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Staying Put: Presenting a Successful Defense to an International Extradition Request

By Saul A. Green[1], Michael H. Gordner[2], Catherine T. Dobrowitsky[3]

In late November 2002, Vera Jakaj and her brother-in-law came into the office to seek help concerning her husband Gjergj Jakaj, a businessman living with his wife and three children in a small community in Michigan. Gjergj had been arrested by U.S. marshals and was presently being held in federal prison as a "fugitive" from Belgian authorities. They had already retained a lawyer who told them that Gjergj was now subject to extradition to Belgium pursuant to the Extradition Treaty between the United States and the Kingdom of Belgium, having been convicted in Belgium of Trafficking in Persons, Passport Forgery, and Conspiracy.

Vera then went on to say that her husband, a U.S. citizen who had emigrated to the United States from Albania over twenty years ago, had been arrested at the Brussels airport in Belgium in February of 2000, along with 10 ethnic Albanians who had forged Austrian passports. All were on their way to Miami. There was one other person with them who fled before he was arrested. The authorities believed that since Gjergj was an American, he was the leader of a people-smuggling ring, and he was charged with various offenses relating to the attempt by the Albanians to enter the U.S. with forged Austrian passports. He was held in custody in Belgium for over two months until he was finally released on bail. Vera gave us a letter from her husband's Belgian lawyer specifically informing our client that there was no chance he would face extradition because Belgium and the United States did not have an extradition treaty. Vera then advised that on the advice of his Belgian lawyer, her husband returned to his home in Michigan. Gjergj did not return to face his trial, again according to Vera, on the advice of his Belgian lawyer and was convicted of all charges *in absentia* in Belgium, although his Belgian lawyer was present to argue the case. He was sentenced to a fine of 5000 francs and to four years imprisonment. Our client believed his Belgian attorney, and thought that as long as he never returned to Belgium, that was the end of the story.

Over a year and a half later, after returning home from work one fall afternoon, he was arrested by U.S. Marshals and driven off in handcuffs to federal prison. A warrant for his ar-

rest had been issued by the United States District Court as a result of a Complaint filed by the United States Attorney's office on behalf of the Kingdom of Belgium. No notice of the warrant was ever sent to our client. The Magistrate found that our "fugitive" client should be arrested and brought before the Court so that "evidence of criminality" could be heard and considered as provided by Title 18, United States Code, Section 3184 and the Extradition Treaty between the United States and the Kingdom of Belgium.

Our client retained a lawyer and a bail hearing was held shortly thereafter. The magistrate, having reviewed the material filed by the United States Attorney's Office, found that Gjergj failed to demonstrate *inter alia* a "reasonable probability that his conviction and sentence will be set aside." The magistrate also determined that no "special circumstances" justified his release pending his extradition hearing as required by law in bail hearings related to Extradition matters. Gjergj was thus remanded into custody.

Desperate and determined, Vera proceeded to our offices, where she handed over the documents produced by the requesting state. They included documents vouched for by Secretary of State Colin L. Powell, formal requests from Belgium for Gjergj's extradition, the sworn Complaint by an Assistant United States Attorney setting out the background and charges, the warrant for arrest signed by the United States Magistrate Judge, the order of Detention, the Extradition Treaty, and an Outline of the Case presented by the Belgium prosecution along with the judgment of the Belgian Court leading to the conviction and sentence of Gjergj, along with the applicable Belgian statutes.

Vera held out little hope, for both her first American attorney and current Belgian attorney advised her that the case was hopeless, especially since the conviction was entered by a stable and democratic European country. She feared that the only sensible thing to do was to agree to the extradition request and work at having Gjergj released from the Belgium jail at the earliest possible parole date.

Without much time, and with a Court date already set within a few weeks we agreed to look into this matter but warned that we would require some time to properly review all the documents and would need to request an adjournment of the hearing, during which time Gjergj would in all likelihood remain in custody. Vera asked us to do whatever we could, as it would be impossible to carry on with her husband in a Belgian jail, so we agreed to review the entire matter. Finally, we advised Vera that we were unable to promise any relief as the initial review of the situation revealed little legal hope to prevent the extradition.

We then investigated the actual documentation, law, and facts in depth. We learned that fighting an extradition request requires diligence, patience, careful scrutiny of all documentation, and an ability to understand the true nature of extradition proceedings, their purpose and procedure. Since United States extradition proceedings and treaties have been around since the founding of our country, one will often find, following a review of the case law, inconsistent and often unreconcilable decisions. Legal practice guides and articles often contain contradictory information. We found, however, that there are some basic guidelines. The following is a simple and brief outline of how to tackle an extradition request, should you ever receive a similar phone call from a client.

A Word About Politics

Extradition is accomplished by treaty, that is, an agreement between two independent nations.[4] Since there is no enforcement mechanism to ensure that one country extradites a "relator" (a person facing extradition), the primary incentive is based upon mutual cooperation and a tit-for-tat strategy. The United States has more extradition treaties than any other country in the world, mainly to ensure that the U.S. can extradite criminals from anywhere in the world to face charges here. That in turn can mean that your client may be a pawn in a much larger game. Although your client is entitled to due process before extradition, such safeguards are minimal. It is important to keep the larger picture of global politics and national interests in mind when assessing the chances of success in fighting an extradition request.

The Treaty: The Start of It All

A person can only be extradited pursuant to a treaty that is in full force and effect.[5] Without a valid and outstanding treaty, a person cannot be extradited. The list of countries without treaties with the United States is a short one.[6]

Closely reading the treaty's provisions is the first step in fighting extradition. The treaty itself may provide some of your best defenses to the extradition request. Normally, the treaty establishes the procedures that the requesting state must follow in its pursuit of your client. It usually begins with a formal request from the requesting state to the United States. The request and its accompanying documents are briefly reviewed by the State Department and, if they pass muster, passed along for formal filing by the U.S. Attorney in the appropriate U.S. District Court. As a courtesy, and in exchange for similar treatment abroad, the U.S. Attorney's Office then files a complaint on behalf of the requesting state, against the relator, seeking extradition of the relator to the requesting state.

The treaty will spell out which documents must be submitted in support of the complaint, and which legal standards must be met. For example, some treaties explicitly require copies of foreign arrest warrants and transcripts of any court proceedings. Some treaties specifically bar extradition for crimes where the possible sentence is less than one year. A thorough review of the documents might reveal material technical errors, or in some cases the complete absence of material required by the treaty. In the beginning, it is crucial to map out all the filed material, and double-check signatures to ensure they are

signed by the proper authorities. Reading the treaty's provisions very carefully will provide valuable assistance in fighting any extradition request.

In our case, for example, we found that the U.S.-Belgium Treaty contained a specific provision dealing with an *in absentia* conviction. It was of the utmost importance in learning that the Treaty itself provided that an *in absentia* conviction was merely the equivalent of an arrest warrant, as opposed to an actual conviction. Using this provision, we then argued that the documentation supporting the extradition request was improper and could not meet a probable cause standard (according to American law) as to whether our client committed any offense.

Check Pre-hearing Procedures.

Once an extradition proceeding has begun, it usually moves quickly. As noted, the requesting state often takes years to build its case, but the relator is left with little more than a few months to prepare and present a defense that will save him from prison time abroad. It's extremely important to determine what stage the extradition proceedings have reached to ensure proper representation and to make applications for adjournments in order to ensure that you have enough time to thoroughly argue the case.

Once the U.S. Attorney's Office receives the material from the requesting state, a complaint is prepared based on that material, presented in Federal Court, and an application is made for an arrest warrant which normally will be issued since the relator hardly ever receives notice of the proceedings.[7] Once the arrest warrant has been issued, the relator will be arrested and brought to court for a bail hearing before a magistrate.

Unlike other cases, in extradition cases there is a presumption against bail.[8] The rationale is that bail should be rarely granted since the relator has typically already fled once from the legal process. In order for a relator to be granted bail, he must show "special circumstances," an elevated legal standard that is difficult to meet.[9] There are a great number of cases dealing with "special circumstances" that set out various factors to be considered at the bail hearing, including probable cause. It is up to you to find whatever special circumstances are present in your particular case that militate against holding your client in custody. Unlike the commonplace arguments in a regular bail hearing, risk of flight and ties to the community will not usually constitute special circumstances.

Since the U.S. District Court has no jurisdiction to hear the magistrate's ruling on appeal, if bail is denied, and in many cases it is, the sole avenue for appeal is by motion for reconsideration or by petition for habeas corpus.[10] Often, the client will remain in custody until the extradition hearing.

Investigation: (or figuring out what really happened).

Extradition proceedings build from their inception to a formal extradition hearing. The determination whether or not to extradite is made upon examination of the record prepared by the requesting state and presented at the hearing. Before the hearing is held, it is crucial to understand the actual case as presented by the requesting state, and specifically whether that case demonstrates probable cause to extradite. Reviewing the allegations with your client is important to determine if the requesting state's case accurately represents what happened, or whether there is another explanation for the facts, another version, or an explanation why the requesting state's case is untrustworthy.

Presenting an active defense requires a thorough factual investigation. The requesting state has had plenty of time to compile its case, and defense attorneys are often left scrambling to secure documents from foreign countries, in foreign languages, which they hope can assist in their defense. The first source for information is the documents that accompanied the Treaty, including any court documents from foreign tribunals. Based on the facts contained in the documents and conversations with the client, a thorough investigation is necessary, much like one that is conducted in the typical criminal case. Although defense witnesses cannot contradict the information contained in the extradition request, they can explain it and may do so to help avoid an extradition in appropriate cases. These witness interviews can provide invaluable information as was the situation in our case. It is most important to obtain affidavits from witnesses that can add material to the case in support of your client so that the Judge will have a full picture in determining the probable cause inquiry.

Just as important as the facts is the preparation regarding the numerous legal issues raised in any extradition hearing. One hallmark of extradition jurisprudence is the principle of dual criminality: in order for a crime to be extraditable, both sovereigns must prohibit the conduct.[11] The foreign laws at issue, in English, should accompany the extradition request. For example, the United States should rightfully refuse to extradite someone to a foreign country for chewing gum in public because while such conduct may be criminal abroad, it does not constitute a crime in America.

Serious investigation should be made regarding both the foreign offense and its American corollary. An international law expert may be able to testify in your favor that the laws at issue are too dissimilar to meet the dual criminality standard. It is important to scrutinize the laws of the requesting state and compare them with the applicable United States statutes to ensure that this dual criminality provision is met.

The Hearing.

The extradition hearing determines whether or not probable cause exists to justify the extradition of your client. The inquiry is two-fold: first, is there probable cause to believe a crime was committed? Second, is there probable cause to believe that your client was the one who committed it?[12] The answers to these questions

are carefully limited by the fact that the relator is not able to present contradictory testimony, such as an alibi or denial, but rather is limited solely to explanatory evidence.[13] For example, the relator cannot deny that he was at the scene when the alleged crime occurred, but he can explain why he was there. Furthermore, the Federal Rules of Evidence and Federal Rules of Criminal Procedure do not apply.[14]

The answers to these questions are also limited by the principle of non-inquiry: the judge will not consider the fairness of the legal system that is requesting extradition.[15] The relator cannot use stories of despotic or cruel policies or punishments in his defense to avoid extradition because the judge should not consider it in his determination.

If the judge finds there is probable cause, then extradition is mandatory.[16] Once the determination is made, the U.S. has two months in which to extradite the relator to the requesting state.[17] There are no appeals; the sole avenue for relief from extradition is to petition for habeas corpus and move to stay the extradition.[18]

If the judge finds that probable cause is lacking, there is no finality in his ruling because the principle of double jeopardy does not apply to extradition.[19] The requesting state may ask that another complaint be filed, and the relator can be provisionally arrested on the spot in the courtroom after the judge announces his findings. Hopefully, however, the requesting state is satisfied with the ruling and does not request extradition again.

Documentation

In defending an extradition request it is also important to carefully scrutinize the actual documents filed by the extraditing state. The court can only consider "depositions, warrants, or other papers or copies thereof offered in evidence" in the extradition inquiry, provided that they are used for similar purposes by the tribunals of the requesting state.[20] The documentation actually presented by the government should be carefully scrutinized to determine whether it can meet this standard.

Final Political Appeal

Because extradition is a matter of foreign policy, the Secretary of State has the final say in whether or not an individual is extradited.[21] The findings of the judge to extradite are nothing more than a recommendation to the Secretary of State. The relator may make a final plea to the State Department to stay extradition, but such relief is extraordinary.

The Successful Defense: A Brief Anecdote

In our case, Gjergj had been held in federal prison after failing to show "special circumstances" at his first bail hearing. Once we became involved, we immediately prepared a petition for habeas corpus, and obtained consent for the adjournment of the proceedings so that we could properly review the material. We then conducted a thorough investigation of the law, and determined that the documents that Belgium had provided contained minimal evidence of probable cause according to U.S. standards. In our view, the *in absentia* conviction was based at least in part on evidence that didn't even meet the American probable cause standard.

