effort to determine links between groups operating here and those operating overseas.

IV. The way ahead

Balkan OC has not reached the epidemic proportions in North America that it has in Europe, but there are growing signs that it is becoming more of a factor in the United States. To prevent it from becoming as entrenched here as it is in Europe, the Department and local law enforcement agencies have to aggressively address the problem.

The first component of the strategy in fighting Balkan OC is to identify linked individuals and groups. In numerous instances, law enforcement officials have not recognized that they are dealing with Balkan OC figures when they have made arrests and even when they have carried through with prosecutions. Many have been unaware of the Balkan OC phenomenon which, until recently, was confined primarily to the Northeast. On occasion, investigators and prosecutors who were not familiar with Albanian or Serbian names have failed to connect their defendants with others operating in the same group and in the same area.

Work that is underway on the threat assessment should go a long way to elucidating the extent of the problem in the United States. Key to the success of this effort is the input from prosecutors and agents across the country. They must be attentive to Balkan OC activity in the same way that they are to LCN, Russian, or Asian OC activity. When they encounter cases potentially involving Balkan OC, they need to ensure that information is channeled through the OCRS and FBI designated points of contact (Trial Attorney Gavin Corn and S/SA Vadim Thomas). Not only does this assist OCRS and FBI HQ in compiling information on the scale of the problem, it opens the door for AUSAs and agents in the field to get information and to determine if their defendants are linked to groups elsewhere in the United States or overseas.

In regard to the latter, the contact established with intelligence and law enforcement agencies overseas has already produced dividends. The information sharing arrangement that is in place will facilitate identifications of individuals linked to overseas groups and allow for coordinated investigations and/or prosecutions in multiple jurisdictions. This is extremely important and is a vital component of any plan to attack the problem. Balkan OC groups have expanded so quickly, and members have moved around so frequently, that the only way to successfully go after them is to make sure that they are not able to use borders and changes in jurisdiction as a means of evading justice.

As part of the fight against Balkan OC, the U.S. Government has joined with European governments in a wide-ranging initiative involving the European Union and the world's eight most influential democracies known as G-8. I attended the initial meeting on the issue along with DAAG Bruce Swartz, OCRS Chief Bruce Ohr, and State Department representatives, in London in November 2002. At this meeting, it was universally agreed that there had to be better communication between police and prosecutors in countries where Balkan OC is a problem. The Department has been working hard to do this on a bilateral basis with several governments such as the United Kingdom and France, but a wide-ranging multilateral effort still has not become reality. This meeting, although a solid first step in that direction, must be followed by concrete actions.

Finally, still more needs to be done to attack Balkan OC at its roots in the Balkan countries. Innovative steps such as placing American prosecutors to head the Department of Justice in Kosovo (I was succeeded in the post in February 2003 by former OCRS Chief Paul Coffey), have had some positive effects. Whatever good that has come from this however, has primarily been limited to Kosovo–a significant but still small part of the problem. Ultimately, the regional governments themselves will have to bring the problem within their respective states under control. In the countries where the problem is worse, the post-communist judicial systems are relatively immature and corruption within the governments is widespread. In these countries the governments are eager to get outside help. They welcome advisers and training programs and are actively seeking more engagement with the United States and the European Union. It is in all of our interests to engage them and to do everything we can to assist them. We have to go into this with our eyes open. Most Balkan governments are plagued with corruption, but we cannot afford to let that alone dissuade us. The stakes are too high, both for us and our European allies, to turn our backs on the Balkans.

The views and opinions expressed in this article are those of the author alone and do not necessarily reflect the position of the National Security Council or the Executive Office of the President.❖

ABOUT THE AUTHOR

❑**Clint Williamson** is currently serving as the Senior Adviser to the Iraqi Ministry of Justice in Baghdad. His permanent position is as the Director of Transnational Crime Issues at the National Security Council in Washington. Prior to his posting at the White House, he served for one year (2001-2002) as the Director of the Department of Justice in UN-administered Kosovo. From 1994 to 2001, he was a trial Attorney at the International Criminal Tribunal for Yugoslavia in The Hague, Netherlands. He went to The Hague from the Organized Crime and Racketeering Section of the U.S. Department of Justice Criminal Division where he worked from 1992 to 1994.✠

The Budapest Project

Thomas V. Fuentes
Special Agent in Charge
Indianapolis Division
Federal Bureau of Investigation

The Budapest Project was initiated to address the increasing threat of Eurasian Organized Crime in Russia and Central/Eastern Europe. Through 1998 and 1999, meetings took place between officials of the Hungarian National Police (HNP) and the Organized Crime Section of the FBI. In April 2000, an FBI agent, who would act as a liaison and have access to HNP Headquarters, was assigned to the United States Embassy in Budapest. The initial objective of the Project was to focus on specific ongoing cases. Intelligence gathering, in cooperation with HNP, caused project members to provide information and assistance to FBI field divisions on a routine basis. The Project has provided a mutually beneficial mechanism whereby the HNP has been able to curtail the influx of criminal activity across its borders, and it has aided the FBI in stemming the encroachment of Eurasian Organized Crime into the United States.

The events that triggered the need for the Budapest Project arose from the collapse and fragmentation of the Soviet Union. Following the collapse, organized crime exploded throughout Russia, the new republics, and the Eastern European Bloc countries. By the mid-1990s, the Moscow-based Solntsevo group emerged as the largest and most powerful Russian Organized Crime (ROC) group. In 1995, one of the strongest Solntsevo factions, led by Semion Mogilevich, established its headquarters in Budapest, Hungary. Budapest was attractive to such groups because, among other things, it maintained a stable, sophisticated banking system, as well as contact with Western countries.

In May 1995, the G-8 held a ROC conference in London, England, hosted by the National Criminal Intelligence Service. Officers of the Russian Ministry of the Interior (MVD) advised the attendees, which included delegates from the United States (FBI), Canada, France, Germany and Italy, of their assessment of ROC. The MVD identified Mogilevich as the boss of more than 300 criminal associates operating in more than thirty countries in Europe, Asia, and North America. Their criminal activities included murder, extortion, trafficking in women for prostitution, smuggling, money laundering, bank and securities fraud, and, in numerous countries, the corruption of public officials.

After the G-8 meeting, I traveled to Moscow and received additional detailed briefings from the MVD and the Federal Security Service concerning ROC groups. Our discussions covered, among other things, Vyascheslav Ivankov, a Russian who had been dispatched to the United States by Moscow ROC bosses to establish a criminal organization structured similar to a La Cosa Nostra family. Ivankov was arrested by our New York Office and was indicted in the Eastern District of New York. (In July 1996, he was convicted on all charges, including those involving extortion and extortion conspiracy.)

During this period, ROC groups showed two faces. They continued to engage in traditional racketeering, i.e., extortion, trafficking in prostitution, etc. These street-corner thugs were visible in Russian-speaking communities from Brighton Beach in New York City to Budapest. Then, the ROC groups evolved, planning and carrying out, for example, sophisticated financial crimes committed through the penetration of the Global Financial Network and international securities markets. In 1997, our Philadelphia Field Office, in partnership with the Internal Revenue Service, the Securities and Exchange Commission, and the U.S. Customs Service, initiated a securities fraud investigation in connection with YBM Magnex, a Budapest-based company run by Mogilevech. This case became an organized crime matter when certain subjects were identified as being connected to ROC.

The FBI's strategy of relentless pursuit of enterprise investigations, coupled with aggressive Department of Justice Strike Force prosecution, resulted in not only the systematic decimation of La Cosa Nostra, but also prevented foreign organized crime groups from establishing a strong criminal base of operations in the United States. As a result, ROC bosses, such as Mogilevich, directed criminal operations against the United States from safe havens overseas. Consequently, it became imperative for the United States to adopt a new approach to bring about broader cooperation in the international law enforcement community, as well as a strategy for implementing that approach that would benefit the United States and its international partners. In light of the exigent circumstances and common concerns, Hungary seemed the place to start.

