



NACDL Immigration

✓ **November Issue '99 -- The Death of Advocacy in Re-Entry After Deportation Cases**
By Michael O'Connor & Celia Rumann

A survey of the problems inherent in the government's use of "fast track" non-negotiable pleas and the ethical issues involved. [more](#)

✓ **July Issue '99 -- An Introduction to International Prisoner Transfers: Going Home**
By Alan Ellis

The United States has treaties with 59 countries which may make it possible for foreign nationals to go home and serve their sentences. -- more --

June '99 *Champion* -- NACDL Urges That Attorney General Reconsider Soriano Immigration Decision
NACDL News

Meeting May 1 in San Francisco, the NACDL Board of Directors voted unanimously to urge Attorney General Janet Reno to reconsider her decision in *Matter of Soriano*. -- more --

✓ **June '99 *Champion* -- Deportation: An Immigration Law Primer for the Criminal Defense Lawyer**
By William R. Maynard

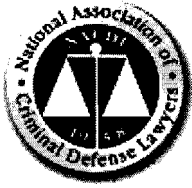
In representing an alien defendant, particularly a lawful permanent resident, defense counsel must focus on "collateral" immigration consequences. This article is a guide through the baffling provisions of the Immigration and Nationality Act in the wake of 1996 amendments by the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act. -- more --

August '97 *Champion* -- Criminal Law Reforms: Defending Immigrants in Peril
By Kari Converse

Last year marked a year of xenophobia in Congress, where some of the most unforgiving, cold-hearted, and mean-spirited anti-immigrant legislation ever was passed.¹ While many of the cruelest provisions affect law-abiding residents, this article will discuss the changes in the law as it affects those accused of crimes. -- more --

August '97 *Champion* -- The Disappearing Federal Courts
By Ira J. Kurzban

The extraordinary changes brought about by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA), create substantial obstacles to immigration lawyers, criminal defense lawyers and their respective clients. Perhaps the most sweeping aspect of these new laws is its effort to remove completely Immigration and Naturalization Service (INS) officials from judicial scrutiny. -- more --



NACDL International

As we enter the new millennium, all of us in the international community need to enlist in the struggle for justice. No nation or government is exempt from prosecutorial overreaching — including rampant law enforcement abuses and police misconduct — which runs roughshod over citizen rights and liberties. Some organizations are content to sit on the sidelines. We're not. At the National Association of Criminal Defense Lawyers (NACDL), we believe you have to fight for what you believe. And we need your help.

NACDL's growing reputation within the international community as a leader on behalf of human rights — promoting fairness for all; due process for even the least among us who may be accused of wrongdoing; compassion for witnesses and victims of crime; and *just* punishment for the guilty — has recently culminated in an invitation to serve as a *member of the International Human Rights Law Group's delegation to the 56th Session of the UN Commission on Human Rights. . . .* [more on NACDL's International Efforts](#)

August Issue '99 -- Northern Lights

By Steven Skurka, Leslie Pringle & Rachel E. Young

Cruel and Unusual Punishment in Canada -- more --

✓ July Issue '99 -- An Introduction to International Prisoner Transfers: Going Home *By Alan Ellis*

The United States has treaties with 59 countries which may make it possible for foreign nationals to go home and serve their sentences. -- more --

May Issue '99 -- Informal Opinion *By Diane Marie Amann*

By Often-Asked Questions About the International Criminal Court -- more --

April Issue '99 -- Northern Lights *By Steven Skurka & Leslie Pringle*

Search and Seizure in Canada -- more --

March 1999 -- The Murder of Rosemary Nelson: Impartial Outside Investigation Urged

Washington, DC, March 16, 1999 -- NACDL expresses outrage and profound grief over the murder of human rights lawyer Rosemary Nelson, who was killed by a car bomb outside her home in Northern Ireland yesterday. "On behalf of our 10,000 members on both sides of the Atlantic, I am calling for an immediate and independent inquiry into this case to forestall any possibility of official cover-up of this heinous crime," said NACDL President, Larry Pozner. --more--

March 1999 -- Defense Lawyers Urge Germany to Impose Economic Sanctions In Protest of LaGrand Executions

Washington, DC, March 1, 1999 -- NACDL urges German companies which do business in the United States to withhold economic investment in the 38 states which execute

imprisoned criminals. The 10,000-member organization is protesting last week's execution of German national Karl LaGrand and the impending execution Wednesday of his brother Walter, also a German citizen. --more--