Our factual investigation turned up a number of witnesses that supported our client's interpretation of the facts, and provided an explanation for his presence with the Albanians who were attempting to enter the United States. We learned that he had absolutely nothing to do with the arrangements to bring the Albanians to the U.S. but was accompanying his future sister-in-law to America as requested by his brother and the young lady's father. The conclusions drawn by the Court in the absence of a real defense were shown to be totally unwarranted. Important to our thorough investigation were our communications with Gjergj's Belgian attorney to find out facts, and the securing of transcripts of the court proceedings and interrogations that had been held while our client was in prison. We spoke with others involved in the case, and contacted many of our client's friends, family and clergy to vouch for his character and to provide an explanation why he was visiting Europe at the time of his arrest.

We identified the areas in which the requesting state had not complied with the procedural requirements of the treaty, and made extensive submissions to the court by way of legal briefs to illustrate these deficiencies in advance of the extradition hearing. By the time of the hearing, the U.S. Attorney's Office requested an additional adjournment of the hearing to answer our position. We refused to agree unless bail was granted. Since the government would not agree to our request, we filed our habeas corpus application with the full explanation and background material that we intended to argue if the government's application for an adjournment would be allowed. While we were preparing our documents contesting the additional adjournment, we were notified by the U.S. Attorney's Office that if we agreed to the adjournment the requesting state would agree to bail. Following the release of our client we commenced our preparation for the hearing.

Approximately one week before the hearing, we were advised that the requesting state was withdrawing its extradition request, and that all formal charges against our client were dropped. He was finally free to resume the life that was taken from him, including returning to his family, his home and his businesses.

Conclusion

The goal in defending any extradition request is to ensure that your client is allowed to continue to enjoy the life he knows here in America. Many requesting states do not provide the civil liberties that the United States does, and it is for that reason that many of those people being extradited fear the lack of due process in the proceedings in their home states. The key to properly representing your client in an international extradition proceeding is to review the documents and conduct a

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Pitfalls to Avoid in Drafting International Commercial Arbitration Agreements

By Mary A. Bedikian

Drafting enforceable international commercial arbitration agreements is an art. The art requires a delicate balancing act – the drafter must include enough specificity to enhance enforcement without producing a ponderous document replete with potentially conflicting provisions. There are many time-tested arbitration clauses that work well, and are also adaptable to most international business transactions. All too often, however, arbitration clauses fall short of the mark.

While there is no perfect clause in arbitration, there are several features that will improve both the likelihood of enforcement, and client satisfaction with process. This article will explain why contract drafters should pay more careful attention to certain components of arbitration, and how to avoid the more common pitfalls in drafting these documents.

Prearbitration ADR

In drafting arbitration agreements, it may be appropriate initially to consider processes of compromise or collaboration. Most international arbitral institutions have published rules to govern ADR procedures. The following example provides a negotiation or consultation step:

> **Negotiation:** *In the event of any dispute, claim, question or controversy arising from or relating to this agreement or its breach, the parties to this agreement shall use their best efforts to negotiate a settlement. If settlement does not occur within [60 days], then upon notice by either party to the other, any remaining dispute, claim, question or controversy may be submitted to arbitration in accordance with the rules of [International Center for Dispute Settlement, the Commercial Arbitration and Mediation Center for the Americas (CAMCA), the Inter-American Commercial Arbitration Commission (IACAC), the International Chamber of Commerce (ICC), or the United Nations Commission on International Trade Law (UNCITRAL)]*

The parties also may consider mediation. As with negotiation, mediation enables parties to retain control of the outcome. With a quality mediator, the parties can work in harmony to achieve an interest-based settlement. Private mediation is effective. A study of commercial mediation, conducted by Northwestern University, "The Effectiveness of Mediation by Four Major Service Providers," concluded that mediation succeeded in settling more than three-fourths of all cases. This study examined mediation offered by the American Arbitration Association, JAMS/ENDISPUTE, the Center for Public Resources Institute for Dispute Resolution, and the United States Mediation and Arbitration Service.[1]

In deciding whether to employ mediation, it is important to consider the cultural context of the parties. Traditional forms of mediation have been successfully employed in both the People's Republic of China and in Japan, where compromise is an ingrained inclination.

The Agreement to Arbitrate

Under the New York Convention[2], parties are free to contract to arbitrate future disputes, or to submit an existing dispute to the arbitral process. Obviously, the decision to insert an arbitration clause into the parties' contract at the front end of the business relationship must be carefully considered. Among the advantages of arbitration are the following:

- ***Informality:*** Courtroom rules of evidence are not strictly applicable. Motion practice is virtually non-existent. Also, there is no requirement for transcripts of the proceedings.

- ***Impartial and Expert Decision-Makers:*** Arbitrators are selected for their cases based on subject matter expertise. This expertise produces more thoughtful and incisive decision-making, and awards that are likely to be self-enforced.

- ***Finality:*** As a general rule, arbitration decisions are final and binding. State and federal laws limit Court intervention, post-award.

If arbitration is selected, the parties should make certain that the clause *expressly* refers to arbitration, rather than some fuzzy or esoteric form of ADR. Also, the clause should state that arbitration is final and binding. Establishing the forum certain at the beginning of the business deal avoids additional controversy after a dispute arises as to the meaning and effect of the clause.

> ▪ **Arbitration:** *Any controversy, claim or disagreement arising out of or relating to this contract, or its breach, shall be settled by final and binding arbitration administered by [appointing authority] in accordance with the rules of the [appointing authority].*

Although most arbitration agreements contain future dispute resolution clauses, parties who have not incorporated such clauses into their business contracts are not necessarily precluded from invoking arbitration after a dispute occurs. The following clause may be used to submit an existing dispute to arbitration:

- **Submission to Arbitration:** *We, the undersigned parties, agree to submit the following controversy [brief description] to arbitration administered by the rules of the [appointing authority].*

Most parties negotiating a dispute resolution clause expect and intend that all disputes between them arising out of their relationship will be subject to arbitration. Thus, a typical broad arbitration clause would provide that *"all disputes, controversies, claims or disagreements arising out of or relating to this agreement or its breach shall be settled by arbitration. . . ."*

There are numerous permutations of this arbitration clause. Among the most common:

- "Any controversy or claim *arising under* this Agreement"
- "Any controversy or claim *in connection with* this Agreement"
- "Any controversy or claim *relating to* this Agreement, or the breach thereof"
- "Any controversy or claim *relating to* this Agreement, *including any questions regarding its existence, validity, breach or termination"*[3]

Despite the fine lines, courts draw distinctions between these clauses. For example, a clause that provides for disputes *"arising under"* has been construed to exclude tort, quasi-contract, and statutory claims.[4] A more expansive phrase, *"arising under or relating to"* increases the likelihood that non-contractual claims will be eligible for resolution under arbitration.[5] Courts do not like to second-guess party intent. *The broader the clause is, the stronger the presumption of arbitrability.*[6]

There are circumstances, however, where the parties may wish to limit the range of disputes. For example, a company holding a U.S. patent may not wish the validity of the patent to be tested in arbitration.[7] Narrow clauses should be carefully crafted. Although disputes sometimes break into tidy categories, frequently they do not. Moreover, after a dispute arises, one party may be motivated for strategic reasons to oppose arbitration, notwithstanding the clear intent of the parties. Such circumstances inevitably lead to litigation over the meaning of the clause, and thus consequential delay and expense.

Institutional or Ad-Hoc Arbitration

Once the decision is made to include arbitration, the next question is how to structure the clause. Should arbitration be self-administered (*ad-hoc*), or administered by an appointing agency (*i.e.,* institutional arbitration). Most parties to international commercial arbitration agreements prefer institutional arbitration because of the assistance they receive in selecting arbitrators, exchanging documents, and managing the logistics of the hearing process. The drawback to institutional arbitration is that the institutions charge a fee for their services, which the parties will be required to pay, along with the arbitrator(s) fees.

The two leading international commercial arbitration institutions are the American Arbitration Association and the International Chamber of Commerce. These services publish rules applicable to international arbitration. It is important to understand the scope and substance of the rules before incorporating any of the rules into the arbitration agreement. Incorporated rules are as effective as the clauses the parties have spelled out in their arbitration agreement.[8]

- **American Arbitration Association Rules:** Amended in July 2003, these rules are comprehensive and enable the arbitrators to decide their own jurisdiction, including objections with respect to the existence, scope and validity of the arbitration agreement. In addition, the arbitrators are authorized to grant interim measures if necessary, including injunctive relief and measures for the protection and conservation of property. Other features include the application of substantive law, the opportunity to interpret or correct an award within 30 days of issuance, and a confidentiality clause, preserving information disclosed during the proceedings (limited to arbitrator and administrator).

- **International Chamber of Commerce Rules:** In 1923, the International Chamber of Commerce established the ICC International Court of Arbitration. Located in Paris, this private "court" oversees the arbitration of hundreds of international commercial cases per year. The ICC Court appoints arbitrators (absent party agreement) and administers the proceedings. *Administration is closely supervised.* [9]

Other rules in international arbitrations include the following:

- **London Court of International Arbitration Rules:** The London Court of International Arbitration (LCIA) began in 1882 as "The London Chamber of Arbitration." Although it is located in London, arbitrations may take place anywhere in the world. The LCIA rules and procedures are very similar to the ICC rules and procedures.

- **United Nations Commission on International Trade Law Rules:** In 1976, the United Nations Commission on International Trade law (UNCITRAL) adopted arbitration rules. These rules are similar to those of AAA except they do not provide for an appointing authority, *i.e.*, freestanding rules for self-administered proceedings. If the parties are not able to agree on an arbitrator, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority.[10] The AAA is the national representative for UNCITRAL in the United States. For this reason, AAA has prepared its own Procedures for Cases under the UNCITRAL Arbitration.

- **Inter-American Commercial Arbitration Commission Rules:** The Panama Convention states that in the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the rules of procedure of the Inter-American Commercial Arbitration Commission (IACAC). When parties agree to these procedures, or by default these procedures come into play, IACAC administers the arbitration. The national office of IACAC in the United States is the American Arbitration Association headquarters in New York City. The rules of IACAC basically parallel UNCITRAL.

Services rendered by arbitral institutions can be costly. Determining whether to use an appointing agency, however, usually entails more than simply the cost of administration. Without an institutional administrator, the arbitrators will be required to perform certain administrative tasks (and charge the parties accordingly). Also, most institutional rules include a fallback appointment process should one of the arbitrators become ill or incapable of performing his/her duties. And finally, agreeing to use institutional rules means that most procedural rules will be incorporated by reference, and you will not need to detail these procedures in the arbitration clause. The AAA's rules, for example, provide for the selection of a specialized, impartial panel, include a mechanism for deciding locale and incorporate administrative conferences.

Situs of Arbitration

An international arbitration agreement should identify the place where disputes are to be heard and the manner of selecting the arbitrator. Otherwise, a court may end up choosing the locale, *and the arbitrator*.[11]

There are several reasons why it is preferable for a citizen of the United States to have arbitration occur within the United States. These reasons include (1) convenience; (2) arbitrator familiarity with American legal concepts; (3) English as first language; (4) the availability of Chapter 1 of the FAA (and Chapters 2 and 3 and the Conventions) in arbitral and judicial proceedings; and (5) reducing the prospect of piecemeal judicial proceedings.[12]

If the United States is not the designated situs, consider choosing a place where the local law (legislation and national courts) is favorable to the arbitral process (for example, where law compels arbitration and enforces subpoenas) and not overly intrusive into the arbitral process. The federal judiciary will enforce the parties' choice of forum "absent a strong showing that it should be set aside."[13] A strong presumption exists in favor of enforcement of freely negotiated contractual choice of forum provisions.[14]

Choice of Law

Another indispensable provision in international commercial arbitration agreements is choice of law. A contractual provision that references which contracting state's law will apply offers a heightened level of predictability. It also obviates the concern that a dispute will be submitted to a hostile forum.

One concern with respect to choice of law clauses is that the arbitration agreement is considered to be a separate contract, thus it may not be subject to the substantive choice of law clause.[15] For example, the Sixth Circuit Court of Appeals has ruled than an Ohio choice of law provision did not displace federal law on the issue of whether the court or the arbitrator was to decide a defense of fraudulent inducement.[16] Thus, it is advisable to include a choice of law that addresses, separate from the larger agreement, the arbitration clause, and the authority of the arbitrators.

Appointing Arbitrators – Method, Number and Qualifications

A well-worded arbitration clause should include a procedure for selecting the arbitrator(s) if the parties cannot agree. Again, this will not be necessary if institutional rules are specified. Under the ICDR's arbitration rules, the parties are initially given an opportunity to designate their arbitrators, with or without the assistance of the administrator.[17] If agreement is not reached within 45 days after arbitration is initiated, the Association will appoint an arbitrator from its National Panel. The administrator evaluates suitability for service.