Initially, investigative assistance from Hungary was severely obstructed. Two European Intelligence Services advised us that the head of the Hungarian National Police Organized Crime Directorate was on Mogilevich's payroll. Fortunately, the government of Hungary was aware of its growing internal ROC threat.

At this time, the Mogilevich organization had taken over street-level racketeering in Budapest. Russian women were illegally imported for prostitution. Black-leather-clad gangsters committed brazen extortions and other acts of violence against local citizens and visitors, including United States military personnel en route to peace keeping duties in the Balkans.

In 1999 when the Hungarians requests for assistance from their European Union neighbors were refused, they turned to the FBI. They formally asked United States Ambassador Tufo and our Assistant Legal Attache (ALAT) Miles Burden for FBI organized crime agents to work with them in Budapest. The FBI responded that such a task force could only be possible if all corrupt officers were removed, the FBI was allowed to create a "vetted" team, the FBI agents were authorized to carry arms, and the agents were afforded diplomatic immunity.

ALAT Burden came to FBI Headquarters with HNP General Isztvan Miko in November 1999. General Miko wanted to convey a message from the Prime Minister, the Minister of the Interior and his boss, the Director of the HNP. He advised us that the corrupt HNP officers and their commander had been fired, and that the ministers wanted to go forward with the creation of an FBI/HNP Organized Crime Task Force.

The following week the FBI met with the Minister of the Interior, Sander Pinter in Budapest. Also in attendance were HNP Director Peter Orban, United States Ambassador Peter Tufo, and ALAT Burden. Minister Pinter and Ambassador Tufo agreed that the FBI agents would be in danger and should be armed. The agents would also be afforded diplomatic status as Special Assistants to the Ambassador. It was agreed that task force operations would be comanaged by General Miko, the new head of the organized crime unit for the HNP, and myself as Chief of the FBI's Organized Crime Section, FBIHQ.

We agreed to identify four FBI agents to serve on a temporary-duty basis. The HNP would assign seven elite officers fluent in English to work as partners. All investigative activity would include at least one officer and one agent. Reporting would comply with requirements for both agencies. The task force would be housed in HNP space. The FBI would pay to remodel and install security, as well as provide furniture, computers, office supplies, and rental cars. Throughout these negotiations, the task force received exceptional support from the State Department's Office of International Narcotics and Law Enforcement. Ambassador Wendy Chamberlain arranged for substantial financial assistance to be dispersed through a site-fund created in the Embassy to support the task force.

The task force began operations on April 1, 2000 and its presence was felt immediately. The Ukranian-born Mogilevich fled Budapest for Moscow and later obtained Russian citizenship. The Hungarians provided an additional 4,000 documents pursuant to Mutual Legal Assistance Treaty (MLAT) requests in connection with the YBM case. This enhanced assistance from Hungary enabled the prosecution team, led by Strike Force Chief Bob Courtney, Eastern District of Pennsylvania, to obtain indictments charging four subjects, including Mogilevich, with money laundering, securities fraud, and RICO conspiracy.

Significant accomplishments continue. For example, special agents assigned to Budapest have been able to establish a criminal intelligence base developed from the perspective of Eastern Europe rather than the United States. With Eastern Europe as the center of the intelligence base, agents can acquire evidence in direct, "real time." With the cooperation of the HNP, agents also have been able to develop intelligence involving the ROC network throughout Europe. This development further enhances the ability of the HNP to make cases and successfully prosecute organized crime in Hungary. It also allows agents, again with the cooperation of the HNP, to thwart the ROC before it reaches the United States.

Since its inception, the FBI/HNP Task Force has established itself as the most elite investigative unit in Hungary. Members employ sophisticated investigative techniques used by the FBI and other investigative agencies. As a result, organized crime investigations have been initiated throughout the world, as well as in a number of FBI Field Offices throughout the United States. The success of the Budapest Project has encouraged others in law enforcement to seek expansion of the concept to other countries.❖

ABOUT THE AUTHOR

❑**Thomas V. Fuentes** presently serves as Special Agent in Charge of the Indianapolis Division, with responsibility for FBI operations in Indiana. His previous posts include Chief of the FBI's Organized Crime Section (HQ), Assistant Special Agent in Charge of the San Francisco office, Supervisory Special Agent in Organized Crime Section (HQ), and Special Agent and Supervisor of an Organized Crime Task Force Squad of the FBI Chicago Field Office.

Reform of United Kingdom Extradition Law

Raj Joshi
Head of European and International Division
Crown Prosecution Service of England and Wales

Brian Gibbins
Policy Adviser
European and International Division
Crown Prosecution Service of England and Wales

I. Introduction

Several years ago one of the authors gave a presentation on English extradition law and procedure to a group of examining magistrates from a European city which had originated a disproportionately high number of extradition requests to the United Kingdom. As soon as he began to speak, he was met with a chorus of discontent with our system. It turned out that the source of the ill feeling was one case that had been dismissed some five years previously. In fact, apart from the one failure, things seemed to be working well between the two countries.

Two features of the failed case were important; firstly it was high profile and secondly it took a considerable amount of time, money and effort, before it was finally dismissed.

It may surprise you to learn that extradition requests to the U.K. rarely fail. It's just that our system is relatively slow; whilst cases take an average eighteen months to process from arrest to surrender, some take considerably longer. A well-funded fugitive can exploit the slowness of the system by a series of long drawn out appeals which may cause the original prosecution to fail as the memories of key witnesses fade. Since well-funded defendants are often high profile, it is obvious how our system has achieved an undeservedly bad reputation among our extradition partners.

Things are about to change. The new Extradition Bill currently before Parliament, and likely to enter force at the beginning of 2004, will introduce changes as radical as the size of the Bill (213 clauses at the time of writing) suggests.

To fully understand those changes it is first necessary to explain, in outline, how the present system works.

II. The current system

Extradition involves a mix of judicial and executive functions. The courts determine whether the fugitive is legally extraditable. However, it is the Home Secretary who decides at the outset whether the courts should determine extraditability at all, and, if so, whether a fugitive who has been held extraditable, should *in fact* be returned to the requesting state.

The difficulty with this arrangement is that it creates what has inaccurately been described as a twin-track appeal system. The development of judicial review jurisprudence means the fugitive may not only appeal the judicial decision on extraditability but also seek judicial review of the Home Secretary's decision to return him. Very often, similar, if not identical, issues are raised in both types of challenge, hence the soubriquet "twin track appeal." All this takes time. Not only are our appeal courts very busy, but the Home Secretary has to go about his decisions extremely carefully to ensure that they are not successfully

challenged by judicial review. This entails a lengthy period before the surrender decision during which representations (sometimes running to thousands of pages) from the fugitive have to be considered. When you bear in mind that the preceding judicial stage allows challenges to the extradition on grounds such as dual criminality, double jeopardy, lapse of time, bad faith, triviality and (in the case of countries outside the European Convention on Extradition 1957) admissibility of the evidence supporting the request, it's easy to see why the patience of our extradition partners is wearing a little thin.

III. Drivers for change

Impetus for the Extradition Bill derived from a number of convergent key factors.

At the national level, concerns about the perceived failings of the current system had not gone unnoticed by the Home Office. It undertook a review of U.K. extradition law with a view to replacing the current Extradition Act 1989. The results were published in March 2001 in *The Law On Extradition: A Review* (available on the Home Office website. www.homeoffice.gov.uk/docs/extrabody.pdf).

