Bruce Zagaris Background on International Evidence Gathering

I. International Evidence Gathering Cases for Which He Served as a Consultant and/or Expert Witness

In the 1980s he worked on the Marc Rich case. He was actually hired by Gray & Co. to prepare pieces for the media on the issues of extraterritoriality and alleged infringement on Swiss confidentiality by the U.S. unilateral compulsory subpoenas of Swiss bank and other documents.

In 1995, his affidavit in an international tax case was cited by the 9th Circuit in the case of *In Re Marsoner*, 40 F.3d 959 (9th Cir. 1994), which concerned a compelled waiver of the defendant's right to bank confidentiality in Austria.

In 1996-97, he represented David M. Duchow in an embezzlement charge in Bolivia, bringing a civil action on Freedom of Information Act request in the U.S. District Court in D.C. and serving as an expert in the criminal case. The Bolivian trial court cited his expert affidavit in its dismissal of the case for lack of jurisdiction due to diplomatic immunity. Insofar as Mr. Duchow needed access to documents concerning the activities in Bolivia and the U.S. and both the U.S. and Bolivian governments refused access, he brought a FOIA action and made representations about the right of Mr. Duchow to access the documents concerning the charges, including in his expert affidavit.

In 1997, his testimony for the U.S. government helped convict the defendant in *U.S. v. David Harris*, U.S. District Court, E.D. Mo., (96CR0057CAS). His testimony concerned the fact that at the time the jurisdiction the defendant sent the embezzled money was a secrecy jurisdiction that do not cooperate in international evidence gathering.

In 1999, the defendants in *U.S. v. Nanne Hogendoorn*, U.S. Dist. Ct., Alaska [No. A98-0087CR (JKS)] hired him as a consultant and expert witness in evidence gathering arising out of charges concerning ocean waste discharges. Defendants were successful in obtaining an order allowing them to use the U.S. MLAT for evidence gathering.

In the early 2000s, he served as a consultant in a civil fraud case for the DOJ Tax Division in Denver, for which he was to appear as an expert. The latter case concerned a matter where a high-net worth individual built a super yacht and then claimed excessive deductions for its use between the Caribbean and Europe.

In 2000, he worked as a consultant for the defense *In the Matter of the Extradition of Pavel Lazarenko*, the former prime minister of the Ukraine, in U.S. District Court, N.D. Ca., and in connection with the Antiguan asset forfeiture case. Both the U.S. and Antiguan cases involved, in part, international evidence gathering issues.

In 2000, he served as a consultant for the defense in *U.S. v. Riley Hill*, U.S. District Court, D. Ore., a criminal tax case involving offshore jurisdictions, in which the requesting state misled the requested state with respect to the use of the requested evidence in tax case.

In 2003, he was an expert in the case of *Gerdy Henry-Pfeiffer vs. Barry Walton Henry*, U.S. Dist. Ct. S.D. Fla., (Misc Case #86554, Civ. – Middlebrooks), in which the court ordered letters rogatory on behalf of the plaintiff and former spouse, for whom he made a declaration.

In 2003-4, he was an expert for the plaintiff in the case of *John F. Eulich v. United States*, U.S. District Court, N.D. Texas, Dallas, (Civ. No. 3:99CV1842-L). The case involved whether the taxpayer had exhausted efforts to comply with a court order that he disclose assets of a Bahamian trust for which he was the grantor and allegedly

controlled. He had sued in the Bahamas to order disclosure, but the trustee invoked Bahamian confidentiality law to refuse. His testimony in that case was in court in Dallas.

In 2005, he advised as a consultant to a law firm in Miami and another in New York with respect to Brazilian targets on mutual assistance in criminal matters requests between Brazil and the U.S.

In 2013, he provided an expert witness affidavit in the case of *The Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund et al v. SNC-Lavalin Group Inc. et al*, Ontario Superior Court of Justice, (Court File No. CV-12-453236-00CP), on the question of whether the court could order the defendants to produce documents concerning the World Bank Sanctions Proceedings on anti-corruption.

In 2014, he consulted for a couple of U.S. law firms who represented some Swiss bank officials who were considering being whistleblowers for the U.S. government. His role included advising the U.S. government of the Swiss confidentiality laws and the Swiss prosecution of three recent whistleblowers. He also attended a meeting with U.S. government officials and discussed the Swiss laws in the context of the need to grant them political asylum should they decide to become whistleblowers.

In 2015, in the case of *Absolute Activist Master Fund Limited et al v. Susan Elaine Devine*, U.S. District Court, M.D. Fla., C.A. (No. 2:15-civ.-328-FtM-29MRM), he served as an expert witness concerning the propriety of international evidence gathering between Switzerland and the U.S., particularly the interplay between informal evidence gathering and the U.S.-Swiss MLAT.