If parties do not incorporate the rules of an appointing authority, many national arbitration statutes provide for judicial appointment by the national courts located in the place of the arbitration.[18]

The number of arbitrators also should be determined at the outset. Most panels are comprised of three arbitrators. Assuming an appointing agency is involved, the three arbitrators are selected according to the institution's rules, which can vary. ICDR's procedure provides that *"one arbitrator shall be appointed unless the*

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Human Rights Abuses in a Closed Society: The Sinyavsky-Daniel Case

By Deirdre Golden, M.S., M.D., J.D.Candidate

> "What we need are democratic reforms in all spheres of life…the road of revival should not be restricted by religious or nationalist ideology… No one can count on a rapid and universal solution of great problems. We must exercise patience and tolerance, combining them with courage and consistency of thought. We must not call on our people, especially the young, to make sacrifices. Our people are totally dependent on the state, and it will swallow each and every person without choking. As for sacrifices, we have had more than enough of them".
>
> *Andrei Sakharov*[1,2]

Abuse of dissidents for political ends has a long history, beginning prior to the former Soviet Union and continuing even after the Soviet Union was dissolved.

The United Nations Universal Declaration of Human Rights, adopted as a non-binding resolution by the United Nations General Assembly in 1948, delineates the human rights provisions of the U.N. Charter. The Soviet Union abstained from voting on the Declaration and the Charter received little publication in the U.S.S.R.

The document sets forth the fundamental rights of all people, which are to be established and protected by the Member States, including those pertinent to the abuse of psychiatry and commitment to mental institutions:

1. *Article 3* Everyone has the right to life, liberty and security of person.
2. *Article 5* "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."
3. *Article 8* Requires that there be a "right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."
4. *Article 10* "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."
5. *Article 19* "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[3]

All of these rights have been consistently ignored and brutally abused by the former Soviet Union.

The "Helsinki Accord," the Final Act of the Conference on Security and Co-operation in Europe, was adopted in 1975.[4] It reiterated many of the rights found in the Universal Declaration and the Covenants, explicitly declaring that:

> Participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfill their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound. [5]

In fact, the "Helsinki Accords" according to Vladimir Bukovsky[6], represented:

> [T]he most successful Soviet trick of the détente era when the whole affair was presented to the Western Public as a great victory for the cause of human rights. In reality, the Western politicians knew perfectly well that the Soviets were not going to respect their obligations, and the Soviets knew equally well that the West was not going to demand seriously that the obligations be respected.[7]

The intensity of KGB campaigns against political crime varied considerably, and the level of political arrests rose markedly during the period from 1960 to 1985.

The Civil Rights Movement began in the spring of 1958. A statue of the poet Mayakovsky was unveiled in Mayakovsky Square, near the center of Moscow. Spontaneously, following the opening, people began to gather daily for poetry readings.

> The poetry reading, right there on the square, in the center of Moscow, created an extraordinary atmosphere. Hundreds came to the readings. "We were fighting for the concrete freedom to create, and it was no accident that many of us - people like Yuri Galanskov, Victor Khaustov, Vladimir Osipov and Edward Kutznetsov, later merged with the movement for human rights. We all got to know one another in Mayakovsky Square. [8]

The government, shortly afterwards, closed Mayakovsky Square to any future readings, and arrested those it considered

to be the organizers: Ginsburg[9], Bakhstein, Kutznetsov and Osipov, accusing them of conspiring in an "assassination plot." They were subjected to a "closed trial" far from the public eye.

Professor Aleksandr Yesenin-Volpin[10] discovered the location of the courthouse where the trial was taking place, and came to the doors waving a copy of the Russian Criminal Code. He was admitted after threatening the guards. [11]

> The central concept in Volpin's arguments was the position of a citizen.... There was no law obliging all the citizens of the USSR to believe in communism or to help build it. Volpin's idea came down to this: 'we reject the regime, not because it calls itself socialist - there's no law defining socialism and therefore citizens are not obliged to know what it is - but because it is based on coercion and lawlessness, tries to impose its ideology on people by force, and obliges everybody to lie and be hypocrites. We wish to live in a state ruled by law. We are obliged to submit to nothing but the law.' [12]

Bukovsky later notes: "Little did we realize that this absurd incident, with the comical Alik Volpin brandishing the Criminal Code like a magic wand to melt the doors of the court, was the beginning of our civil rights movement, and the movement for human rights in the USSR." [13]

In June 1963 the Leningrad Poet, Joseph Brodsky[14] (who later became a Nobel Laureate in Literature, and an American Poet Laureate) was arrested and tried under an "anti-parasite" law. The court refused to believe that writing poetry was 'useful work' and sentenced Brodsky to five years imprisonment in the labor camp.

Following the fall of Khruschev, the regime, hoping to dissuade further dissent, arrested the well-known writers Andrei Sinyavsky and Yuli Daniel for agitation and propaganda against the Soviet State. After the "secret arrest," the authors were detained against their will and summoned to trial. They were accused of "ideological sabotage".[15]

Sinyavsky, a graduate of Moscow University with a degree in Philological Sciences, was a revisionist critic defending works attacked by the literary establishment. He was a devotee of Pasternak and analyst of Pasternak's poetry. Daniel was a graduate of Kharkov University and a translator of poetry.

Under the names Abram Tertz and Nikolai Arzhak, the writers smuggled many of their compositions abroad to be published in France and to ensure they would be preserved as literature. Their works were primarily fantasy and satire.[16]

Many prominent intellectuals tried to intervene on behalf of Sinyavsky and Daniel to no avail. Supporters of this new "legality" were called "zakoniki,"[17] legalists who, following the lead of Volpin, tried to force the government to hold to its own laws and principles.[18] They called for an open trial, invoking the Soviet Constitution: A closed trial is an illegal act. **Article 3, U.S. Constitution and Article 18 of the RSFSR criminal code.[19]**

> "May your smarting calluses
> Remind you of others being mutilated
> You are submerged in human destiny
> From now on your destiny is pain"
>
> *Y. Daniel, 1966, awaiting sentencing.*

After just three days, Judge Smirnov returned verdicts of guilty and sentenced Sinyavsky to seven years hard labor, and Daniel to five.[20] Daniel ultimately served 19 years of his life in jail.

On December 5, 1965, "Constitution Day," (while Sinyavsky and Daniel were awaiting trial), Soviet Dissent wrote the first page of its modern history. At 6:00 P.M., a group of Soviet intelligensia gathered in Moscow's Pushkin Square. With foreign diplomats and the KGB watching, they pulled banners[21] from beneath their coats, intending to publicize their demand that the Kremlin adhere to Soviet Laws regarding free speech and assembly.

The early political dissent was represented almost exclusively by intellectuals - academics, writers, and scientists. Among the brightest were *Boris Pasternak*, *Aleksandr Solzhenitsen[22]*, *Andrei Sakharov, Yuri Orlov[23], Aleksandr Ginsburg*, and *Vladimir Bukovsky*.[24, 25] They sought greater political freedoms within the Soviet system. Some, like Aleksandr Solzhenitsyn, were die-hard anti-communists. Some were liberal advocates of Western-style political systems while others were Marxists. The Soviet authorities treated them all as enemies of the state.

Soviet repression of dissidents[26] represented both a violation of human rights and a breach of medical ethics. Hospitalization of dissenters, diagnosed as "mentally ill," effectively controlled those who questioned government acts.

Political dissidents, those who oppose either the form of a rule in a state or its specific policies, were incarcerated in special psychiatric hospitals[27] when there was "no medical justification for their detention." [28]

Forcible confinement included the administration of debilitating drugs:

> "Medication was widely used for punitive purposes. "High doses of anti-psychotic drugs were routinely administered by injection over a ten-to-fifteen day regimen to punish violations of hospital rules and to treat 'delusions of reformism' and 'anti-Soviet thoughts.'"[29]

"For some dissenters, the worst penalty was the psychiatric hospital; for others, the labor camp; and still for others, exile to the West."[30] In 1970, Aleksandr Solzhenitsen wrote that "[t]he incarceration of free-thinking healthy people in madhouses is spiritual murder."

According to the Soviet System, empowering the KGB, this was an alternative to straightforward arrests and avoided the unfavorable publicity that often arose with criminal trials of dissenters.[31]

Continued on the next page

Human Rights issues raised by prosecutions criminalized dissent. "Hospitalization of dissenters who are not mentally ill, on the grounds of "non-imputability, combines repression with moral fraud and magnifies the violation of human rights; it demeans the dissenter's dignity, devalues his message, and establishes the legal authority for an indeterminate period of what can only be called psychiatric punishment."[32]

> It seems likely that a subset of Soviet psychiatrists, associated primarily with Moscow's Serbskii Institute for General and Forensic Psychiatry, knowingly collaborated with the KGB to subject mentally healthy dissidents to psychiatric punishment, in blatant violation of professional ethics and human rights. In this respect, abuse of psychiatry in the Soviet Union had less to do with psychiatry per se than with the repressiveness of the political regime of which the psychiatrists were a part. [33]

The pattern of abuse that was revealed in the Soviet Union was too pervasive to be attributable to a few evil doctors. A U.S. delegation visiting Russia in 1999 discussed the use of "political pressures influencing their judgment, resulting in deliberate misuse of psychiatry for purposes of social control."[34]

Control of psychiatry by the government for its own ends, legal and political, resembles the concept of paternalism in the Western World, leading to abuse of civil commitment. In the Soviet Regime, "socialist ideology infused paternalism with a deep streak of authoritarianism."[35]

Paternalism is not unlike authoritarianism in its outlook. It is defined as the interference of a state or an individual with another person against their will and is justified by the claim that the person interfered with will be better off or protected from harm. The issue of paternalism arises with respect to restrictions by the law such as anti-drug legislation and at the theoretical level it raises questions of how persons should be treated when they are less than fully rational and the issue of civil commitment.

Authoritarianism, a contemporary term for despotism, favors authority over individual freedom and specifically relates to governance in which the individual's rights are subordinated to the interests of the group, state, or institution and philosophically is based on the premise that an individual lacks the capability for decision with regard to activities and knowledge deemed so by the group.

The use of authoritarianism in the Soviet Union via rigidity, racism, and anti-semitism was characterized by Soviet coercive psychiatric abuse. "Authoritarianism presumes a moral imperative of the institution to do whatever is necessary to achieve its agenda. The use of coercion to enforce prohibitive social sanctions to protect the individual from him/herself is seen as unpleasant but necessary and corrective."[36] "[T]o imprison people for political reasons is a "cardinal violation of international human rights."[37]

On September 16, 1966, two laws directly threatening the civil rights of Soviet citizens were passed. The strategy of legality was beginning to make its mark.

The Laws were as follows:

> *Article 190- 1.* Provided sentences from 1 to 3 years, and/or a fine of 100 rubles, for criticizing the Soviet state or social system.
>
> *Article 190- 3.* Provided identical sentencing for the formation of groups or organizations without the approval of the government.

In 1967, Andrei Sakharov wrote an article, "Reflections on Progress, Peaceful Coexistence, and Intellectual Freedom," attacking the Soviet political system. Sakharov argued for a "democratic, pluralistic society free of intolerance and dogmatism, a humanitarian society."[38] Sakharov developed the thesis that "intellectual freedom is essential to human society."[39] After publication of "Reflections" abroad, Sakharov was fired from the weapons program.

In 1972, Sakharov assumed the leadership of the Human Rights Committee. Under Sakharov's guidance, the Committee turned its focus outward. While maintaining its emphasis on holding the Soviet government accountable to domestic law and international regimes, the Committee replaced its "academic" activities with protests and appeals abroad.

> The Human Rights Committee succeeded in bringing international pressure to bear on the USSR, procuring the release of several prisoners and becoming a model for dissent in the post-Helsinki era. Ultimately, only the lack of a heterogeneous constituency and the absence of greater foreign governmental support preempted greater success for Sakharov's Human Rights Committee.[40]

Sakharov became an increasingly vocal advocate of human rights. When he denounced the Soviet military intervention in Afghanistan, the Soviet authorities were quick to respond, banishing him to internal exile in Gorkii in January 1980.

> Sakharov worked tirelessly to promote democracy in the Soviet Union until the very last day of his life. He was elected to the Congress of People's Deputies and appointed a member of the commission responsible for drafting a new Soviet constitution. On the day he died, December 14, 1989, he made a plea before the Soviet Congress for political pluralism and a market economy.[41]

To no avail, in spite of many changes in recent Russia, the system still uses the "old" methods of oppression and lies, and the abuse of Human Rights continues.