At EU level, the Treaty of Amsterdam of 2nd October 1997 set the EU goal of establishing for its citizens "a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters" (now embodied in Article 29 of the Treaty of the European Union). The facilitation of extradition between Member States was identified as one of the specific areas for such cooperation (Article 31).

The European Council meeting at Tampere, Finland in October 1999 took matters further. It declared that, in respect of persons who have been finally sentenced, formal extradition procedures between Member States should be replaced by simple transfer. In other cases, Member States were exhorted to consider fast track extradition procedures.

On 13th June 2002, the European Council concluded a Framework Decision on the European Arrest Warrant (EAW). Member States, including the U.K., are committed to implementing its provisions by midnight on 31st December 2003.

Outside Europe it also became clear that key extradition partners were anxious to speed up extradition procedures. Most notably, on March 31, 2003, a new extradition treaty was signed by the United Kingdom and the United States. It now awaits ratification by the United States Senate. The key features of the treaty are discussed in more detail below.

In November 2002, the Commonwealth amended its extradition scheme (the London Scheme for Extradition in the Commonwealth). The most significant change is the removal of member states' ability to refuse extradition on the grounds that the fugitive is one of their nationals. Since the U.K. has always extradited its own nationals, this change will affect us only in the context of extradition requests we send out. Nonetheless, it is an expression of how attitudes are changing globally.

IV. Extradition Bill: key changes

The Extradition Bill's herculean task is to draw all these different factors and schemes into one coherent and overarching piece of legislation that speeds the process up while still protecting the rights of the fugitive. How will it do it?

The Bill splits requesting countries into two groups. EU countries, plus Iceland and Norway, are classed as Category 1 territories. Requests from Category 1 territories are governed by Part 1 of the Bill. All other countries with which we have extradition arrangements (including the U.S.A.) are classed as Category 2 countries. Requests from Category 2 countries are governed by Part 2 of the Bill. We will deal with the key features of each Part in turn.

A. Part 1: Extraditions

Part 1 gives effect in U.K. law to the European Union Framework Decision on the European Arrest Warrant (the Framework Decision). The EAW is a standardized extradition warrant, enforceable throughout EU member states without the need to obtain a domestic arrest warrant in the requested country. Contrary to some wild claims in the media, foreign officers will not be coming to the U.K. and arresting people. It will mean, however, that U.K. officers in receipt of a valid EAW will be able to arrest the subject of the warrant without first having to obtain a domestic warrant of arrest.

Unlike the current system, there will be no executive involvement in Part 1 extraditions. The court will determine both legal liability to extradition and whether the fugitive should be surrendered.

Direct contact between judicial authorities is one of the underpinnings of the Framework Decision. This makes sense in the context of the

European civilian systems where extraditions are dealt with by investigating judges (juges d'instruction). It means that diplomatic and administrative middlemen (central authorities) can be removed from the process of transmitting and receiving requests. Unfortunately, it does not readily translate into the U.K. common law system. This is because our courts react to applications by parties. They cannot act of their own motion in the way that their continental counterparts can. Moreover, neither the courts nor the Crown Prosecution Service (CPS) have power to direct the police. The central authority function will therefore be retained, but will pass from the Judicial Cooperation Unit (JCU) at the Home Office to the National Criminal Intelligence Service (NCIS). NCIS will pass EAWs on to the arresting police forces and to Casework Directorate of the CPS, which will act on behalf of the requesting authorities in the court proceedings. (Slightly different arrangements will apply in Scotland and Northern Ireland). Notwithstanding the necessity to retain the central authority, the positioning of NCIS within the Schengen Information System, its translation facilities, and round-the-clock coverage, mean that the spirit of direct communication (i.e., speed) will hopefully be upheld. SIS is, in effect, a Europe-wide police computer capable of registering alerts for fugitives, missing persons and stolen goods. For its part, CPS is looking to second (detail) a lawyer to NCIS to provide early advice. It is also looking to formalize its provision of out-of-hours advice to foreign states, which hitherto has been provided by individual lawyers on a goodwill basis.

Authentication, that topic so beloved of extradition lawyers, virtually disappears. Instead of ministerial seals and signatures, a certificate from NCIS confirming that the EAW was received from a judicial authority believed to have the function of issuing such warrants will be all that is required.

Under the present system, there are no overarching time limits governing the time taken to process the fugitive from arrest to surrender. Article 17 of the Framework Decision obliges member states to complete the process in sixty days (extendable in "specific cases" to ninety days), but there is no such provision in the Bill. The U.K. regards this as a national obligation rather than something to be enacted as a specific provision in the Bill. The Bill does, however, provide that the extradition hearing must be commenced within twenty-one days of the fugitive's first appearance at court following arrest. It is anticipated that Rules of Court will impose similar deadlines on the commencement of appeal hearings.

Purists take the view that returns pursuant to an EAW are not extraditions in the traditional sense but "surrenders." Whether or not that is a correct construction of the Framework Decision itself, it is clear that the EAW, as embodied in the Extradition Bill, is most definitely an extradition process. The Bill refers throughout to "extradition." A substantial array of bars to extradition and possible challenges are retained, including double jeopardy, passage of time as well as the fugitive's age, physical and mental condition. Significantly, the test of dual criminality, however, is retained only for offences that do not fall within a comprehensive list set out in the Framework Decision.

Extradition Hearings for fugitives arrested in England and Wales will continue, in the short term, to be dealt with by specialist District Judges at Bow Street Magistrates' Court in London, with appeals lying to the High Court and (with leave) to the House of Lords. In the medium term, the Government is considering whether to devolve some of the first instance work to a number of regional court centers. Sensibly, from the outset of the new Act, fugitives arrested in Northern Ireland will be dealt with from start to finish, in Belfast, rather than being brought to the mainland, as is the case at present.

Perhaps the most significant change, however, is not contained in Part 1 at all; that is, the U.K.'s impending implementation of SIS. In the extradition context, it will be used as the main vehicle for transmission of the EAW. It will mean that if a fugitive is stopped for, say, speeding, road traffic officers will be able to arrest the fugitive on the basis of the extradition alert and extradition proceedings will be triggered. It is estimated that by the time the U.K. "goes live" on SIS (scheduled for the latter part of 2004), there will be in the region of 17,000 extradition alerts on the system. Even if only a small proportion of these are located in the U.K., our courts are going to be very busy indeed. Add to the mix an ever-expanding European Union and improved technology at border controls, such as passport swiping and iris recognition, and you can see that extradition will be very much to the forefront of the fight not just against international and organized crime, but crime generally for some time to come.

B. Part 2: Extraditions

This is all very well, but where does that leave our other extradition partners, most notably the United States?

Requests from Category 2 territories will be divided into two groups; a general one requiring admissible evidence of a prima facie case to support the extradition request, and one where a prima facie case will not be required in respect to requests from countries specified by Order in Council. The U.K. Government has not yet announced which countries will be so specified although it is significant that Article 8 of the new U.S.-U.K. Treaty (see below) requires the U.S. to provide only "a statement of facts of the offense."

The Judicial Co-Operation Unit at the Home Office will continue to act as the central authority for receipt of requests to the U.K. from Category 2 territories. The Home Secretary, however, will not be required to authorize court proceedings at present. Instead, provided the request contains a statement to the effect that the fugitive is accused of the offence specified in the request or is unlawfully at large following conviction, and has been made in the "approved way," the Home Secretary will simply issue a certificate to that effect. Hopefully, that will provide little scope for judicial review challenge at this stage.

Direct contact between CPS Casework Directorate and the relevant authorities in the requesting state is most certainly not precluded. Indeed, in the context of U.S.-U.K. extraditions, it is to be hoped that the excellent working relationship between Casework Directorate and the Office of International Affairs, as well as U.S. Attorneys across the Union, continues to flourish. The recent appointments of Gareth Julian (CPS) as U.K. Liaison Magistrate in Washington and Mary Troland of the OIA to the U.S. Embassy in London, are a practical demonstration of our countries' joint commitment to that process. The European and International Division of CPS, which coordinates all the Service's activities relating to cross-border, serious and organized crime, also has Liaison Magistrates stationed in Paris, Rome, and Madrid.