Jan/Feb Issue '99 -- NACDL Resolution Supports Irish Defense Lawyers *NACDL News*
At the Atlanta meeting, the NACDL Board of Directors approved a resolution in support of defense lawyers in Northern Ireland. -- more --

Jan/Feb Issue '99 -- Northern Lights *By Steven Skurka & Rachel E. Young*
A View From Canada -- more --

✓ **Sept/Oct '98 *Champion* -- Representing Foreign Nationals: Emerging Importance of the Vienna Convention on Consular Relations as a Defense Tool**
By John Cary Sims and Linda E. Carter

The Vienna Convention guarantees consular officials of each signatory access to their citizens who may need assistance while abroad. Professors Sims and Carter say the treaty has direct consequences for U.S. criminal defendants who are foreign nationals. -- more --

August '98 *Champion* -- The Ordeal of Guy Paul Morin: Canada Copes With Systemic Injustice *By Jack King*

The acquittal, the conviction, and then the exoneration of an innocent man led the Province of Ontario to conduct an unprecedented top-to-bottom examination of its criminal justice system. Staggering in its scope, the inquiry found perjured testimony by prosecution witnesses, incompetence and cover-up in the country's premier forensic sciences center, suppression of exculpatory evidence by police and prosecutors, a possibly contaminated crime scene, poor evidence handling, and lost evidence. -- more --

✓ **Jan/Feb '98 *Champion* -- *Behind Closed Doors: Second Circuit Applies Fifth Amendment to Fear of Foreign Prosecution* *By David S. Rudolf & Thomas K. Maher***
The Fifth Amendment means different things to different people, or different courts. To the Second Circuit, the Fifth Amendment plays a "role in preserving an individual's privacy and dignity," preserving our criminal justice system and protecting the individual citizen against governmental overreaching. The importance of the Fifth Amendment is illustrated by the court's willingness to defend its safeguards even when the only threat to the individual is prosecution by a foreign government. -- more --

November '97 *Champion* -- *RICO Report: Fifth Amendment Privilege and Fear of Foreign Prosecution* *By Barry Tarlow*

Eighty-four-year-old Aloyzas Balsys has lived in the United States as a resident alien for the last 36 years, and resides with his family in Woodhaven, New York. The OSI (Office of Special Investigations) section of the Criminal Division of the United States Justice Department, which was created to investigate and conduct denaturalization and deportation proceedings against suspected Nazi war criminals, initiated an investigation of Balsys for suspected collusion with the Nazi forces occupying Lithuania during World War II, by his alleged role as a persecutor of Jews and other civilians while a member of the Lithuanian Security Police. -- more --

August '97 *Champion* -- DOJ Renews Assault on Defendants' Right to Use Treaties to Obtain Evidence from Abroad *By Michael Abbell*

Today, the United States has more than 20 mutual legal assistance treaties (MLATs) worldwide. This article focuses on the importance of MLATs in obtaining evidence from abroad in criminal cases, and how the Department of Justice (DOJ) has endeavored to stymie criminal defendants in their efforts to obtain evidence from abroad for use in their own defense. Defense counsel must diligently pursue such evidence or risk a subsequent charge of ineffective assistance of counsel. -- more --

May '97 *Champion* -- Rwanda's Quest for Justice: National and International Efforts and Challenges *By Michael G. Karnavas*

Approximately 90,000 men, women and children sit in overcrowded prisons charged with the most deplorable of all crimes -- genocide. Some have waited, or better yet survived, over two years in these prisons. Almost all of them have yet to have even an initial appearance in court, let alone a trial. Though the prisons have much improved, the conditions remain a human rights nightmare. Many inmates suffer from dysentery, malaria, AIDS, tuberculosis and respiratory infections. As of May 1996, 377 infants were incarcerated with their mothers and 1163 minors were living with the adult prison population. -- more --

✓ **March '97 *Champion* -- Vienna Convention: New Tool for Representing Foreign Nationals in the Criminal Justice System *By Logene L. Foster & Stephen Doggett***

Foreign Nationals arrested on criminal charges are at a disadvantage in mounting a criminal defense. This disadvantage is particularly serious in a capital case, in which the accused may lose his life because of an inability to respond effectively to the charges. To compensate for the disadvantages experienced by accused foreign nationals, international law guarantees the right of consular access. -- more --