When law, whether domestic or international, mirrors the aspirations of society and captures its imagination, it acquires a moral and political force whose impact can rarely be predicted and often far exceeds

Continued on page 28

Update: American Father and Daughter Win Victory Against Austria

by
Jan Rewers McMillan

Americans Thomas and Carina Sylvester were awarded a money judgment against the Republic of Austria in April of this year for Austria's violation of their fundamental human right to a private family life free from interference by the state. The judgment arises out of complaints brought by the father and daughter in the European Court of Human Rights (ECHR) in 1997 in Strasbourg, France against Austria for its failure to enforce an order of the Austrian court, affirmed on appeal, that Carina be returned to Michigan under the terms of the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) in 1995.

The background and substance of the case was the subject of an article published in the Spring 2002 issue of the *Michigan International Lawyer* entitled "The European Court of Human Rights Considers the Aftermath of an International Parental Child Abduction from Michigan," at which time the case was still under consideration. On April 24, 2003, the ECHR found by unanimous decision that because Austria had failed to take all measures reasonable under the circumstances to enforce the return order; Austria had violated Article 8 of the European Convention of Human Rights, which protects a person's fundamental right to a private family life within the territories of those nations which, like Austria, are party to the European Convention of Human Rights.

The remedy for Austria's violation was a small award for non-pecuniary damages to the father in the amount of EUR 20,000, no award of pecuniary damages, the cost of just one trip to Austria for a court hearing along with a minor amount in attorney fees, for a total award of EUR 42,682.61. Carina Sylvester was awarded nothing. The damages issue was the subject of two separate dissenting opinions, one was the result of the 4-3 split in the decision not to award Carina non-pecuniary damages and the frugality of the award to the father. The other was a critique by a single judge of the damage award *in toto.* In his separate opinion, Judge Bonello called the award "paltry and uncaring," "mean and beggarly," and "an offensive trifle." He concluded that "if neutralizing the Convention comes so cheap, states may well find it foolish not to brave a try."

The decision represents the first time an American father and child have successfully sued the Republic of Austria or any other Council of Europe nation for a violation of their right to family life. Yet, the victory is a moral one only. Carina Sylvester will celebrate her ninth birthday on September 11, 2003 in Graz, Austria with her mother and maternal grandparents. She has never returned to the United States since she was abducted by her mother, an Austrian native, from West Bloomfield on October 30, 1995 when she was just 13 months old. The Austrian courts have determined that she may not travel to the United States in the future. Thus, the favorable decision in the ECHR does nothing to remedy the continuing alienation of father and daughter. However, Austria will now be required to take measures to come into compliance with the European Convention of Human Rights so as not to perpetrate such a human rights violation again.

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*Tips for Taking Your Company's Ethics Program Overseas**

By Valerie Holton, IOR Global Services

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The recent wrongdoings in corporate America have caused business leaders, academics and the general public to revisit issues around corporate governance, business ethics, and the importance of personal and group integrity. A multitude of pressures - competitive stresses, short-term earnings focus, the erratic and volatile economy, and the difficulties of working in a multinational environment with different cultural norms - all add to imperfect ethical decision making.

This article will discuss briefly the historical framework of business ethics, the difficulties of designing international standards, seven ethical principles that may serve as guidelines, some considerations when designing global codes of conduct, and methods of evaluating ethical dilemmas.

Historical Framework

In the United States, business ethics is a relatively modern business discipline emerging from the social, civil and post-Vietnam War political issues of the 1960s, the misconducts of the 1970s (Watergate and the insider trading scandals) and the early 1990s federal government mandates for companies with federal contracts. Two significant legal outcomes — the Foreign Corrupt Practices Act (which focused on bribery in foreign countries) and the U.S. Sentencing Guidelines (which encouraged companies contracting with the Federal government to put ethics standards in place), created legal parameters around certain business conduct.

Historically business ethics in other countries lagged U.S. programs although this was not true in all cases and is now changing rapidly. Australia had trade practice laws in effect 10 years prior to the U.S., and currently over fifty percent of European companies have an ethics code. What is different, and not surprising, is that that the U.S. ethics codes are based primarily on U.S. legal requirements (specifically Federal Sentencing guidelines), while in other parts of the world, particularly Europe, less than 20 percent of the codes are legally driven.

This legal focus has increasingly become complicated as more and more companies become "multi-national". Suddenly country specific laws and restraints are less relevant. Domestic compliance codes which are focused on laws and regulations of one country may not be appropriate overseas where laws in each country may be very different. In fact even the word "ethics" is culturally interpreted. The word ethics does not translate in Japan and the concept of business ethics is viewed in terms of loyalty to one's company. In the United States, equality and fairness are the underlying ethical principles, while in the Middle East ethics is more closely associated with etiquette, and in Europe ethics has a strong moral underpinning.

Designing A Global Ethics Programs: Whose Standards?

Companies moving into the international arena, therefore, face the dilemma of "whose ethics?" International business ethics is problematic because of ethical relativism. Each society or culture has its own set of moral rules. If true, *then* no society's ethical code has the special status of being "better" or "truer" than another. All ethical principles are relative to time, place and circumstance. What is the better decision from a business point of view? A legal point of view? A moral point of view?

Should the ethics standard be to obey the laws of one's home country even if those laws are not mandated abroad? To obey the laws of the host country where you are conducting business? To take a position somewhere in between? Or should it take yet a fourth position of business ethics, called the "naïve immoralist,"[1] whereby a corporation should not follow any ethical rules abroad because to do so would place the company at a competitive disadvantage? Most of us would feel that the fourth proposition is not an option; the difficulty is in interpreting the other options in an international setting.

Several years ago I attended an international business ethics conference sponsored by IOR Global Services. I remember vividly the anecdotal story of a Managing Director for a global advertising agency that was sent to Moscow to open a new office. He shared examples of trying to secure a location, install communication lines, buy supplies and garner clients. Repeatedly he was asked for money in return for services. Repeatedly he called his home office and was told to "get the office open quickly! That's your job!" He was caught in the classic case of trying to meet corporate objectives while questioning whether the methods to do so violated laws. In addition, and more importantly, was his own unease in taking actions that he perceived to be unethical. And he was worried about ultimately being the corporate scapegoat if the agency's actions came into question. He quit the firm.

His was a classic example of how an individual working abroad must grapple with the dilemma of "following orders" versus honoring one's own moral compass. Setting unrealistic goals that can only be accomplished by cutting corners or behaving unethically is a common mis-

take in international business. Home offices often unknowingly make unrealistic demands because they lack the knowledge of how business is conducted overseas.

Guidelines for Determining Standards

Richard T. De George, noted professor of business ethics, believes that ethical norms can be designed for multinational companies operating overseas. He suggests that the following seven rules[2] to serve as a basis for evaluating and responding to potential charges of unethical behavior:

1. Multinationals should do no intentional direct harm.
2. Multinationals should produce more good than harm for the host country.
3. Multinationals should contribute by their activity to the host country's development.
4. Multinationals should respect the human rights of their employees.
5. To the extent that local culture does not violate ethical norms, multinationals should respect the local culture and work with and not against it.
6. Multinationals should pay their fair share of taxes.
7. Multinationals should cooperate with the local government in developing and enforcing just background/monitoring institutions.

Designing a Global Ethics Program

In the United States, companies design their ethics programs around the following key components:

1. A code of conduct
2. An Ombudsmen role or "helpline" communication tool (phone or e-mail) that allows employees to confidentially raise any ethics questions or concerns
3. Ongoing training for all employees
4. Communication tools such as newsletters, e-mail broadcasts, and bulletin boards
5. Monitoring and auditing tools to measure the program's success

Implementing Ethics Standards Internationally: *companies should consider taking the following additional steps:*

Conduct a global audit consisting of interviews, focus groups, etc. that addresses questions such as: what are the areas and business actions most likely at risk of misconduct, and are there potential conflicts between the company's standards and local practices? Not only will this initial research help design the standards, but it will be critically important in getting the buy-in of employees outside the headquarters country so that the program is not seen as only home country-centric.

Include international personnel from business units and functional areas (particularly finance, legal and HR) in the design of the code of conduct. Decide how corporate standards will be applied across geographies and cultures. Will standards be applied universally? Will local regions have their own standards or will there be a core set of principles that will be modified within certain limits?

Consider having local ombudsmen. It is unlikely that overseas employees will contact headquarters' ethics offices for a variety of reasons including time zone and cultural differences. Build the infrastructure that monitors and enforces the standards as determined, and

Constantly communicate. Educate and train all employees on the concepts of corporate responsibility and integrity. When communicating the ethics program internationally, companies must be careful to omit home country cultural references and confirm that the wording and concepts are understandable within cultural contexts. Placing all documents in the different languages and being careful of translation is equally important.

Guidelines for Evaluating Ethical Business Issues

When faced with a complex ethical dilemma, the stakeholder approach is an invaluable way of framing the issue. This method states that there are many different groups or "stakeholders" potentially impacted by a decision. They may include employees, customers, the general public, suppliers, subcontractors, strategic partners, local and foreign governments, management and board of directors, special interest groups, etc. By listing all parties, their concerns, and the impact of the decision on each group, one can approach the problem more holistically. Adding societal or cultural pressures further complicates but ultimately helps the decision-making process by taking all factors into consideration. When in doubt, more disclosure, more dialogue and more involvement with people being impacted will help in the decision-making process.

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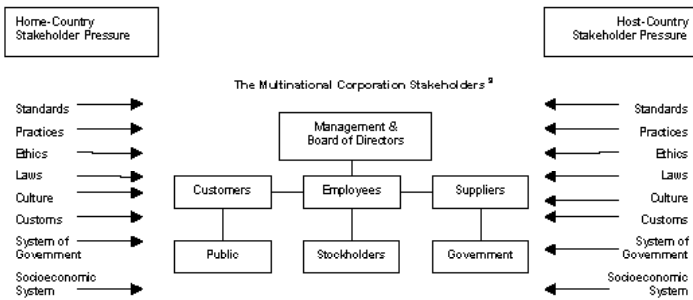
The Dilemma of Multinational Corporations



Personal Integrity: the Most Critical Ingredient

I recall looking at the picture of the former WorldCom controller David Myers being lead, handcuffed, in front of media cameras as he was being arrested. He was dressed well, in an expensive suit, a bright red tie and crisply starched blue shirt. And I was thinking about his family. How did his wife feel as she shopped at the local food store, his parents as they attended Sunday church services, his children as they entered their classroom? And therein lays the biggest ethical test of all. We each must hold to our own moral standards. Ethical integrity within any organization begins at the individual level. Moral courage is the ultimate ethical action.

About the Author

Valerie Holton is Marketing Director for IOR Global Services, an intercultural services company with offices in Detroit, Chicago, and London. IOR's core competencies are intercultural management training, (including Business Ethics Across Cultures,) and a variety of expatriate support services which focus on Cross-Cultural Training, Language Tutoring, and Destination Assistance. For more information contact *vholton@iorworld.com*, 1-847-205-0066, or *aconnor@iorworld.com*, 1-248-645-5382.

Endnotes

1 Richard T. De George, *Competing With Integrity In International Business*, 1993: p.9.

2 Richard T. De George, pp. 42-55.

3 Archie Carroll. *Business & Society – Ethics & Stakeholder Management.* Second Edition, 1989, p. 165.

State Bar of Michigan

68th Annual Meeting
September 11-12, 2003
Lansing Center, Lansing

Thursday
Golden Anniversary Reception
Board of Commissioners Meeting
Section Meetings

Friday
Representative Assembly Meeting
Section Meetings

Saturday
Race for Justice, Potter Park Zoo
(Saturday, September 13, 2003)

Pitfalls to Avoid . . .
Continued from page 7

administrator determines in its discretion that three arbitrators are appropriate because of the larger size, complexity or other circumstances of the case."[19] None of these criteria are defined.

If parties prefer, they can integrate a party-nominated system into the arbitration clause, which will permit each of them to select an arbitrator. The two party appointed arbitrators would then select the presiding arbitrator, typically from the list provided by the appointing agency. This is where the advantage of an institutional group comes into play. Organizations such as the American Arbitration Association and the International Chamber of Commerce carefully screen and select candidates for their respective panels.

Arbitration agreements also can reference specific qualifications of arbitrators. This is common in domestic arbitrations, where specialized licenses or fluency in a particular language may be required to resolve the subject matter of the dispute. For the most part, this is the function of an appointing agency, to make certain that the arbitrators placed on the list of candidates are knowledgeable in the area of the parties' dispute.

Impartiality of Arbitrators

A touchstone of arbitration is the impartiality and independence of the arbitrator selected to decide the case. Under most institutional rules, arbitrators are required to disclose any personal, business or professional circumstances that might give rise to a conflict.[20] Even *appearances* are important. As a general rule, arbitrators are precluded from having significant nexus financially, professionally, or personally, to any party, counsel, or witness.