Authentication is retained but in a watered-down form. For Category 2 territories generally, Clause 135 provides for the admissibility in extradition proceedings of "duly authenticated documents." A duly authenticated document is one which either "purports to be signed by a judge, magistrate, or other judicial authority" of the requesting territory, or purports to be authenticated by the oath or affirmation of a witness. Similar requirements are imposed under Article 9(a) of the new Treaty.

V. Practical issues

A. What documentation will be required for U.S. requests to the United Kingdom? For Category 2 countries generally the requirements under Clause 77 are as follows:

- Particulars of the person whose extradition is requested;
- Particulars of the offense specified in the request;
- In the case of a person accused of an offense, a warrant for his arrest issued in the Category 2 territory;
- In the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the Category 2 territory of the conviction and (if he has been sentenced) of the sentence.

B. Requirements specific to U.S.-U.K. extraditions are set out in Article 8 of the new Treaty.

They are as follows:

- As accurate a description as possible of the person sought, together with any other information that would help establish identity and probable location;
- A statement of facts of the offense;
- The relevant text of the law(s) prescribing punishment for the offence for which extradition is requested;
- In accusation cases, a copy of the warrant or order of arrest issued by a judge or other competent authority and a copy of the charging document, if any; and
- In conviction cases, information that the person sought is the person to whom the finding of guilt refers, a copy of the judgement or memorandum of conviction (or if a copy is not available, a statement by a judicial authority that the person has been convicted), a copy of the sentence imposed and a statement establishing to what extent the sentence has been carried out, and in the case of a person convicted *in absentia*, information regarding the circumstances under which the person was voluntarily absent from the proceedings.

The possible grounds for challenge remain largely unaffected, that is, documentation, dual criminality, double jeopardy, passage of time and the fugitive's age, physical and mental condition.

The new U.S.-U.K. Treaty, however, makes a significant advance on the topic of dual criminality. Under the current arrangement, whether an offense is an extradition crime depends upon its falling within a list of crimes derived from the Extradition Act 1870. Unsurprisingly, that list is out of date. Its inadequacies are aptly demonstrated by the difficulties encountered where U.S. requests to the U.K. are based on wire fraud offenses. There is no equivalent English offense. Thus, given similar facts in the U.K., we would probably prosecute for common law conspiracy to defraud. Since conspiracy to defraud is not on the 1870 list, it is of no use in satisfying the dual criminality test. The new Treaty will replace the list system definition with one based on punishability. Article 2 provides that an offense will be extraditable if the conduct on which the offense is based is punishable in both countries by a minimum of one year's deprivation of liberty.

As with Part 1 cases, the extradition hearing for fugitives arrested in England and Wales will take place at Bow Street Magistrates Court before a specialist District Judge who decides whether the fugitive is extraditable as a matter of law. If he so concludes, the case will be sent to the Home Secretary to make the decision on surrender.

Under Clause 92, the Home Secretary is prohibited from ordering return if he considers that the fugitive could be, will be, or has been, sentenced to death. This prohibition, however, does not apply if the Home Secretary receives a written assurance that he considers to be adequate that the death sentence will either not be imposed, or if imposed, not carried out. Similar provision is contained in Article 7 of the new Treaty.

Appeals will lie against the decisions of both the District Judge and the Home Secretary to the High Court and (with leave) to the House of Lords.

The Bill provides that, where the fugitive is provisionally arrested, the full documents must follow within forty days unless a longer period is specified by Order in Council. No such Order has yet been drafted but it is worth noting that Article 11 of the new U.S.-U.K. Treaty refers to sixty days. The Bill also stipulates that the extradition hearing must commence within two months of either the first hearing (if the arrest has taken place after the request has been received) or within two months of receipt of the request (in the case of provisional arrest). Regulations governing time limits for the commencement of appeals have yet to be drafted.

VI. Conclusion

Will all this really make extradition from the U.K. easier and quicker? In short, yes, we think it will. The removal of the list system definition of extradition crime and evidential requirements in respect to requests from the U.S. to the U.K., in particular, will undoubtedly make things much more straightforward for those preparing requests, as well as for those steering them through U.K. courts. On the issue of whether the process will be quicker, much will depend, of course, upon the regulations governing the commencement of appeal hearings and how proactive the courts are, not just in commencing hearings, but also in ensuring that they conclude within a reasonable time. Inevitably, new legislation means a flurry of new challenges, and it will be some time before we can fully gauge the effectiveness of these reforms.

On a final note, you will be heartened to learn that CPS European and International Division and the Department of Justice are currently working on a joint training initiative to enable prosecutors on both sides of the Atlantic to maximize the potential of the new system in our common fight against cross-border crime.

The views and opinions expressed in this article are those of the authors alone and do not necessarily reflect the position of the Crown Prosecution Service or the Government of the United Kingdom.❖

ABOUT THE AUTHORS

❑**Raj Joshi** is Head of the European and International Division of the Crown Prosecution Service of England and Wales (EID). Raj joined CPS in 1986. Following extensive casework experience in CPS London, he was appointed head of EID in January 2000. Raj has been responsible for a series of initiatives aimed at generating closer alliances with our European and U.S. criminal justice partners. These include negotiating and implementing key liaison posts within the French and Spanish Ministries of Justice and the United States Department of Justice. Raj facilitated and held the position of Chair on the Project Board for the 7th International Association of Prosecutors Conference held in September 2002 in London.

Brian Gibbins is a Policy Advisor in EID. He jointed CPS in 1989. Brian spent five years working as a prosecutor at Area level before transferring to CPS Headquarters in London in 1994. Since then he has specialized in a number of fields, particularly extradition and mutual legal assistance. Brian joined EID as a Policy Adviser at

the beginning of 2002. He is a member of the Home Office Extradition Bill Working Group and has been responsible for preparing the Service's comments on the emerging legislation. He is also responsible for managing a project to train CPS extradition specialists and staff in other key U.K. agencies on the provisions Bill and is closely involved in the Service's preparations to implement the new system.✠

Classified Information and International Investigations: A Warning

Miriam Banks, Assistant Chief
Organized Crime and Racketeering Section

Recent well-publicized events–the war in Iraq, the selling or other misuse of classified information by our countrymen, requests from 9/11 defendants for access to classified information–have made law enforcement personnel, and the general public, increasingly aware of the exceedingly complicated and sensitive issues associated with classified information. When an investigation involves classified information, particularly international investigations which are likely to raise such issues, prosecutors should, as soon as possible, consult with the Counterespionage Section or, if it is an organized crime investigation, the Organized Crime and Racketeering Section.

For purposes of this brief advisory, classified information generally includes any information or material deemed by the U.S. Government to require protection against unauthorized disclosure for reasons of national security. Naturally, if the case involves classified information, the prosecutor must work closely with the intelligence community. The process may be complex and lengthy.

The procedures addressing the issues associated with protecting classified information in a criminal case (when the competing interests of defendants and the need for national security arise), are found in the Classified Information Procedures Act (CIPA) at 18 U.S.C. App. 3 (1980). The statute covers cases in which the government will seek to introduce classified information into evidence, as well as defendant requests for disclosure of classified information and the ensuing responsibilities of the court and prosecution team. Specifically, the statute provides for: the assignment of a security officer who is responsible for the physical security of the classified information; protective orders; government ex parte discovery submissions; and, in camera pretrial hearings where the court makes determinations as to the admissibility, relevancy and use of classified information prior to trial in order to prevent the public disclosure of classified information during the trial.