In 2015-2016 he was in charge of a case involving an SEC FCPA investigation concerning a Latin American lawyer. Initially, he cooperated with the Swiss lawyer responding to a subpoena from FINMA, the Swiss financial regulator. There were all kinds of issues dealing with relevancy, attorney-client privilege (since the client is a lawyer), and Swiss law. More recently, we have had to respond to SEC subpoenas because the client has assets in the U.S.

In 2016, for a small law firm he represented a Swiss trading company which was paying over € 200,000 to a Korean trading company. Someone hacked into the Korean agent's emails and directed the Swiss trading company to pay a bank account in the U.S. A Swiss prosecutor started a fraud investigation. The U.S. bank refused to return the money even though using open source investigative materials he showed that the bank's customers were fraudsters. The Swiss prosecutor was preparing an MLAT request. He communicated indirectly with the Swiss prosecutor through the Swiss private lawyer. Eventually, after the U.S. bank brought an Interpleader, he was able to persuade the bank's clients, as a result of open source intelligence, that they had serious criminal exposure and they admitted the money was not there and the U.S. bank decided to return the money. The case ended in March 2016.

II. Testimony before Legislatures on International Evidence Gathering

At the request of the House Ways & Means Oversight Committee, he testified on the tax information exchange provisions and agreements under the Caribbean Basin Economic Recovery Act in February 1986.

In September 1987, he testified at the request of the Subcommittee on Commerce, Consumer and Monetary Affairs, Committee on Government Operations, on the U.S. Government's efforts to combat international tax evasion.

In September 1988, at the request of the Senate Foreign Relations Committee, he testified on whether the U.S. should ratify six pending Mutual Legal Assistance Treaties. Some months before the testimony the ABA House of Delegates passed a resolution, recommending that defendants and third parties should have access to MLATs. The hearing concerned the first MLAT for which the U.S. started inserting provisions prohibiting

access by defendants and third parties. The Committee Chair called a second hearing on this issue and requested his testimony.

In 2003, he testified at a joint session of two committees of the Brazilian Congress on international criminal cooperation, including international evidence gathering.

III. Consulting for Foreign Governments on International Evidence Gathering on Projects Financed by the U.S. Government

During the U.S. occupation of Iraq on behalf of ABAROLI, which is largely funded by the U.S. Congress, he provided a training manual on terrorist financing investigations and prosecutions.

In December 2005, he was the keynote speaker at the Money Laundering Strategy Conference hosted by the Brazil government in Vitoría, Brazil. One of themes discussed was that most of the black money outside of Brazil was in the U.S. Insofar as some of it concerned tax offenses, he suggested that Brazil conclude a tax information exchange agreement (TIEA). About two years later, after Lula requested a TIEA, the two countries concluded one.

In October 2011, he provided training for prosecutors and magistrates in Bahrain and the U.A.E. on how to investigate and prosecute grand corruption cases where some of the evidence and assets were outside of the country. His work to a large extent focused on discussing hypothetical situations. Much of the discussion concerned the various ways to obtain international evidence, including informal means, unilateral means, letters rogatory, MLATs, and multilateral conventions.

In August 2012, he prepared a training module on using money laundering and asset forfeiture for grand corruption cases in the Gulf.

In July 2012, he was part of a team that engaged in a program with Supreme Court Justices in Egypt on how to investigate and prosecute grand corruption cases in the wake of the end of the Mubarak administration, where some of the evidence and assets were outside of the country. His work to a large extent focused on discussing hypothetical situations. Much of the discussion concerned the various ways to obtain international evidence, including informal means, unilateral means, letters rogatory, MLATs, and multilateral conventions. It also involved the use of joint investigations between the U.S. and Egypt.

IV. Work for Foreign Governments on International Evidence Gathering

Since 1981, much of his work has consisted of advising governments on international evidence gathering, international financial regulatory matters, and international financial services.

On June 4-6, 1991, he consulted on behalf of the British High Commission for several governments in the Caribbean on international law constraints to money movement and the need to develop gateways to financial confidentiality in order to combat money laundering and increase international enforcement cooperation.

For Barbados he has had a monthly retainer since 1981. Some of the work has been advising it on income tax treaties, TIEAs, international evidence gathering, and FATCA IGAs. In some cases, he has participated in the negotiations of its income tax and TIEAs with the U.S.

For another government, Antigua & Barbuda, he advised on international evidence gathering, and participated in the negotiation of TIEAs with the U.S., Australia and New Zealand.

With the Cayman Islands, he advised on its MLAT with the U.S. as a consultant to Gray & Co.

For St. Kitts & Nevis, he advised on a TIEA with the U.S.

For Barbados and Suriname, he advised on a FATCA Intergovernmental Agreement with the U.S. An IGA is a mini-TIEA dealing with automatic exchange of information.

In 2016-17, he advised an Organization of East Caribbean States government on a MLAT request concerning an alleged corruption case.

V. Work for International Organizations on International Evidence Gathering

In the 1980s, he served as a consultant to the U.N. Crime Branch, writing a paper on international ethnic organized crime.