Unlike domestic arbitrations where party-appointed arbitrators are regarded as partisan appointments, in the international sector, arbitrators who are party-appointed are regarded as independent, unless the parties have stipulated otherwise. This type of panel offers additional leverage, and given the restrictions relating to communications, enhances the overall integrity of the process.

Law Governing Judicial Review

The New York Convention contemplates that the parties will choose the law applicable to enforcing and challenging awards. Under Article V, the parties may identify the law to be applied to the "validity" of the underlying agreement, "the composition of the arbitral authority or the arbitral procedures," the "binding" nature of the award, and the court (and grounds) for setting aside or suspending the award.[21]

Since the law limits judicial review of arbitration awards generally, parties wishing to expand the scope of judicial review will need to craft a specific clause, taking into account whether they are enforceable under the local law of the situs of arbitration. In the United States, for example, the various federal circuits are split as to whether parties can contract for heightened judicial review.[22]

Other Issues

The parties also can address other issues, including the following:

- Multi-party arbitrations
- Discovery (primarily the order thereof)
- Allocation of Fees
- Removal of arbitrators (if proceeding *ad hoc*)
- Evidence (*i.e.,* technical rules of evidence, documents, witnesses)
- Remedies (*e.g.,* specific performance, injunction, punitive damages, interest)
- Entry of judgment (necessary if there is the expectation that the award will be enforced in a United States Court)

Again, all of the above requires a thoughtful analysis at the beginning of the business relationship. Once arbitration is selected as the forum for dispute resolution, counsel should consider a standard proven clause courts are likely to enforce. From there, consideration should be given to the special nuances of the deal, being careful to avoid too much specificity or unrealistic deadlines. The result should meet the parties' business needs, and offer predictability and order if the parties' relationship culminates in a dispute.

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Gary B. Born, *International Arbitration and Forum Selection Agreements* 24-26 (Kluwer Law International 1999)

Michael F. Hoellering, *International Arbitration Agreements: A Look Behind the Scenes*, 53 Disp. Resol. J., Nov. 1998, at 64.*

Alan Redfern, *Having Confidence in International Arbitration*, 57 Disp. Resol. J., Nov. 2002-Jan. 2003, at 60. *

Useful Web Sites

- www.adr.org American Arbitration Association (cite includes a "drafting clauses booklet")
- www.adr.org/icdr International Centre for Dispute Resolution (AAA)
- www.cpradr.org Center for Public Resources
- www.iccwbo.org International Chamber of Commerce Court of Arbitration (ICC)

- *www.un.or.at/uncitral* UNCITRAL
- *www.lcia.arbitration.com* London Court of International Arbitration

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Endnotes

[1]Michael F. Hoellering, *World Trade: To Arbitrate or Mediate-That is the Question*, 49 Disp. Resol. J. 67 (1994).

[2]The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C.A. § 201 (1998).

[3]*See* Gary B. Born, International Arbitration and Forum Selection Agreements 24-26 (Kluwer Law International 1999).

[4]*Tracer Research Corp. v. Nat'l Envtl. Servs. Co*., 42 F.3d 1292 (9th Cir. 1994) (arbitration clause held only to apply to contract claims).

[5]See *Ripmaster v. Toyoda Gosei*, 824 F.Supp 116 (E.D.Mich., 1993) (holding that a broad arbitration clause includes claims of fraudulent misrepresentation, unjust enrichment, and promissory estoppel of non-signatory third-party beneficiaries).

[6]*AT & T Techs., Inc. v. Communications Workers of Am*., 475 U.S. 643, 650 (1986); *Communications Workers of Am. v. Mich. Bell Tel. Co*., 820 F.2d 189 (6th Cir. 1987).

[7]David E. Wagoner, *Tailoring the ADR Clause in International Contracts*, 48 Arb. J., June 1993, at 77.

[8]*P & P Indus., Inc. v. Sutter Corp*., 179 F.3d 861 (10th Cir. 1999) (party who consents by contract to arbitration before AAA also consents to be bound by procedural rules of AAA, unless that party indicates otherwise in contract); *Commonwealth Edison Co. v. Gulf Oil Corp*., 541 F.2d 1263 (7th Cir. 1976) (domestic award confirmable because arbitration agreement incorporated AAA commercial arbitration rules providing that parties consented to entry of judgment upon award).

[9]Although the ICC has the second largest international caseload, the ICC has been criticized as expensive and cumbersome. For many, it remains the forum of last resort.

[10]UNCITRAL Arbitration Rules, G.A. Res. 31/98, U.N. GAOR, 31st Sess., Supp. No. 17, at 37, U.N. Doc. A/31/17 (1976), *available at* http://www.uncitral.org/english/texts/arbitration/arb-rules.htm#(Articles%206%20to%208).

[11] *Jain v. De Mere*, 51 F.3d 686 (7th Cir. 1995).

[12]*Seetransport Wiking Trader Schiffarhtsgesellschaftr MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 989 F.2d 572 (2d Cir. 1993) (New York Convention contemplates possibility of winning party seeking enforcement of award in country "A" while losing party seeks to vacate award in country "B" where arbitration occurred.).

[13]*Riley v. Kingsley Underwriting Agencies, Ltd*., 969 F.2d 953, 958 (10th Cir. 1992) ("Only a showing of inconvenience so serious as to foreclose a remedy, perhaps coupled with a showing of bad faith, overreaching or lack of notice, would be sufficient to defeat a contractual forum selection clause.").

[14]*Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc*., 473 U.S. 614, 631 (1985) (enforcing arbitration agreement that Puerto Rican dealer arbitrate any disputes in Japan under rules and regulations of Japan Commercial Arbitration Association).

[15]*Mastrobuono v. Shearson Lehman Hutton, Inc*., 514 U.S. 52 (1995).

[16]*Ferro Corp. v. Garrison Indus., Inc*., 142 F.3d 926 (6th Cir. 1998).

[17]Int'l. Arb. Rules, R-2, Art. 6 (Am. Arb. Ass'n. 2003), http://www.adr.org/index2.1.jsp?JSPssid=15747&JSPsrc=upload\LIVESITE\Rules_Procedures\National_International\..\..\focusArea\international\AAA175current.htm#Appt_of_Arbs.

[18]Federal Arbitration Act, 9 U.S.C. §§ 5, 206 (1998).

[19]Int'l. Arb. Rules, R-2, Art. 5 (Am. Arb. Ass'n. 2003), http://www.adr.org/index2.1.jsp?JSPssid=15747&JSPsrc=upload\LIVESITE\Rules_Procedures\National_International\..\..\focusArea\international\AAA175current.htm#Number_of_Arbs.

[20]Int'l. Arb. Rules, R-2, Art. 7 (Am. Arb. Ass'n. 2003), http://www.adr.org/index2.1.jsp?JSPssid=15747&JSPsrc=upload\LIVESITE\Rules_Procedures\National_International\..\..\focusArea\international\AAA175current.htm#Impartiality. states: Prior to accepting appointment, a prospective arbitrator shall disclose to the administrator any circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence." Disclosures are not limited to the outset of the proceedings. The Article continues: If, at any stage during the arbitration, new circumstances arise that may give rise to such doubts, an arbitrator shall promptly disclose such circumstances to the parties and to the administrator."

[21]Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, art. V, paras. 1(a), 1(b), 1(e), 21 U.S.T. 2517, 2520, 330 U.N.T.S. 38, 40-43.

[22] Compare *LaPine Tech. Corp. v. Kyocera Corp*., 130 F.3d 884 (9th Cir. 1997) to *UHC Mgmt. Co., v. Computer Scis. Corp*., 148 F.3d 992 (8th Cir. 1998).

Minutes of the Council Meeting – June 10, 2003

Detroit Athletic Club, Detroit, Michigan

On Tuesday, June 10, 2003, the International Law Section of the State Bar of Michigan held its regularly scheduled Council Meeting at the Detroit Athletic Club in Detroit, Michigan, pursuant to notice duly circulated to all Section members.

The meeting was called to order at 4:15 p.m. by the Chair, Clara DeMatteis Mager.

First, Section members and guests in attendance introduced themselves and their professional affiliations.

Thereafter, Randolph M. Wright, Secretary of the Section, presented the Minutes from the Section meeting held on April 29, 2003 in Ann Arbor, Michigan, and moved that they be approved. Bruce Birgbauer seconded the Motion, and the Minutes were approved.

Next, Bruce Birgbauer, Treasurer of the Section, presented the Treasurer's Report for the 8 months ending on May 31, 2003. The year-to-date income was $13,145.00. Expenses totaled $7,037.07. The beginning fund balance for the fiscal year was $19,756.37, with a current balance of $26,793.44. Randolph M. Wright motioned to adopt the Treasurer's Report. William Dance seconded the Motion and the Treasurer's Report was approved.

Clara DeMatteis Mager indicated that the motion to amend the Bylaws of the Section to allow for the Section to hold its annual meeting at an alternative location will be published in the Fall edition of the Michigan International Lawyer, as required by the Section's Bylaws, and the motion will be voted upon at the annual meeting on September 11, 2003.

Next, the Chair asked Jan Rewers McMillan to report on the status of the annual meeting. Ms. McMillan indicated the meeting will be held in Lansing, Michigan starting at 1:00 p.m. Ms. McMillan suggested the topic for the presentation at the meeting be framed around the Immigration and Naturalization Service's new requirement that 90% of all visa applicants be required to attend a face-to-face interview. A panel discussion will address the impact of these new procedures on Michigan business, such as Ford and Delphi, and the resulting delays in processing the applications.

Jan McMillan indicated that she had invited a number of people from the State Department to participate in the panel.

William Dance expressed his desire that extensive publicity be initiated to ensure strong participation. For example, the annual meeting could be advertised in *Crain's* and *The Detroit Legal News.* Clara DeMatteis Mager indicated that the American Immigration Lawyers Association would be interested in participating in this, and that we should also send invitations to non-attorneys. Scott Fenstermaker indicated that there was precedent to invite non-lawyers to the presentation.

Randolph M. Wright indicated that, if we broadened the topic to include the impact of these regulations on inbound business from Canada, Mexico and the Middle East, we may reach a broader audience.

Clara DeMatteis Mager asked Fred Smith what impact all of this would have on Customs. He indicated that the U.S. Customs Service is still formulating policy at this point. Most of their focus today is on potential criminal activity.

Next, the Chair addressed the issue of an award of outstanding achievement. There was general discussion and it was agreed that the Secretary would circulate the criteria for the award to the people present at the meeting. Nominations would be forthcoming from them, move that the officers be empowered to select the award recipient. The Motion was made by Jan McMillan, seconded by Susan Gasparian.

Next, the Chair asked John Mogk to report on the *Michigan International Lawyer*. He indicated that August 1, 2003 is the deadline for articles for the Fall issue and asked that the Section formalize the program for the annual meeting so that it can be published in this issue. He would like to list the calendar of 2003-2004 events.

Alex Fedynsky requested articles for the publication. He recommends it be a minimum of 24 pages. John Mogk advised that there is no limit and, if we had enough articles, we could publish a volume twice that size. He also indicated that the idea is to get the Fall publication out prior to the annual meeting, which would require they close out on or before Labor Day. Alex Fedynsky distributed a draft Table of Contents and it was reviewed. In addition to the eleven items on the draft, he would add a summary of the strategic planning meeting, a summary of the annual meeting program and an update of Jan Rewers McMillan's previously submitted article.

Next, the Chair distributed a memorandum regarding the issue of residency requirement for admission to the State Bar of Michigan. There is a concern by the Deans of Michigan law schools and others that the current requirement is overly restrictive. The Michigan State Board of Law Examiner interprets the word "residence" to require that applicants must be citizens or legal resident aliens holding green cards in order to be admitted to the Bar. The catch-22 of this is that in order to obtain a visa and, thus, a green card, the applicant must already be licensed to practice law.

John Mogk indicated that the current joint-program at the University of Detroit and the University of Windsor is well-established and must have already addressed this issue. Randolph M. Wright indicated that he would contact the University of Detroit to obtain their input. Julia Qin indicated that there was an ABA proposal to

Continued on next page

Minutes . . .
Continued

limit the opportunity of foreign lawyers to take Bar examinations. However, she believes it was defeated. She indicated that Bar Associations like the New York Bar support foreign law students because they do work related to their homeland rather than the bread and butter work of U.S. lawyers. John Mogk stated that there is a legitimate concern regarding foreign law students taking 26 credit hours for an LLM and then taking the Bar exam, versus the 85 credit hours required for a J.D., thus, allowing them to get into a "short line" to take the Bar exam.

Jan Rewers McMillan indicated that the Bar is looking for our Section's input on this issue on a yea or nay basis. It was decided that Randolph M. Wright would head up a committee to look into the matter and present it for consideration at the annual meeting in 2003. Julia Qin, Peter Swiecicki and Fred Frank agreed to participate on that committee.