Part, or all, of the government's case may be dismissed if a judge orders disclosure of classified information and the intelligence community refuses to do so for reasons related to national security. This alone should be a strong incentive for the prosecution team to learn the law and applicable procedures. Importantly, however, the statute permits expedited interlocutory appeals, by the United States, of orders imposing disclosure, sanctions for nondisclosure of classified information, or for the court's refusal of a protective order sought by the United States to prevent disclosure.

The intended message here is that many important investigations may involve issues related to national security. It is imperative, therefore, that those of us who intend to prosecute such cases, seek guidance and assistance as soon as possible. Such help is available through Deputy Chief Ron Roos of the Criminal Division's Counterespionage Section ((202) 514-1211); or, if the investigation is one under the cognizance of

the Organized Crime and Racketeering Section, the prosecutor should also contact an OCRS International Program Attorney.

Please note that the foregoing is not meant as an all-inclusive notice or instruction on the use or nondisclosure of classified information. It is not meant as a primer on the problems associated with investigations involving classified information. Rather, it is meant to increase the prosecutor's awareness of prohibitions against disclosure of classified information, as well as the necessity and availability of guidance.❖

ABOUT THE AUTHOR

❑**Miriam Banks** currently serves in the International Program of the Organized Crime and Racketeering Section (OCRS), which she joined more than thirteen years ago as a member of the Section's newly-formed Litigation Unit. She later served as the assistant chief/supervisor of the Section's RICO Unit. Before joining OCRS, Ms. Banks served as an Assistant United States Attorney for the Southern District of Georgia, and earlier as an Assistant Attorney General for the Attorney General of Tennessee, Criminal Justice Division.✠

Sample Rico Indictment: Introduction

Robert C. Dalton
Trial Attorney
Organized Crime and Racketeering Section

Imaginative criminals operating in foreign jurisdictions have used a variety of methods to seek and obtain illicit profits from the American economy. The Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961-1968) (RICO) can be a particularly effective tool for the prosecution of complex cases involving foreign defendants because of its well-established advantages regarding jurisdiction and venue. As described below, RICO's jurisdictional reach includes not only interstate but foreign commerce, and venue choices are liberal.

Traditionally, criminal statutes are not given extraterritorial application unless some misconduct occurred within the United States, as noted in *United States v. Wright-Barker*, 784 F.2d 161, 166-68 (3d Cir. 1986)(citing *Strassheim v. Dailey*, 221 U.S. 280, 285 (1911)). However, the most recent draft of the Restatement of the Foreign Relations Law of the United States asserts that laws can be applied extraterritorially when their only nexus to the United States is an intended effect upon or within the United States. Restatement 3d of the Foreign Relations Law of the United States Section 402, cmt. D. (1987). *Wright-Barker* also noted the following five principles governing a sovereign's interest in exercising criminal jurisdiction:

> 1) territorial–within a country's territorial borders;
>
> 2) nationality–as applied to a country's own nationals, wherever located;
>
> 3) passive personality–as applied to those who commit crimes against a country's nationals, wherever located;
>
> 4) protective–applied to acts that have a potentially adverse effect on a country's security and governmental interests, wherever committed; and
>
> 5) universal–applied by any country to acts, wherever committed, regarded as heinous crimes.

Wright-Barker, 784 F.2d at 167, n. 5.

U.S. courts have sustained extraterritorial application of the RICO statute involving predicate crimes committed on foreign soil consistent with the principles enumerated above. For example, in *United States v. Noriega*, 746 F. Supp. 1506, 1512-17 (S.D. Fla. 1990), the district court held that the RICO statute applied extraterritorially to drug trafficking, even regarding a defendant whose conduct occurred entirely outside the United States, because Congress intended that the RICO statute "be read expansively as a means of attacking organized crime at every level" and "be liberally construed to effectuate its remedial purpose." *See also United States v. Vasquez-Velasco*, 15 F.3d 833, 839 (9th Cir. 1994) (applying 18 U.S.C. § 1959, a companion statute to RICO, extraterritorially where defendants participated in the murder of American citizens in Mexico who were mistaken for DEA agents; extraterritorial application upheld where inherent powers of the United States, as

sovereign, are compromised or threatened, or where conduct gravely affects a substantial number of U.S. citizens).

Other aspects of RICO similarly reflect congressional intent that the statute be applied extraterritorially. For example, RICO's definition of racketeering activity includes offenses typically committed, in whole or in part, outside the United States (*see*, *e.g.*, 8 U.S.C. § 1324 proscribing alien smuggling and related offenses); 18 U.S.C. § 1952 (proscribing interstate and foreign travel in aid of racketeering); and 18 U.S.C. § 1958 (proscribing travel in interstate or foreign commerce or use of a facility in same)).

The RICO amendments enacted on October 26, 2001, in conjunction with the USA PATRIOT Act, PUB L. NO. 107-56, 115 Stat. 272, made clear that Congress intended the statute to apply extraterritorially with regard to certain offenses. Several of the newly-added RICO predicate offenses are federal statutes that apply to criminal conduct occurring wholly outside the United States *(see*, *e.g.*, 18 U.S.C. § 956(a)(1), prohibiting conspiracy to murder, kidnap, or maim persons abroad; 18 U.S.C. § 2332, prohibiting homicides or other violence occurring outside the United States against its nationals; and 18 U.S.C. § 2332a, prohibiting the unlawful use of a weapon of mass destruction against a U.S. national while such national is outside the United States).

Numerous venue decisions reflect RICO's potential scope in application. Venue for RICO prosecutions is governed by 18 U.S.C. § 3237(a), permitting prosecution of a continuing offense "in any district in which such offense was begun, continued, or completed." *See*, *e.g., United States v. Persico*, 621 F. Supp. 842, 857-58 (S.D.N.Y. 1985); *United States v. Castellano*, 610 F. Supp. 1359, 1388 (S.D.N.Y. 1985) (venue proper in any district where offense was begun, continued, or completed, even though virtually every racketeering act occurred in another district). Thus, a RICO prosecution may be brought in any district where some of the enterprise's criminal activity occurred. *See Fort Wayne Books v. Indiana*, 489 U.S. 46, 61 (1989) (under state RICO statute patterned after federal RICO statute, there is no requirement that all acts of racketeering be committed in the jurisdiction where prosecution is brought; such a requirement "would essentially turn the RICO statute on its head: barring RICO prosecutions of large national enterprises that commit single predicate offenses in numerous jurisdictions"). The RICO charge may include racketeering acts that occurred in districts other than the district of venue, and if venue for the overall charge is proper, it is not necessary that each defendant participated in the conduct within the district of indictment. *See Persico*, 621 F. Supp. at 858 (holding that it makes no difference whether any individual defendant was in the district, as long as the government establishes that the defendant participated in an enterprise that conducted illegal activities in the district). Moreover, venue for a RICO offense also lies in any district where the RICO enterprise conducted business. *Id*.

The potential reach of these disparate principles should be apparent. Assuming that foreign criminals have violated federal laws among the RICO predicate offenses enumerated in 18 U.S.C. § 1961, and that an enterprise can either be identified (such as a legal entity) or established (as an association-in-fact), RICO provides a readily-available and far-reaching means to prosecute such defendants in U.S. district courts under a single indictment. With jurisdiction and venue established, RICO can serve to reach defendants not otherwise within U.S. jurisdiction. For example, the money laundering statutes grant extraterritorial jurisdiction over foreign nationals outside the U.S. only in cases in which the misconduct occurs, at least in part, in the United States, and the transaction or series of related transactions involves amounts exceeding $10,000. *See* 18 U.S.C. § 1956(f). Thus, a non-U.S. citizen conducting money laundering transactions entirely outside the United States, or even within the United States in amounts under $10,000, could not be charged in the U.S. under § 1956 for those individual transactions. OCRS has concluded, however, that both of these sorts of transactions may properly be included within a RICO charge as racketeering acts predicated on § 1956 (or, under RICO conspiracy, as an overt act), if the money launderer is properly named as a defendant in a RICO charge brought within U.S. jurisdiction. This conclusion is consistent with general extraterritorial principles regarding conspiracy. It is well-established that foreign defendants are subject to U.S. jurisdiction for conspiracies committed, in part, in the United States. *See*, *e.g.*, *Dealy v. United States*, 152 U.S. 539, 546-47 (1894) ("if the conspiracy was entered into within the limits of the United States and the jurisdiction of the court, the crime was then complete, and the subsequent overt act in pursuance thereof may have been done anywhere").