In the mid-1990s, he served as an evaluator of a United Nations International Drug Control Program project on anti-money laundering and asset forfeiture in the Caribbean.

VI. Speeches on International Evidence Gathering

In September 2008, he spoke on the U.S.-Brazil MLAT at the Brazilian Institute of International Juridical Cooperation in Brasilia in Portuguese.

In September 2008, he spoke on U.S. asset forfeiture at the Criminal Justice Seminar of the Association of the Bar of Sao Paulo.

In October 2008, he spoke to Brazilian government officials at the Institute of Anti-Corruption at George Washington University.

In 2010, he spoke to a group of international law practitioners on the U.S.-Brazil MLAT at the Sao Paulo office of the law firm of Barbosa Müssnich & Aragão.

VII. Law Review Articles or Book Chapters Primarily on International Evidence Gathering

Developments in Mutual Assistance: U.S.-Canada Reach New Agreement and Swiss Court Decision Sheds Light on the Operation of the Amended Swiss Act, 33-48 in Gordon & Zagaris, INTERNATIONAL EXCHANGE OF TAX INFORMATION RECENT DEVELOPMENTS (1985 PLI (co-author)).

Exchange of Information Outside Tax Agreements, 65-114, both in Gordon & Zagaris, INTERNATIONAL EXCHANGE OF TAX INFORMATION RECENT DEVELOPMENTS (1985).

Securing Documents Overseas by the United States, II Bassiouni (ed.), INTERNATIONAL CRIMINAL LAW PROCEDURE 373-90 (1986) (co-author).

Recent Decisions by U.S. Courts on the Exercise of Subpoena Powers to Secure Evidence Abroad in Criminal Matters, Nanda and Bassiouni (eds.), INTERNATIONAL CRIMINAL LAW: A GUIDE TO U.S. PRACTICE AND PROCEDURE (1987).

Judicial Assistance under Bilateral Treaties to Combat International Terrorism, LEGAL RESPONSES TO INTERNATIONAL TERRORISM: U.S. PROCEDURAL ASPECTS 219-30 (1988 Martinus Nijhoff Publishers).

Developments in International Judicial Assistance and Related Matters, 18 DENVER JOURNAL OF INTERNATIONAL LAW & POLITICS *339-86 (1990).*

Asset Forfeiture International and Foreign Laws, in Forfeitures and Asset Freezes A Comprehensive Survey of Asset Forfeiture, Restraints and Third-Party Rights *Tab R (61 pp.) (Dec. 3-4, 1990* ABA NATIONAL INSTITUTE*) (co-author).*

Selected Developments of New Tax Information Exchange Agreements and Their Relatives, 19th ANNUAL INTERNATIONAL TAX CONFERENCE OF THE FLORIDA BAR *1.1-69 (1991).*

The Mexico-U.S. Mutual Legal Assistance in Criminal Matters Treaty: Another Step Toward the Harmonization of International Law Enforcement, 14 ARIZ. J. OF INT'L & COMPARATIVE LAW 1-96 (1997) (co-author).

Extradition, Evidence Gathering and Their Relatives in the Twenty-First Century: A U.S. Defense Counsel Perspective, 23 FORDHAM INT'L L.J. 1403-43 (June 2000).

Bruce Zagaris, *U.S. Extends Its Reach for Evidence*, 15 CRIM. JUSTICE 4-55 (ABA Sec. of Crim. Just. 2001).

U.S.-Brazil and International Evidence Gathering: The Need for Better Procedural Due Process, 99 REVISTA BRASILEIRA DE CIANCIAS CRIMINAIS 241-74 (Dec. 2012).

International Evidence Gathering, Chapter 10, Bruce Zagaris, INTERNATIONAL WHITE COLLAR CRIME: CASES AND MATERIALS, 365-412 (2d ed., 2014, Cambridge Univ. Press).

VIII. Speeches on International Evidence Gathering

In Panama he spoke specifically on MLATs as Panama was considering concluding an MLAT with the U.S.

Since approximately 1983, he has spoken almost every three months on international evidence gathering and cooperation to the following organizations: International Tax Institute for the Florida Bar and AICPA, the ABA Criminal Tax Fraud Institute, the American Law Institute's International Trust & Estate Planning, STEP, the ABA Tax Section Civil and Criminal Tax Penalties Committee, the White Collar Crime Committee, the International Bar Association, and the ABA Criminal Justice Section.

Some recent examples:

- March 2016 – he prepared a paper on international evidence gathering and extradition and moderated a hypothetical on evidence gathering in response to a multi-jurisdictional anti-corruption investigation.
- January 2016, he spoke on international tax enforcement to the Florida Bar and AICPA International Tax Institute.
- On May 5, he moderates a panel on international tax enforcement for STEP International Trust and Estate Planning in Laguna Beach, CA.
- In November and December 2015 he was one of two panelists for the CITCO regulatory roundtable for wealth management in New York City and Miami. It concerned automatic exchange of information and other international enforcement developments impacting the wealth management industry.