December '96 *Champion* -- The International Criminal Tribunal *By Michael G. Karnavas*

May 31, 1996, before a packed public gallery, separated from the courtroom by panes of bulletproof glass, the audience at the International Criminal Tribunal for the former Yugoslavia (ICTY) listened to Drazen Endemovic's grisly account of genocidal acts. Endemovic, 24, a Croat serving in the Bosnian Serb army, pled guilty for his involvement in the summary execution of unarmed Muslim men in July 1995, after Srebrenica, the UN protected "safe area," fell to Bosnian Serb forces. -- more --

NACDL's International Efforts

Visiting international delegations increasingly look to NACDL for help in structuring more rational and humane criminal justice policies in their respective countries. We have most recently met with delegates from Venezuela — the latest Latin American country to switch from the inquisitorial to the adversarial system of justice. We've also given counsel to Judge Hiromichi Inoue of the Tokyo High Court in his studies of the public defender system in the U.S. And we've met with justice ministers, prosecutors, judges, and law

professors from Oman, Brazil, Spain, Macedonia, Romania, Azerbaijan, Chile, the United Kingdom, and the Peoples Republic of China to share our perspective on both the plusses and minuses of America's justice system.

NACDL's Legislative Director, **Raj Purohit**, is a native of the United Kingdom and completed his law degree in the U.K. His academic and professional background, steeped in human rights, suits this Association well in our international advocacy efforts. Here's *just a sample* of some of our initiatives that may be of interest to you:

- A delegation of NACDL members recently traveled to Strasbourg, France, to urge adoption of a resolution by the European Parliament which would further the goal of abolishing the death penalty worldwide and, in particular, in the U.S. The proposal invites European companies which are considering locating a manufacturing plant or making a major capital investment in America to give priority to those states which do not permit capital punishment.
- We have formed a series of alliances with international human rights organizations with a view toward advocating for the rights of lawyers whose lives and/or rights are threatened because of the very nature of their legal practice.
- We are at the forefront of a policy shift within the U.S. advocacy community which has led to a framing of civil rights issues in a more globalist human rights manner. For example, we are currently striving to ensure U.S. domestic compliance with international obligations such as those found in the Vienna Convention on Consular Relations.

Citizens of every nation have a right *not* to be deprived of their liberty or property without due process of law. They have a right to expect privacy in their homes, vehicles, and communications. And they have a right to consult counsel of their choice without it being used against them. Lending your support by becoming an **International Member of NACDL**, you advocate these fundamental rights.

The Champion

National Association of
Criminal Defense Lawyers

July 1999

An Introduction to International Prisoner Transfers: Going Home

By Alan Ellis

Alan Ellis, a former President of the National Association of Criminal Defense Lawyers, has offices in San Francisco and Philadelphia. He works with other lawyers, criminal defendants and inmates throughout the United States in the area of federal post-conviction remedies, including sentencing and international prisoner transfers. The author wishes to thank Samuel A. Shummon, an associate in the California office, for his invaluable assistance in preparing this article. Mr. Shummon is the co-author of Alan Ellis' Federal Prison Guidebook.

In 1998, Israel, Costa Rica, and Chile became signatories to the Council of Europe Convention, wherein nationals from those countries, who are serving sentences in U.S. prisons could be transferred back to their home countries for the service of their sentences.

This brings to 59 the number of countries and their territories with which the United States has such treaties.¹

Under these treaties, inmates serving federal sentences as well as inmates serving state sentences in certain states, can apply to be considered for transfer to their home countries to serve their sentences.² For federal prisoners, the transfers in some cases (depending upon the treaty) may not be available to: (1) inmates in custody for civil contempt; (2) inmates with committed fines without permission of the court; (3) inmates serving sentences for certain immigration law violations; and (4) inmates with pending court proceedings, *e.g.*, appeals, 2255 motions, etc.³

Additionally, most of the prisoner transfer treaties outline some

restrictions on eligibility. In general, the conditions that must be met include: (1) the prisoner must be a citizen or national of the receiving country; (2) the prisoner must not be a citizen of the U.S.; (3) the offense for which the prisoner is incarcerated must be a crime under the laws of the country to which the prisoner wishes to be transferred; (4) the prisoner must have at least six months left to serve on the sentence at the time of application. Individual treaties may have additional transfer requirements. The United States' treaties with Canada and Mexico, for example, preclude the transfer of prisoners who are serving out sentences for immigration or military offenses; the treaty with Mexico further precludes the transfer of persons who have been present for at least five years, with an intent to remain permanently in the United States.