This brief note is not intended as a full discussion of the issue of extraterritorial

jurisdiction, and the Organized Crime and Racketeering Section (OCRS) will approve the extraterritorial use of the RICO statute only after careful and detailed consideration. For additional information, including changes in law affecting application of the statute, contact the RICO Unit or OCRS attorney Frank Marine, Senior Litigation Counsel for the Criminal Division. It is our hope that, after reading this issue of the UNITED STATES ATTORNEYS' BULLETIN, Assistant U.S. Attorneys will appreciate RICO's potential usefulness in combating international organized crime. Toward that end, OCRS offers the following fictitious RICO and RICO conspiracy indictment as a brief illustration of RICO's application to international criminality within United States jurisdiction. It should be noted that the indictment has been edited for brevity and is not intended as a one-size-fits-all model charging instrument. AUSAs should refer to OCRS' RICO Manual, as well as OCRS' model RICO pleadings, and the Office of Legal Education (Publications Unit (803) 576-7657)) for indictment forms. Please note that any prosecution of a criminal or civil RICO, as well as charges under Section 1959 (violent crime in aid of racketeering), must be preapproved, and a proposed indictment or information must be submitted to OCRS for review and approval at least fifteen working days in advance of any charges or plea agreement. Those interested in prosecuting a case under the RICO statute or its companion statute, 18 U.S.C. § 1959, should contact the RICO Unit, Organized Crime and Racketeering Section, at (202) 514-1214, early in the preindictment stage for guidance and current law regarding the elements of these offenses.✠

ABOUT THE AUTHOR

❑**Robert C. Dalton** served as a U.S. Marine Corps judge advocate from 1982 until 1990, when he joined the U.S. Department of Justice Asset Forfeiture Office. In 1994, he became an Assistant United States Attorney in the Eastern District of Texas, specializing in asset forfeiture and money laundering prosecutions. He returned to Washington in 1999 as a trial attorney in the Organized Crime and Racketeering Section.✠

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

CRIMINAL NO. 03-1369(RCD)

v.

MIKHAIL MOUSEKEVICH,

MINIKITA MOUSEKEVICH, Violations:

MORTIMER RATT 18 U.S.C. §1962(c),

FERDINAND RATT 18 U.S.C. § 1962(d)

Defendants.

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT ONE

(Violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) – 18 U.S.C. § 1962(c))

The Enterprise

1. At various times relevant to this Indictment, MIKHAIL MOUSEKEVICH, MINIKITA MOUSEKEVICH, MORTIMER RATT, and FERDINAND RATT, the defendants, and others known and unknown, were owners, officers, employees, investors and associates of ChillOut, Inc., a corporation organized and incorporated in the state of New York involved in the manufacture and sale of "dry ice" (frozen carbon dioxide) for commercial applications.

2. ChillOut, Inc., including its leadership, membership and associates, constituted an "enterprise," as defined by Title 18, United States Code, Section 1961(4) (hereinafter "the enterprise"), that is, a group of individuals associated in fact. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise. This enterprise was engaged in, and its activities affected, interstate and foreign commerce.

Purposes of the Enterprise

3. The purposes of the enterprise included the following:

a. Enriching the owners, operators, employees, and investors of the enterprise through, among other things, mail fraud, wire fraud, securities fraud, and the laundering of the proceeds from these offenses in order to protect and conceal their wealth from detection by civil authorities and law enforcement.

b. Preserving and protecting the power and profits of the enterprise through the use of false reassurances to victims and the use of "lulling letters."

c. Promoting and enhancing the enterprise and its members' and associates' activities.

Roles of the Defendants

4. The defendants participated in the operation and management of the enterprise in the following roles and capacities:

a.. MORTIMER RATT was president and 50% shareholder of ChillOut, Inc., who directed other members of the enterprise and its employees in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs.

b. FERDINAND RATT was vice-president and 50% shareholder of ChillOut, Inc., who directed employees of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs.

c. At the direction of MORTIMER RATT and FERDINAND RATT, officers and leaders of the enterprise, MIKHAIL MOUSEKEVICH, and MINIKITA MOUSEKEVICH participated in unlawful and other activities in furtherance of the conduct of the enterprise's affairs.

Means and Methods of the Enterprise

5. Among the means and methods by which the defendants and their associates conducted and participated in the conduct of the affairs of the enterprise were the following:

a. MORTIMER RATT and FERDINAND RATT operated ChillOut, Inc., ("ChillOut") a family-held company that produces dry ice for use in the shipment of food and other perishable items. The company has operated the business in Moose Jaw, Saskatchewan, Canada since 1986. In an attempt to increase revenues through diversification, MORTIMER RATT and FERDINAND RATT began renting storage units at the same address in 1996. MORTIMER RATT and FERDINAND RATT have never been licensed by any Canadian authority to provide any kind of undertaking services, mortuary services, or burial services.

b. Sometime during 1998, in an effort to increase revenues by consolidating ChillOut's diverse products and services, MORTIMER RATT and FERDINAND RATT created a scheme and artifice to defraud by offering the firm's dry-ice capabilities and its storage facilities for the purpose of cryogenics, i.e., the practice of freezing deceased persons for purported future resuscitation. However, MORTIMER RATT and FERDINAND RATT never intended to provide any such services.

c. In furtherance of this scheme, MORTIMER RATT and FERDINAND RATT caused to be printed thousands of brochures describing ChillOut as a "Leader In The Cryogenics Industry" and containing various enticements, including "Put Your Love On Ice" and "Why Put Grandma in the Cold, Cold Ground? Try Us Instead!" The brochures included a fee schedule for supposedly different levels of cryogenics, including "Canadian Blast," "South Pole Holiday" and "Arctic Special," each with attendant storage fees by the week, month, year, or decade. MORTIMER RATT and FERDINAND RATT also created a similar brochure seeking investors to support purported "start up costs" associated with the venture.

d. MORTIMER RATT and FERDINAND RATT mailed, and caused to be mailed, these brochures to hundreds of prospective clients and potential investors who were identified by purchasing mailing lists from nursing homes in the United States, including persons in the Southern District of New York. In response to these mailings, various clients and investors mailed checks and money orders, all payable to ChillOut, to the company's mailing address in Moose Jaw, Saskatchewan.

e. In order to receive these proceeds and avoid detection of the scheme, MORTIMER RATT and FERDINAND RATT enlisted the assistance of their uncle, MIKHAIL MOUSEKEVICH, a former resident of the former Soviet republic of Laurelstan then living in Brooklyn, New York, whom they knew to launder money for various Russian organized crime groups. In concert with MORTIMER RATT and FERDINAND RATT, MIKHAIL MOUSEKEVICH first opened a bank account in the name of "Frozen Chosen, Inc." under MIKHAIL MOUSEKEVICH's signature authority at Big Apple Bank ("Big Apple") in Brooklyn, New York. MIKHAIL MOUSEKEVICH then arranged for his wife, MINIKITA MOUSEKEVICH, to open correspondent bank accounts in the name of "Frozen Chosen, Inc." ("Frozen Chosen") under their individual signature authority at Slapshot Bank in Toronto, Canada ("Slapshot")and Sun Beach Bank in the Grand Cayman Islands ("SunBeach").