The Chair asked that the memorandum be distributed to Council members for their comment. It was discussed and decided that the memorandum should be distributed to the entire Section with a request for comment.

The Chair then indicated at the annual meeting this year there would include the election of a Treasurer and election of Council positions that are due to expire vis-a-vis John Mogk, Fred Smith, Scott Fenstermaker and Peter Swiecicki.

Thereafter, the Chair requested that the Section address the strategic planning issues outlined in the agenda.

The first issue discussed was programs. There was general discussion about the number of Council meetings and location of Council meetings. It was decided that the Section would continue to have quarterly meetings, and will attempt in 2003-2004 to have meetings in Detroit, Oakland County, Ann Arbor, and Grand Rapids.

Bill Dance stated that, when the Section was first formed, all meetings were held in Lansing to avoid any problems of concentrating in one locale. It was decided that for 2003 and 2004, we would follow the above scenario, and consider this issue at the annual meeting.

Randolph M. Wright asked whether the format of the Council meetings would continue to be a business meeting followed by a guest speaker. It was discussed and determined that rather than have guest speakers at the Council meetings, the Section would reinstate education programs, such as the "Going International Program".

There was a general discussion concerning topics for the education programs and the following were agreed upon:

1. Andrew Doornart suggested an education program on Homeland Security.
2. Julia Qin suggested that it is appropriate to have a program on NAFTA on a 10-year anniversary.
3. Lois Bingham suggested a program on Foreign Corrupt Practices Act and Compliance.
4. Sheryl Adle promoted the idea of having the events be 2 or 3 hour events, either in the morning or a brown bag lunch in order for these people to participate and then get to their offices. Marc Maguire stated that the PWC events of this nature have been extremely successful and he concurred with Sheryl's recommendation. Sheryl also suggested that it would be appropriate to expand the mailing to other Sections like the Young Lawyer Section.

There was general discussion about programs for 2003-2004 and it was decided at the September 2003 annual meeting the topic would be the aforementioned INS interview process. In February or March timeframe, there would be an education seminar on inbound business. In May of 2004 during World Trade Week, a seminar on outbound business. In September 2004 annual meeting in Detroit, Michigan, a keynote speaker would be invited to speak on current events.

There was general discussion concerning the SAE program and lack of attendance. Thereafter, the Section decided to drop the participation in the program.

There was general discussion concerning the World Trade Week program. Randolph M. Wright indicated that this year's program was on the topic of International Commercial Dispute Resolution, and it was well-attended. Although the report has not been published by the Detroit Regional Chamber, he indicated that there were certainly over 40 attendees at the conference. It appears that the Section's percentage of the revenue generated by the conference will be adequate to cover costs. It was agreed that the Section participate again in 2004.

The Chair stated that the officers would work on a schedule for 2003-2004 to incorporate the above, with an attempt to coordinate one meeting on one month with the next month a program so as not to congest the schedule.

Louis Bingham suggested that when we send out the notice of these programs, we ask members if they are willing to participate in the planning and/or delivery of the events.

Bill Dance suggested that it is a good idea to do joint programs, for example, with Wayne Law School. This gives both the Section and the Law School notoriety. Peter Swiecicki supported that concept and suggested that the Michigan State University NAFTA after 10 years conference would be an example of a topic that we could joint venture. Bill Dance indicated that the program he had in mind would be a substantive program which

would be an all day session, including lunch. John Mogk indicated that Wayne State Law would be willing to be the first law school, but that we should encourage rotation to all of the law schools. Julia Qin indicated that she is willing to work on the project, however, she will be gone for one year and would be willing to work on it when she gets back.

Sandy McRae stated that she would be active in Wayne International Law Society in 2003-2004, and was pressing the law students to join the State Bar Section and the International Law Section.

Next, the Section addressed the idea of giving an annual scholarship. Lois Bingham indicated that an essay contest with a $1,000 reward would be an outstanding program to initiate. There was a discussion on the topic as to how to frame it and how much money should be dedicated to it. Bruce Birgbauer made a motion to dedicate $1,000 to the scholarship and that the first scholarship be established at Wayne State Law School to be selected by a Wayne State Law faculty member. Louis Bingham seconded the motion. There was general discussion on the motion, including the idea of rotating to each law school in the State of Michigan. Marc Maguire suggested that the discussion revealed that there were a lot of issues that needed consideration and that the matter should be tabled. Peter Swiecicki concurred with that and, therefore, the motion was tabled. Lois Bingham and Bruce Birgbauer accepted the responsibility to frame the issue and return to the Section with a recommendation.

Sheryl Adle stated that Compuware was willing to host one of the meetings in 2004 and asked that this be considered during the scheduling process.

The strategic planning session was adjourned at 6:30 p.m. The attendees were invited to stay for a dinner hosted by the Section for continued discussion of the strategic planning topics.

Respectfully submitted,

Randolph M. Wright
Secretary

Submissions Guidelines

The *Michigan International Lawyer*, which is published three times per year by the International Law Section of the State Bar of Michigan, is Michigan's premiere international law journal. Our mission is to enhance and contribute to the public's knowledge of world law and trade by publishing articles on contemporary international law topics and issues of general interest.

The *Michigan International Lawyer* invites unsolicited manuscripts in all areas of international interest. Manuscripts should be available in hard copy and electronic format. Manuscripts submitted for consideration cannot be returned unless accompanied by a $5 check or money order made payable to **Wayne State University Law School** for shipping and handling.

All submissions may be forwarded to the editor at the following address:

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07/10/03

State Bar of Michigan
International Law Section
For the Nine Months Ending June 30, 2003

		Current Activity June	Year To Date June
Income:			
1-7-99-525-1050	International Law Section Dues		13,050.00
1-7-99-525-1055	International Stud/Affil Dues	5.00	100.00
Total Income		5.00	13,150.00
Expenses:			
1-9-99-525-1276	Meetings		1,347.39
1-9-99-525-1283	Seminars	30.00	630.00
1-9-99-525-1297	Annual Meeting Expenses		1,276.08
1-9-99-525-1833	Newsletter		2,541.00
1-9-99-525-1861	Printing	225.00	386.41
1-9-99-525-1868	Postage		182.05
Total Expenses		255.00	6,362.93
Net Income		(250.00)	6,787.07
Beginning Fund Balance:			
1-5-00-525-0001	Fund Bal-International Law Sec		19,756.37
Ending Fund Balance		(250.00)	26,543.44

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2002-2003

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U.S. Department of State
Bureau of Consular Affairs - Visa Services
Visa Waiver Program (VWP)

Important Notices

Machine-readable passports Starting October 1, 2003, each Visa Waiver Program traveler must present a machine-readable passport (MRP) at the U.S. port of entry to enter the U.S. without a visa, otherwise a nonimmigrant visa is required. This change includes all categories of passports-- regular, diplomatic, and official, when the traveler is seeking to enter the U.S. for B-1/B-2 purposes. To learn more, see below. Select *Visa Telegram* dated 7/15/03 for Public Talking Points and additional information.

Citizens of Belgium who wish to travel to the U.S. under the Visa Waiver Program must present a machine-readable passport (MRP) effective May 15, 2003.

- Overview
- What Are the Visa Waiver Program (VWP) Countries?
- What Do I Need to Know About the VWP and the Machine Readable Passport?
- What is a Machine Readable Passport?
- What Do I Need to Enter the United States on the VWP?
- Entering the U.S. - Port of Entry
- Is there Any Fee?
- When Does a Citizen of a VWP Country Need to Apply for a Visa?
- Do Canadian Citizens Need a Visa or MRP?
- How Does a Country Qualify for Visa Waiver?
- Additional Information - Department of Homeland Security

Overview

The Visa Waiver Program (VWP) enables citizens of certain countries to travel to the United States for tourism or business for 90 days or less without obtaining a visa. Not all countries participate in the VWP. Some restrictions apply to this program as explained below.

What Are the Visa Waiver Program (VWP) Countries?

Currently, 27 countries participate in the Visa Waiver Program, as shown below:

Visa Waiver Program - Participating Countries

Andorra	Iceland	Norway
Australia	Ireland	Portugal
Austria	Italy	San Marino
Belgium	Japan	Singapore
Brunei	Liechtenstein	Slovenia
Denmark	Luxembourg	Spain
Finland	Monaco	Sweden
France	the Netherlands	Switzerland
Germany	New Zealand	United Kingdom

What Do I Need to Know about VWP & the Machine Readable Passport Required October 1?

Starting October 1, 2003, each Visa Waiver Program traveler must present a machine-readable passport (MRP) at the U.S. port of entry to enter the U.S. without a visa. Those without MRPs must obtain a nonimmigrant visa. This change includes all categories of passports -- regular, diplomatic, and official, when the traveler is seeking to enter the U.S. for B-1/B-2 purposes.

Families and groups seeking to enter the U.S. under the VWP will need to obtain an individual passport for each traveler, including infants. Machine-readable passports typically have biodata for only one traveler in the machine-readable zone. Based on this, families may be denied visa-free entry into the U.S. if the biodata for only one traveler is machine-readable.

What Is a Machine Readable Passport?

A machine readable passport has biographical data entered on the data page according to international specifications. The size of the passport and photograph, and arrangement of data fields, especially the two lines of printed OCR-B machine readable data, meet the standards of the International Civil Aviation Organization, Doc 9303, Part 1 Machine Readable Passports. OCR-B means the type is Optical Character Reader size B. If there are questions about your passport, after carefully reviewing this information, and any information that may be available to you from your country, you may want to contact the passport issuing agency or authority in your country of citizenship.

What Do I Need to Enter the United States under the VWP?

To enter the U.S. under the VWP, travelers from participating countries must:

- Be a citizen of a Visa Waiver Program country;
- Have a valid passport issued by the participating country. Beginning October 1, 2003, the passport must be machine readable passport;
- Be seeking entry for 90 days or less, as a temporary visitor for business or pleasure. You will not be permitted to extend your visit or change to another visa category under the VWP.

Visitors for Business - Some types of activities , here are types of activities permitted as a business visitor:

- ✓ Participating in commercial business transactions that do not involve gainful employment in the U.S, for example, negotiating contracts or consult with business associates You cannot receive a salary or wages from a U.S. source.
- ✓ Participating in scientific, educational, professional or business conventions, conferences or seminars;
- ✓ Conducting independent research;
- ✓ Appearing as a witness in a court trial

NOTE: Representatives of the foreign press, radio, film or other information media require a nonimmigrant Media (I) visa and cannot travel to the U.S. using the visa waiver program.

Visitors for Pleasure - While this is not a complete listing, here are types of activities permitted:

- ✓ Visiting friends and relatives, touring or vacationing, visits for rest;
- ✓ Visits for medical treatment;
- ✓ Participating in conventions, conferences or convocation of fraternal or social organizations;
- ✓ Amateurs participating in sports, musical, and other events or contests, who will receive no money or other remuneration in return;

- If entering by air or sea, have a round-trip transportation ticket issued on a carrier that has signed an agreement with the U.S. government to participate in the VWP, and arrive in the United States aboard such a carrier.
- Hold a completed and signed Nonimmigrant Visa Waiver Arrival-Departure Record, Form I-94W, on which he/she has waived the right of review or appeal of an immigration officer's determination about admissibility, or deportation. These forms are available from participating carriers, from travel agents, and at land-border ports-of-entry.
- You must have no visa ineligibilities. This means if you have been refused a visa before, have a criminal record or are ineligible for a visa you cannot travel on the Visa Waiver Program without a visa. You must apply for a visa to the U.S.

Entry at a land border crossing point from Canada or Mexico is permitted under the Visa Waiver Program.

Entering the U.S. - Port of Entry

Detailed information about admissions and entry in the U.S., under the Visa Waiver Program can be found by selecting *Admission to the U.S.* to go to the DHS, Bureau of Citizenship and Immigration Services internet site.

Is there Any Fee?

There is a small filing fee for the Nonimmigrant Visa Waiver Arrival-Departure Record, Form I-94W from airlines. Select *BCIS Forms and Fees* to go to the Department of Homeland Security's Bureau of Citizenship and Immigration Services internet site to learn more.

When Does a Citizen of a VWP Country Need to Apply for a Visa?

You must apply for a visa under the following circumstances, if you:

- want to work or study in the United States; or
- have been refused a visa before; or
- have a criminal record; or
- are ineligible for a visa. *See Classes of Aliens Ineligible for Visas*.

Do Canadian Citizens Need a Visa or MRP?