A federal inmate can obtain an application for transfer from his unit team. A federal inmate must wait until he is in the custody of the Bureau of Prisons (BOP) before the application can be made. Once made, if the application is rejected, he cannot reapply for another two years unless compelling, humanitarian reasons develop.

Once the application is completed and returned to a unit team staff member, a package is put together and forwarded to the warden.

Request Packet

A transfer request packet is compiled by BOP and typically contains: (1) the prisoner's application; (2) the criminal judgment; (3) the pre-sentence investigation report (PSI); (4) any information about the prisoner's adjustment to prison life; (5) the prisoner's sentence computation information; (6) information about the prisoner's ties to the receiving country (as reflected in the PSI); and (7) information about pending appeals or detainers.

The warden then transmits the package to the BOP Assistant Director, Correctional Programs Division, Bureau of Prisons, in Washington, D.C. who checks the package to make sure it contains all the necessary documents. The package is then sent by messenger to the Office of Enforcement Operations (OEO), Criminal Division, International Prisoner Transfer Unit (IPTU), Department of Justice (DOJ). Once it arrives at the DOJ, a case analyst is assigned to review the paperwork to determine

eligibility and to contact interested parties such as the U.S. Attorney's Office that prosecuted the case and the investigative agency (Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Internal Revenue Service (IRS), etc.) to ascertain their position on the transfer.

The role of the U.S. Attorney's Office is to provide facts and recommendations to the IPTU that can be considered in approving or denying an offender's transfer request. Typically, absent compelling factors, any relevant information requested by IPTU must be supplied within ten days of the request. The views of the federal law enforcement agency involved in the case, concerning the prisoner's involvement in related crimes or the subject of other investigations, are always sought as well. Although the views and recommendations of the U.S. Attorney's Office are accorded greater weight than those of law enforcement agencies, neither are determinative of the final decision on any particular transfer request.⁴

While there are no formal regulations governing the considerations to be applied to prisoner transfer requests, non-binding internal guidelines — setting forth a number of factors which are considered — do exist. These factors include: (1) the seriousness of the underlying offense; (2) the payment of fines or restitution; (3) the existence of a prior record; (4) the offender's ties to each country; and (5) the likelihood of rehabilitation.

If DOJ approves the transfer, it is then forwarded to the embassy or ministry of justice of the receiving country (the country to which transfer is sought). The receiving country's embassy or ministry of justice then determines whether to accept the inmate. If the inmate is accepted, the paperwork goes back via the same pipeline and winds up back on the desk of DOJ's International Prisoner Transfer Unit. The inmate is then notified, and preparations are made for the physical transfer.

Two-Fold Benefits

The benefits of being transferred to one's home country to serve one's sentence are twofold: (1) the inmate is closer to his friends and family and, according to studies, is better able to be rehabilitated in his or her home culture; and (2) the amount of time to be served is governed by laws of the receiving or home country which oftentimes results in an earlier release. Parole

eligibility, if any, and good time are determined by the receiving/home country.

Defense counsel can facilitate a client's transfer by negotiating a provision in the plea agreement wherein the U.S. Attorney's Office agrees to recommend — or at least, not to oppose — the defendant's transfer and to recommend to the sentencing judge that the court itself, make such a recommendation to the International Prisoner Transfer Unit.

Counsel can also, once the application is made, assist the Department of Justice by providing relevant information that will make the likelihood of approval that much greater.

Notes

1. The countries include: Austria, Bahamas, Belgium, Bolivia, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Federated States of Micronesia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mexico, Netherlands (Netherlands Antilles and Aruba), Norway, Panama, Peru, Poland, Portugal, Republic of Palau, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Trinidad/To-bago, Turkey, Ukraine, United Kingdom and U.K. Territories.
2. States with legislation authorizing the transfer of foreign prisoners include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Northern Marianna Islands (United States Territory), Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont (transfers to Canada only), Virginia, Washington, Wisconsin, and Wyoming.
3. 318 U.S.C. § 4100 (c).
4. U.S. Department of Justice, **United States Attorneys' Criminal Resource Manual** § 735 (1998).