f. MORTIMER RATT and FERDINAND RATT caused all funds received from cryogenics customers and potential investors to be forwarded to MIKHAIL MOUSEKEVICH for deposit in the ChillOut account at Big Apple. MIKHAIL MOUSEKEVICH subsequently arranged the transfer of all of the deposited funds, in various amounts, to Frozen Chosen's accounts at Slapshot and SunBeach. MINIKITA MOUSEKEVICH subsequently arranged for all of these deposited funds to the MOUSEKEVICH's joint personal checking account at the First National Bank ("FNB") in Laurelstan. Half of these deposits at FNB were later sent to MORTIMER RATT and FERDINAND RATT.

g. As the scheme and artifice to defraud began to generate revenues from investor-victims, MORTIMER RATT and FERDINAND RATT expanded the scheme and artifice to defraud by asking MIKHAIL MOUSEKEVICH and MINIKITA MOUSEKEVICH to take steps to induce U.S. securities regulators to register ChillOut, Inc. on the New York Stock Exchange ("NYSE") for the public sale of ChillOut shares, to be predicated on ChillOut's supposed status as a company offering cryogenics services. MIKHAIL MOUSEKEVICH and MINIKITA MOUSEKEVICH undertook the creation of false and wholly fictional records including a prospectus, accounting statements, balance sheets, and minutes of meetings to create the impression the ChillOut was a financially successful cryogenics company, when in fact no such endeavor had ever been undertaken by any of the defendants.

h. It was further part of the scheme that MIKHAIL MOUSEKEVICH and MINIKITA MOUSEKEVICH caused a registration statement to be filed with the U.S. Securities and Exchange Commission ("SEC") in or about January 2000, to register the stock of ChillOut for trading on over-the-counter markets in the United States. Further, in a application to secure a listing on the NYSE, the defendants incorporated and included the false and deceptive representations submitted to the SEC regarding the financial condition of the ChillOut, its business operations and its core business activity.

i. During February, 2000, MIKHAIL MOUSEKEVICH and MINIKITA MOUSEKEVICH, secured the listing of ChillOut stock on the NYSE by falsely and fraudulently representing, through the fraudulent prospectus dated January 2, 2000 and a listing application dated January 3, 2000 incorporating the prospectus, that Chill-Out was a growing, increasingly profitable cryogenics enterprise with a solid financial record of sales in the United States. The filings made by the defendants with the NYSE incorporated material misrepresentations and omissions regarding ChillOut's core business, assets, sales and revenues.

[NOTE: the detailed "scheme and artifice to defraud," normally required to satisfy fraud-related pleading requirements and merely summarized in the "Means and Methods" section above, has been deleted due to space limitations]

The Racketeering Violation

6. From approximately 1998 through in or about March 2000, with both dates being approximate and inclusive, in the Southern District of New York and elsewhere, the defendants, MIKHAIL MOUSEKEVICH, MINIKITA MOUSEKEVICH, MORTIMER RATT, and FERDINAND RATT together with others known and unknown to the grand jury, being persons employed by and associated

with the ChillOut, Inc. described above, an enterprise engaged in, and the activities of which affected, interstate and foreign commerce, unlawfully, and knowingly conducted and participated, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity, that is, through the commission of Racketeering Acts One through Five as set forth in paragraphs 7 through 11 below.

Racketeering Act One -- Mail Fraud

7. On or about the dates listed below, MORTIMER RATT and FERDINAND RATT, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, the matters and things specifically set forth in Racketeering Acts 1a and 1B, the commission of either one of which constitutes the commission of Racketeering Act One:

RACKETEERING ACT	DATE	DESCRIPTION OF LETTER OR THING
1a	On or about October 30, 1999	ChillOut Cryogenics Contract executed by Kay Davver and Check #1234, Acct. #A246-81012, Brooklyn, in the name of Kay Davver, in the amount of $25,000.00
1b	On or about November 30, 1999	Check #1235, Acct. #A246-81012, Brooklyn Bank, in the name of Kay Davver, in the amount of $75,000.00

Each in violation of 18 U.S.C. § 1341.

Racketeering Act Two -- Mail Fraud

8. On or about the dates listed below, MORTIMER RATT and FERDINAND RATT, in the Southern District of New York, for the purpose of executing the aforesaid scheme and artifice to defraud, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, the matters and things specifically set forth in Racketeering Acts 2a and 2b, the commission of either one of which constitutes the commission of Racketeering Act Two:

RACKETEERING ACT	DATE	DESCRIPTION OF LETTER OR THING
2a	On or about November 10, 1999	ChillOut Cryogenics Contract executed by D.C. East and Check #3579, Acct. #B357-91113, Seattle Bank, in the name of D.C. East, in the amount of $50,000.00
2b	On or about December 7, 1999	Check #1235, Acct. #A246-81012, Tucson Bank, in the name of D.C. East, in the amount of $100,000.00

Each in violation of 18 U.S.C. § 1341.

Racketeering Act Three -- Mail Fraud

9. On or about the dates listed below, MORTIMER RATT and FERDINAND RATT, in the Southern District of New York, for the purpose of executing the aforesaid scheme and artifice to defraud, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, the matters and things specifically set forth in Racketeering Act 3a:

RACKETEERING ACT	DATE	DESCRIPTION OF LETTER OR THING
3a	On or about December 25, 1999	Check #3579, Acct. #B357-91113, Left Bank, in the name of Ted Boddy, in the amount of $500,000.00, bearing the note "for 500 shares ChillOut, Inc.

In violation of 18 U.S.C. § 1341.

Racketeering Act Four -- Money Laundering

10. On or about each of the dates listed below, in the Southern District of New York and elsewhere, the respective defendants named below did knowingly and willfully conduct financial transactions affecting interstate commerce, to wit, the movement of funds by wire, that is, a wire transfer in the amounts listed below, which involved the proceeds of specified unlawful activity, that is, mail fraud in violation of 18 U.S.C. § 1341, knowing that the transactions were designed, in whole or in part, to conceal and disguise the nature, location, source, ownership and control of the proceeds of that specified unlawful activity, and that while conducting and attempting to conduct such financial transaction knew that the property involved in the financial transaction, that is, the wire transfers, represented the proceeds of some form of unlawful activity, each transaction being in the amount set forth below, any one of which constitutes the commission of Racketeering Act Four:

RACKETEERING ACT	DEFENDANTS	DESCRIPTION	AMOUNT
4a	MORTIMER RATT, FERDINAND RATT	Big Apple Bank wire order #A567 dated 11/1/99 to Slapshot Bank	$25,000.00
4b	MORTIMER RATT, FERDINAND RATT	Big Apple Bank wire order #A678 dated 12/1/99 to Beachfront Bank	$75,000.00
4c	MORTIMER RATT, FERDINAND RATT	Big Apple Bank wire order #A667 dated 11/11/99 to Slapshot Bank	$50,000.00

4d	MORTIMER RATT, FERDINAND RATT	Big Apple Bank wire order #A876 dated 12/8/99 to Beachfront Bank	$100,000.00
4e	MIKHAIL MOUSEKEVICH	Slapshot Bank wire order #R2D2 dated 11/12/99 to FNB Laurelstan	$75,000.00
4f	MINIKITA MOUSEKEVICH	Beachfront Bank wire order #C3PO dated 12/9/99 to FNB Laurelstan	$175,000.00
4g	MORTIMER RATT, FERDINAND RATT	Big Apple Bank wire order #L493 dated 12/26/99 to Slapshot Bank	$500,000.00
4h	MINIKITA MOUSEKEVICH	Slapshot Bank wire order #WOW777 dated 12/9/99 to FNB Laurelstan	$500,000.00

Each in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

All in violation of Title 18, United States Code, Section 1962(c).