Citizens of Canada generally do not require a visa. (While some people mistakenly think Canada is part of the visa waiver program, the authorization for Canadian citizens to travel visa-free comes from other immigration laws.) The machine-readable passport requirement does not apply to Canadian citizens, because they are not part of the visa waiver program. It should be noted, these Canadian citizens travelling to the US require nonimmigrant visas: treaty traders (E), and fiance/es (K-1), as well as a U.S. citizen's foreign citizen spouse, who is traveling to the U.S. to reside here while they wait for the final completion of the process of immigration (K-3), and their respective children (K-2 for children of fiancees, and K-4 for children of a foreign citizen spouse), spouses of lawful permanent residents (V-1) and the children of those spouses (V-2) traveling to the U.S. to reside here while they wait for the final completion of their immigration process. Additionally, these Canadian citizens travelling to the US require nonimmigrant visas: foreign government officials (A), officials and employees of international organizations (G), NATO officials, representatives and employees if they are being assigned to the U.S. (as opposed to an official trip). To learn more about Canadian entry select *Border Countries - Canada and Mexico* and select *the U.S. Embassy In Ottawa, Canada*. Also select Entry from Canada to go to the DHS Bureau of Immigration and Citizen Services web site.

How Does a Country Qualify for Visa Waiver?

Select *Visa Waiver Program – How a Country Qualifies to learn more.*

Additional Information - Department of Homeland Security

Select the *Visa Waiver Program* to go the Department of Homeland Security's Bureau of Citizenship and Immigration Services (BCIS) information about the Visa Waiver Program.

Return to Visa Services Page

Return to Consular Affairs Page

http://www.travel.state.gov/vwp.html
7/29/2003

Summary of the Winter Panel Discussion on Intellectual Property Rights in China

By Wendy Thompson

On July 31, 2003, the U.S. Department of Commerce presented a panel presentation discussing the protection of intellectual property rights (IPR) in China. Speakers included Susan Tong, an International Trade Specialist in the Office of the Chinese Economic Area at the International Trade Administration; Mark Cohen, an attorney-advisor in the Office of Enforcement at the U.S. Patent and Trademark Office; and Thomas Moga, an attorney at Dickinson Wright PLLC. The event was sponsored by the Law Offices of Dickinson Wright PLLC in Bloomfield, Michigan. This event was part of a series of presentations by the Department of Commerce in various U.S. cities. So far, this Detroit venue attracted the highest number of attendees. Each speaker gave an in-depth look at various aspects of intellectual property rights in China. This article will touch on some of the highlights of their presentations.

As part of Market Access and Compliance at the Department of Commerce, Susan Tong helps ensure that U.S. companies have equitable access in foreign markets and that foreign companies abide by bilateral agreements. This is especially important in China due in part to its position as the number one recipient of foreign direct investment as well as its fifth ranked position in the world export market. As the U.S.'s ninth largest export market, China receives over $22 billion in exports from the U.S.

With these economic ties, it is important to U.S. companies that China abides by its own IP laws as well as international IP law, of which the most important is the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). However, the current IPR environment in China is very unfavorable. With the second highest piracy rates in the world (over 90 percent) and rampant counterfeiting of goods (estimation of 15-20 percent of revenue lost by multinational companies), Susan Tong predicts that the IP violations will get worse before improvements are made following China's accession to the WTO.

There are various reasons for why IPR infringement is so rampant in China. There are limited government constraints on domestic companies, there is stronger consumer demand for name brands following the influx of foreign companies in China, and there has been an abundance of capital in China since the 1990s. Authorized licensees producing overruns, distributors, joint-venture partners, unlicensed factories, and criminal syndicates are among those responsible for IPR infringement.

The U.S. International Trade Commission (ITC), using Section 337, and U.S. Customs and Border Protection (CBP) work to stop the importation of infringed products. Utilizing Section 337, the ITC determines whether there is unfair competition in the importation of products into the U.S. or IPR infringement. The ITC can bar products at issue from entering the U.S. through an exclusion order, as well as issue a cease and desist order to the violating parties. (For more information on Section 337 of the USITC: www.usitc.gov/us337.htm or ftp://ftp.usitc.gov/pub/reports/studies/PUB3516.PDF.) The CBP has the legal authority to determine trademark and copyright infringements, but not patent. It can also search, seize, and arrest. IPR owners may record their trademarks and copyrights with the CPB Office of Regulations and Ruling. The CBP also implements the exclusion orders issued by the ITC.

Current U.S. government actions in relation to IPR in China include the USTR's Special 301 Report (China's status is now Section 306 Monitoring), the China IPR Action Plan through the U.S. Embassy in Beijing, discussions with the government in China on U.S. IPR concerns, technical assistance training for Chinese IPR enforcement officials, and informing U.S. exporters of the pros and cons of entering the Chinese market.

As the second speaker, Mark Cohen discussed the key IPR rights in China: patents, trademarks, trade secrets, and copyrights. Patent protection in China is handled through its Patent Office: State Intellectual Property Office. Regional offices provide administrative enforcement and there is also national coordination available with IP International Organizations. In addition, China has specialized IP courts, the 3rd Civil Division, for civil infringement cases and technology transfer cases. Some pertinent information about Chinese patent law includes that patents must be registered in China to provide protection against infringement, they can be costly and must be filed on a timely basis, and foreign patent applicants must be filed using registered patent agents.

The Chinese Trademark Office, part of the State Administration for Industry and Commerce (SAIC), provides administrative enforcement throughout China. Also, the SAIC provides administrative enforcement of company name infringements, trade dress infringements, and trade secret infringements. Like patents, foreign trademark applicants must be made through registered trademark agents. Trademarks must be registered in order to receive IP rights. China's specialized IP courts also handle trademark infringement cases.

Trade secrets do not need to be registered. They are normally defined by contract, are not territorially limited, and are a WTO obligation. The principle law concerning trade secrets is "law to counter unfair competition." While the principle administrative enforcement agency is the Fair Trade Bureau of AIC, the Ministry of

Labor, the Ministry of Science and Technology, and the Ministry of Commerce may be involved in trade secret cases. Trade secret laws include Article 43 of the contract law, which states that a trade secret is not to be disclosed or improperly used when it has become known during the course of contract formation -- whether or not the contract is concluded. Notice of Ministry of Labor on Several Issues Involved in Enterprise Worker Mobility (No. 355, 1996) dictates that terminated employees must be reasonably compensated to ensure enforcement of trade secret protection.

The National Copyright Administration of China and the Ministry of Culture are the principle agencies for copyright protection. Chinese customs also provides enforcement. The laws protecting copyrights include the Copyright Law and Implementing Rules. While copyright registration is not required, registration may be useful in proving the substance of the copyright.

As the final speaker, Thomas Moga discussed what steps businesses should follow in order to ensure IPR protection in China. Mr. Moga recommends registering everything that you can afford: patents -- including invention, utility, and design -- trademarks, and copyrights. Besides registering your intellectual property at the proper offices and agencies (State Intellectual Property Office for patents, Administration of Industry and Commerce for trademarks, and National Copyright Administration for copyrights), businesses should also register their IP at Customs Offices. These offices have a time limit in which they can keep products so to avoid wasting time, IP should be pre-registered.

The primary goal when infringement does occur is to control the problem and control the damage by using the least costly approach. Send a cease and desist letter to the infringer, gather evidence, begin administrative action and raids, destroy goods, seize any exported goods, and initiate civil action if necessary.

The trends in IP law in China are that they are constantly being improved and generally comply with the TRIPS Agreement. In addition, China has developed IP-related laws with the Unfair Competition Law and Consumer Protection Law. IP enforcement has generally become more effective, with courts becoming more sophisticated and active as the cases of IPR have increased (35,000 IP cases resolved in China between 1990 and 2000).

In complying with the TRIPS Agreement, China must provide certain minimum standards of protection for IP as well as adequate and effective enforcement of these rights. However, China's accession to the WTO and the TRIPS Agreement does not guarantee that businesses will be protected. A Chinese IP judge stated before the accession that "WTO membership is not the end of our work, but only the beginning."

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Human Rights Abuses . . .

Continued from page 10

the wildest expectations of its particular lawmaker.[42] Those who believe that real politik means only military and political power have not learned the lesson of history about the force of ideas and the irony of hypocrisy.[43]

Endnotes

1 Andrei Sakharov, *My Country and the World,* New York: Knopf, 1975

2 Andrei Sakharov was one of the twentieth century's most ardent and unrelenting champions of human rights and freedoms. It was for his work as an outspoken dissident to the Soviet regime that the Nobel Committee awarded him the Peace Prize in 1975. The citation called him "the conscience of mankind" saying that he "has fought not only against the abuse of power and violations of human dignity in all its forms, but has in equal vigor fought for the ideal of a state founded on the principle of justice for all." The Soviet authorities denied him permission to go to Norway to receive his award.

The absence of an elitist approach and his maximal self-sacrifice in supporting the persecuted distinguished Sakharov from, alas, most Soviet dissidents. Had it not been for Sakharov, the dissident movement would have been less noticeable and would have been suppressed much earlier. Valentin Turchin wrote that "Sakharov demonstrated a new model of behaviour. Its influence was tremendous and would be realized only in the future".

3 International Declaration of Human Rights, G.A. Res. 217A[III], U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948)

4 Conference on Security and Cooperation in Europe: Final Act, Aug. 1, 14 I.L.M. 1292

5 Conference on Security and Cooperation in Europe: Final Act, Aug. 1, 14 I.L.M. 1292

6 Vladimir Bukovsky was first arrested in 1963 for possession of anti-Soviet literature and interned in a special psychiatric hospital for 14 months. He spent years in and out of mental institutions and labour camps for his persistent opposition to the regime until his release and exile in 1976. He determined to bring the plight of the dissidents to the attention of the Western World. He assembled documentation and diagnoses of psychiatrists, and sent the material abroad in January 1971.

7 Vladimir Bukovsky, *To Choose Freedom*, Denise H. Wood, trans., Alexis Klimoff, ed., (Hoover Institution Press, 1st ed. 1987)

8 Vladimir Bukovsky, *To Build a Castle: My Life as a Dissenter*, Michael Scammell, trans., (Andrei Deutsch, London, 1st ed. 1978)

9 As a student of Moscow Institute at the Moscow Institute of History & Archives in 1960, Aleksandr Ginsburg founded the first independent magazine in the Soviet Union "Syntaxes". It contained literary works by underground poets and writers, some later becaming leading figures of modern Russian literature. For this "Samizdat" publishing Ginzburg was jailed in 1960 for two years. Upon being released in 1962, he continued to be a champion of the independent press. After the infamous "Daniel and Sinyavsky" trial, Ginzburg compiled the "White Book," which provided the first detailed account of the Soviet political trial. For that, the Soviet authorities punished Ginzburg in 1967 with another 5 year term of imprisonment.This publication as well as the Ginzburg's and his friends trial helped to mobilize world public opinion in support of the Soviet dissidents, which helped the dissident movement to persist and prevail.

Released in 1972 Ginzburg continued his activities, and became one of the central figures of the human rights movement in the USSR. He was the first director of the Fund to Help Political Prisoners, founded by Alexander Solzhenitsin. Once again, Ginzburg was one of the initiators of the much needed support for persecuted dissidents and their families. Solzhenitsin's Fund was always a great help and encouragement to the democratic movement throughout its existence. In 1977 Alexander Ginzburg became one of the founders of the Moscow Helsinki Group and its first member to be arrested shortly after that. He was sentenced to more than ten years of labor camps and exile. Yet, in 1979, under the growing pressure of world public opinion, Ginzburg together with four other leading dissidents was released to the West.

10 A logician, Alexander Yesenin-Volpin, son of the poet Sergei Esenin, created the basic strategy that was to predominate in the Russian civil rights movement through the 60's and 70's . As a dissident he was often the first to show the "political effectiveness of his theoretical convictions." He endured 5 years of punitive medicine in special psychiatric hospitals.

It has been said of Yosenin-Volpin: "anyone who's understanding of the Russian political context was so acute that he was able to lay down the fundamental strategy of a 30-year movement for justice against one of the worst tyrannies in history, must have a very good mind." (Roy Lisker Author, *Ferment* 1994)

11 Roy Lisker Author/Editor, *FERMENT* Volume VIII, # 6 Volume VIII, # 6 January 18, 1994

12 Vladimir Bukovsky, *To Build a Castle: My Life as a Dissenter, 234*

13 Vladimir Bukovsky, *To Build a Castle: My Life as a Dissenter, 163*

14 Celebrated as the greatest Russian poet of his generation, Joseph Brodsky authored nine volumes of poetry, as well as several collections of essays, and received the Nobel Prize for Literature in 1987. Brodsky served as Poet Laureate of the United States from 1991 to 1992.

"Joseph Brodsky's selected essays come as an event both valedictory and anticipatory. Their appearance on the horizon, like that Roman candle or ''shower of light" of which Marina Tsvetayeva spoke in her essay on Boris Pasternak, makes the surrounding darkness more palpable."

David Bethea, *Conjurer in Exile* http://www.nytimes.com/books/00/09/17/specials/brodsky-less.html July 13, 1986.

15 The Soviet State v. Andrei Sinyavsky and Yuli Daniel, R.S.F.S.R. Session of February 10, 1966 (U.S.S.R.)

16 John E. Turner, New York Times, 12 18 December 1965, [Max Hayward, *ON TRIAL*: The Soviet State versus & "Abram Tertz, & Nikolai Arzhak," Max Hayward, ed., trans., (Harvill Press, London, 1st. ed. 1967)]

17 *Belaya Kniga po delu A. Sinyavskogo i Yuli Danielya* 61 (Aleksander Ginzburg comp. 1967): quoted in: Alexeyeva, Ludmilla,

Soviet Dissent: Contemporary movements for National, Religious and Human Rights 275 (Carol Pearce and John Glad trans. 1985)

18 Michael F. Rinzler, *Law and Psychiatry: Different Goals and Overlapping Concerns*

19 Michael F. Rinzler, *Law and Psychiatry: Different Goals and Overlapping Concerns*

20 *Izvestia*, 11 February 1966, translated in *Current Digest of the Soviet Press* 18, no. 6 (2 march 1966): 3-4

21 ...[T]here is reason to fear violations of the law with regard to the public nature of court proceedings. As is well known, all sorts of illegalities may take place behind closed doors, and a closed trial is itself an illegal act (article 3 of the constitution and article 18 of the RSFSR criminal code). It is unlikely that the works of writers constitute a crime against the state.

In the past illegal acts of the government cost the lives and freedom of millions of Soviet citizens. It is easier to sacrifice one day of peace than to suffer the consequences of unchecked arbitrary authority for years to come.

Citizens have means to struggle against judicial arbitrariness...public meetings, 'We demand an open trial.'...shouts or placards going beyond the limits of a strict observance of legality are definitely dangerous and may possibly serve as a provocation. They must be stopped by the participants in the meeting themselves." *Aleksandr Yesenin-Volpin*

22 Nobel Laureate. Author of many works describing Stalinist prison camps, including: *One Day in The Life of Ivan Denisovich* Praeger, *The Gulag Archipelago, The First Circle.*

23 The internationally distinguished high energy physicist Yuri Orlov held top research and honorary posts in the Soviet scientific world until authorities took note of his growing leadership role in the human rights movement.In retaliation for founding the Moscow chapter of Amnesty International in 1973, Orlov was dismissed from his post at Moscow's Institute of Terrestrial Magnetism. Undaunted, in 1976 he proceeded to help found and to chair the Moscow Helsinki Watch Group, which was dedicated to promoting Soviet compliance with the human rights provisions of the Helsinki accords. This led to his arrest in 1997 and trial after 15 months' incommunicado detention on a charge of "anti-soviet agitation and propaganda." He received the maximum sentence for his "crime" -- seven years at hard labor followed by five years of internal exile. While in the strict regime labor camp, Orlov was repeatedly singled out for harsh treatment, spending nearly half of his term in special punishment cells and solitary confinement. On completing his sentence he was remanded to internal exile in Siberia, where he endured untold hardship.

24 Vladimir Bukovsky, *To Build a Castle: My Life as a Dissenter*, Michael Scammell, trans., (Andrei Deutsch, London, 1st ed. 1978)

25 Vladimir Bukovsky, *To Choose Freedom*, Denise H. Wood, trans., Alexis Klimoff, ed., (Hoover Institution Press, 1st ed. 1987)

26 The word dissident, "...entered the Russian language only in the mid-1970s over Radio Liberty and other foreign sources. Until that time, the word of choice was generally 'inakomyslyashchi,' or "otherwise-thinker."

27 For three hundred years, psychiatry was used to control behavior. "Eccentrics, "originals," vagrants, and homeless wanderers who caused little harm but were irritating to the society in which they lived"27 were hospitalized or deprived of legal rights.

28 Discussion Document on the Political Abuse of Psychiatry, Division - 1989 Medical Ethics Committee: 159th WMA Council

Session: Divonne-les-Bains, France: 3–6 May 2001 Initiated: March 2001 DD 1/Psych 2001

29 Bonnie & Polubinskaya, *Unraveling Soviet Psychiatry,* 10 J. Contemp. Legal Issues 279, *280 –283 (1999)

30 Ralph R. Slovenko, *Civil Committment Laws: An Analysis and a Critique* 17 T.M. Cooley L.Rev. 25, 38 (2000)

31 Rinzler, Michael F. *Battling Authoritarianism Through Treat: Soviet Dissent and International Human Rights Regimes* 35 Harv. Int'l L.J. 461, (1994)

32 Peter R. Dahl, *Legal and Psychiatric Concepts and The Use of Psychiatric Evidence in Criminal Trials* 73 Cal. L. Rev. 411, *411

33 Ansar M. Haroun, Grant H. Morris, *Weaving a Tangled Web: The Deceptions of Psychiatrists* 10 J. Contemp. Legal Issues 227, 227(1999)

34 Report of U.S. Delegation to *Assess Recent Changes in Soviet Psychiatry*, July 12, 1989, and the Soviet Response, reprinted in Schizophrenia Bul. (Supp. 4 1989)

35 Bonnie & Polubinskaya, Unraveling Soviet Psychiatry

36 *Authoritarianism: Social Disease*_Tod H. Mikuriya, M.D. (1997)

37 International Declaration of Human Rights, G.A. Res. 217A [III], U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948)

38 Unknown Author, *http://www.pbs.org/wgbh/amex/bomb/peopleevents/pandeAMEX67.html*

39 Sidney Drell, *http://www.the-scientist.library.upenn.edu/yr1990/feb/opin1_900219.html* February 19, 1990

40 Michael F. Rinzler*, Law and Psychiatry: Different Goals and Overlapping Concerns*

41 Unknown Author, *http://www.pbs.org/wgbh/amex/bomb/peopleevents/pandeAMEX67.html*

42 Rinzler, Michael F. *Battling Authoritarianism Through Treaty: Soviet Dissent and International Human Rights Regimes* 35 Harv. Int'l L.J. 461, 464(1994)

43 William R. Rainbolt, The History of Underground Communication in Russia since the Seventeenth Century 63 (1979)

Letter from the Chair

Clara DeMatteis Mager

It is truly hard to believe that we are planning for the Annual Meeting in September and that the end of my term as Chair is drawing near. It has been a pleasure and privilege to serve as the Chair of the International Law Section. I have enjoyed the challenges, the comraderie, the programs, and the gatherings after the meetings to share dinner with colleagues and friends.

I want to sincerely thank my fellow officers, Jan Rewers McMillan, Randolph Wright and Bruce Birgbauer, as well as the members of the Council for all of their assistance and support. A special thank you is also in order to John Mogk, Julia Qin, Sandra McRae and Alex Fedynsky and their colleagues at Wayne State University Law School for their hard work and support in publishing the *Michigan International Lawyer*. The accomplishments over the course of the past year were truly the result of a team effort:

November 5, 2002 Council Meeting. Mr Rem Jethmalani, the former Law Minister of India, spoke on the "Legal and Political Issues Facing Kashmir." Narinder J.S. Kathuria, Section Council Member, was responsible for providing speaker.

January 21, 2003 Council Meeting. Susan Gasparian of Ford Motor Company, and Randolph Wright, Principal, Barry Moorman PC, both Section Council Members, made an excellent presentation on Business Opportunities in Vietnam and other ASEAN member Nations.

March 6, 2003 – **International Law Section Program for the SAE World Congress**. The topic of the program was "Foreign Companies Doing Business in the U.S.- Michigan." Frederick J. Frank, Honigman Miller Schwartz and Cohn, LLP, Section Council Member, was the Program Chair. The speakers were: Michael Domanski, Senior Tax Manager, KPMG LLP, Lois Elizabeth Bingham, Associate General Counsel, R. L. Polk & Co. and Clara DeMatteis Mager, Butzel Long PC.

April 29, 2003 Council Meeting. The meeting was held in Ann Arbor at the School of Social Work Building, in the International Institute. Professor Ken Kollman, Director, European Union Center, and Professor of Political Science was the guest speaker. He spoke on the European Union.

May 14, 2003 World Trade Week Presentation on International Commercial Dispute Resolution. This event was held at the Ford Conference Center, Deaborn, Michigan, from 4:00 p.m. to 5:30 p.m. Randolph M. Wright was the Program Chair. The panel consisted of Randolph M. Wright, Berry Moorman, P.C., Moderator; Julia Ya Qin, Assistant Professor of Wayne State University Law School; Jerome Hill, Butzel Long, P.C.; Elena V. Helmer, Adjunct Professor, University of Michigan Law School; and Mary A. Bedikian, Professor, Michigan State University-DCL College of Law, and Director of the University's Alternative Dispute Resolution Program.

June 10, 2003 – Council Meeting/ Strategic Planning Session. This event was held at the DAC to discuss future programs and direction of the Section. It was a tremendous success with over 20 attendees sharing their ideas for the future of the Section, volunteering to work on programs for the coming year and to chair committees. Some great ideas were shared.

September 11, 2003 – Section Annual Meeting. Jan Rewers McMillan, Chair-Elect, is in charge of an outstanding program for the Annual Meeting.

I encourage our membership to become more active in the Section and to continue to support the activities of the Section. Again, thank you for a wonderful year.

Sincerely,
Clara DeMatteis Mager

Staying Put . . .
Continued from page 4

careful investigation into what really happened. Only then can a successful defense strategy be developed in order to counter the case prepared by the requesting state, and to ensure that your client stays put.

Endnotes

1 Principal, Miller, Canfield, Paddock & Stone, P.L.C.

2 Senior Counsel, Miller, Canfield, Paddock & Stone, P.L.C.

3 Associate, Miller, Canfield, Paddock & Stone, P.L.C.

4 18 U.S.C. § 3184.

5 18 U.S.C. § 3184. Although 18 U.S.C. § 3184(b) carves out an exception to permit extradition without a valid treaty, the number of persons who would fall into this exception is small and as such the exception is not included in the discussion of this article.

6 The United States has entered into extradition treaties with all major countries except China, Indonesia and most of the former Soviet republics. Michael Abbell, *Extradition to and From the United States,* § 2-2 n.5 (2002).

7 It is noted that in some cases, a relator may be provisionally arrested while the United States awaits a formal request from the requesting state. A discussion of provisional arrests is outside the limited scope of this article.

8 *Wright v. Henkel*, 190 U.S. 40, 23 S.Ct. 781, 47 L.Ed. 948 (1903).

9 *Id.*

10 *Id.*

11 *Collins v. Loisel*, 259 U.S. 309, 42 S.Ct. 469, 66 L.Ed. 956 (1922).

12 *U.S. v. Barr*, 619 F.Supp. 1069, 1971 (E.D.Pa. 1985).

13 *Charlton v. Kelly*, 229 U.S. 447, 33 S.Ct. 945, 57 L.Ed. 1274 (1913).

14 Fed.R.Evid. 1101(d)(3), Fed.R.Crim.P. 54(b)(5).

15 *U.S. v. Kin-Hong*, 110 F.3d 103 (1st Cir. 1997).

16 18 U.S.C. § 3184.

17 18 U.S.C. § 3188.

18 28 U.S.C. § 2241, *Fernandez v. Phillips*, 268 U.S. 311, 45 S.Ct. 541, 69 L.Ed. 970 (1925).

19 18 U.S.C. § 3184.

20 18 U.S.C. § 3190.

21 18 U.S.C. § 3186.

Calendar of Meetings

Dates & Locations of Council Meetings

2003

September 11	International Section Annual Meeting, 1:00-2:00 p.m. Section Business Meeting; 2:00-5:00 p.m. Section Program: Lansing Center, 333 E. Michigan, Lansing, Michigan
November 4	Berry Moorman—Birmingham

2004

January 20	Butzel Long—Detroit
April 20	U of D Mercy Law School—Detroit
June 15	Planning/Section Outing
September	Annual Meeting—Lansing
November 9	Miller Canfield—Troy

Publication Deadline Dates
Michigan International Lawyer

Winter Issue	Articles due December 1
Spring issue	Articles due April 1
Fall issue	Articles due August 1

If you know of any upcoming event, please let us know.
Contact: Professor John E. Mogk, Editor
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Proposed Amendment to Bylaws

ARTICLE VIII
MEMBERSHIP MEETINGS

CURRENT LANGUAGE:

SECTION 1. ANNUAL MEETING. The annual meeting of the Section shall be held during and at the same place as the Annual Meeting of the State Bar of Michigan and shall include such programs and order of business as may be arranged by the Council.

PROPOSED AMENDMENT:

SECTION 1. ANNUAL MEETING. The annual meeting of the Section shall be held during and at the same place as the Annual Meeting of the State Bar of Michigan, *or at such other place and time as may be arranged by the Council,* and shall include such programs and order of business as may be arranged by the Council.

Michigan International Lawyer

State Bar of Michigan
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