Racketeering Act Five – Securities Fraud

11. From on or about June 7, 1999 to on or about November 30, 2001, in the Southern District of New York and elsewhere, the defendants, MIKHAIL MOUSEKEVICH, MINIKITA MOUSEKEVICH, MORTIMER RATT and FERDINAND RATT did, directly and indirectly, by the use of means and instruments of transportation and communication in interstate commerce and the mails, knowingly and willfully employ a device, scheme and artifice to defraud, obtain money and property by means of omissions to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading, and engage in transactions, practices and courses of business which would and did operate as a fraud or deceit upon the purchaser in the offer and sale of securities, to wit: the common stock of ChillOut, Inc., as more fully described in paragraphs 5f and 5g above, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNT TWO

(Conspiracy to Violate of the Racketeer Influenced and
Corrupt Organizations Act (RICO) – 18 U.S.C. § 1962(d))

12. Paragraphs 1 through 5 of Count One are hereby realleged and reincorporated as if fully set out herein.

13. From between 1999 through March 2000, both dates being approximate and inclusive, within the Southern District of New York and elsewhere, the defendants MIKHAIL MOUSEKEVICH, MINIKITA

MOUSEKEVICH, MORTIMER RATT, and FERDINAND RATT, together with other persons known and unknown, being persons employed by and associated with ChillOut, Inc., an enterprise, which engaged in, and the activities of which affected, interstate and foreign commerce, knowingly and intentionally conspired to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity, as that term is defined by 18 U.S.C. § 1961(1) and (5). The pattern of racketeering activity through which the defendants agreed to conduct the affairs of the enterprise consisted of the acts set forth in paragraphs 7 through 11 of Count One of this Indictment, which are incorporated as if fully set forth herein.

It was a further part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

All in violation of Title 18, United States Code, Section 1962(d).

FORFEITURES

14. The allegations contained in Counts One and Two of this indictment are hereby realleged and incorporated as if fully set forth in this paragraph.

15. Pursuant to Rule 32.2, Fed. R. Crim. P., notice is hereby given that, pursuant to the provisions of Title 18, United States Code, Section 1963, regarding the offenses charged in Counts One or Two of this indictment, the defendants MIKHAIL MOUSEKEVICH, MINIKITA MOUSEKEVICH, MORTIMER RATT, and FERDINAND RATT:

a. have interests which they acquired or maintained in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture pursuant to Title 18, United States Code Section 1963(a)(1);

b. have interests in, security of, claims against, or property or contractual rights affording them a source of influence over, the enterprise known and described in this superseding indictment as ChillOut, Inc., which the defendants MIKHAIL MOUSEKEVICH, MINIKITA MOUSEKEVICH, MORTIMER RATT, and FERDINAND RATT, have established, operated, controlled, conducted, and/or participated in the conduct of, or conspired to do so, in violation of Title 18, United States Code, Sections 1962(c) and 1962(d), which interests are subject to forfeiture pursuant to Title 18, United States Code, Section 1963(a)(2);

c. have property constituting or derived from proceeds which they obtained directly or indirectly from racketeering activity in violation of Title 18, United States Code, Section 1962, which property is subject to forfeiture pursuant to Title 18, United States Code, Section 1963(a)(3).

16. Pursuant to the provisions of Title 18, United States Code, Section 1963, upon conviction of either of the offenses charged in Counts One or Two of this superseding indictment, the defendants MIKHAIL MOUSEKEVICH, MINIKITA MOUSEKEVICH, MORTIMER RATT, and FERDINAND RATT shall forfeit to the United States the following:

a. An amount of approximately $1,500,000 U.S. currency.

b. The premises and real property, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 115 Biscayne Avenue, Miami, Florida, described in the land records of Dade County, Florida as Block 91, Lots 12, 13 and 17, held in the name of FERDINAND RATT and MORTIMER RATT.

17. If, by any act or omission of the defendants MIKHAIL MOUSEKEVICH, MINIKITA MOUSEKEVICH, MORTIMER RATT, and FERDINAND RATT, any property identified as directly forfeitable in paragraphs 15 and 16 above:

a. cannot be located upon the exercise of due diligence;
b. has been transferred or sold to, or deposited with, a third person;
c. has been placed beyond the jurisdiction of the Court;
d. has been substantially diminished in value; or
e. has been commingled with other property which cannot be subdivided without difficulty,

it is the intention of the United States, pursuant to Title 18, United States Code, Section 1963(m) to seek forfeiture of any other property of defendants MIKHAIL MOUSEKEVICH, MINIKITA MOUSEKEVICH, MORTIMER RATT, and FERDINAND RATT up to the value of such forfeitable property described in subparagraphs 16a-16b above.

FOREPERSON
Dated:

Extradition and Mutual Legal Assistance Requests

Thomas G. Snow, Principal Deputy Director
Office of International Affairs

Matters related to extradition or Mutual Legal Assistance Treaty requests (MLATs) must be approved by the Office of International Affairs (OIA) at (202) 514-0000 (Mary E. Warlow, Director). A number of helpful resources are offered by the Office of Legal Education, including *Obtaining Evidence Abroad*, a general guideline written by OIA Assistant Director Sara Criscitelli (ret.), FEDERAL NARCOTICS PROSECUTIONS, Chapter 10, Office of Legal Education (1999), as well as numerous related articles available in the UNITED STATES ATTORNEY'S BULLETIN. .

In addition, *See* Thomas G. Snow, *The Investigation and Prosecution of White Collar Crime: International Challenges and the Legal Tools Available to Address Them*, WM. & MARY L. REV. (forthcoming 2003).❖

Points of Contact, Organized Crime and Racketeering Section
Bruce G. Ohr, Chief

Main Number (202) 514- 3594

Strike Force Matters

Bruce G. Ohr, Chief
Douglas E. Crow, Principal Deputy Chief
P. Kevin Carwile, Deputy Chief
Kenneth J. Lowrie, Deputy Chief

RICO Unit: (202) 514-1214

Amy Chang Lee, Assistant Chief
Attorneys: Robert Dalton, Mervyn Hamburg,
Melissa Marquez Oliver, David Stander,
Catherine Weinstock

Labor Racketeering: (202) 514-3666

Gerald Toner, Assistant Chief
Attorneys Vincent Falvo, Rebecca Kettelle-Pyne

Litigation Unit Attorneys

Chief Bruce G. Ohr, Supervisor
Trial Attorneys: Gavin Corn, Marilyn Gainey, Gregory Lisa, David Malagold, Hallie Mitchell, Patrice Mulkern, Joshua Nesbitt, Thomas Ott, Jennifer Shasky (Eurasian), Cynthia Shepherd, Marty Woelfle

International Program

Bruce G. Ohr, Chief
Kenneth J. Lowrie, Deputy Chief (Eurasian)
Miriam Banks, Assistant Chief (Italy, CIPA)
Jennifer Shasky, Trial Attorney (Eurasian, CIPA)
Gavin Corn, Trial Attorney (Balkan)
P. Kevin Carwile, Deputy Chief (Asian)

Senior Litigation Counsel

Frank J. Marine

NOTES

Request for Subscription Update

In an effort to provide the UNITED STATES ATTORNEYS' BULLETIN to all who wish to receive it, we are requesting that you e-mail Nancy Bowman (nancy.bowman@usdoj.gov) with the following information: Name, title, complete address, telephone number, number of copies desired, and e-mail address. If there is more than one person in your office receiving the BULLETIN, we ask that you have one receiving contact and make distribution within your organization. If you do not have access to e-mail, please call 803-576-7659. Your cooperation is appreciated.