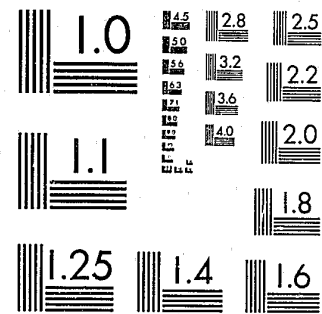


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Washington, D. C. 20531

4-8-82

# FBI LAW ENFORCEMENT BULLETIN

JANUARY 1982



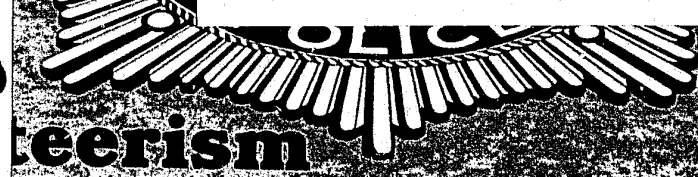
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Cooperation

# Swiss-American Cooperation in Criminal Investigations



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As the tourist and the businessman benefit from technological advances in communications and transportation, so do the criminal elements who can cross international boundaries with ease.

Without a corresponding increase in mutual assistance between law enforcement authorities, we would all be condemned to a losing battle. Fortunately, the United States and Switzerland not only have a history of law enforcement cooperation and legal assistance but since January 23, 1977, they also have a major tool to implement their national policies of cooperation. On that date, the Treaty on Mutual Assistance in Criminal Matters (hereafter referred to as the Legal Assistance Treaty) between the United States and Switzerland became effective after almost 10 years of negotiation and groundwork.

The practical problem confronting a U.S. investigator or prosecutor who needs information or evidence from Switzerland is whether to make a request for police cooperation or a formal request for legal assistance. However, before treating the factors which influence such decisions, it would be beneficial to describe briefly the structure and duties of Swiss authorities, since these facts could influence the decision of the U.S. investigator or prosecutor.

## Swiss Law Enforcement Authorities

Two Swiss authorities, the Swiss Central Police Bureau and the Swiss Federal Office for Police Matters, deal with U.S. requests for assistance in criminal matters. Within the Swiss Central Police Bureau, the Swiss National Central Bureau (NCB) in the Interpol network handles foreign police requests. Its responsibility is the exchange of police information, including criminal intelligence information, between Swiss and foreign police forces.

There are three other sections within the Swiss Central Police Bureau, each having separate and distinct functions. The Central Registry of Conviction records all convictions in Swiss courts which result in a jail sentence or fine of more than 200 Swiss francs (approximately \$100). It also records similar sentences of Swiss citizens by foreign courts, if foreign authorities inform Switzerland of the conviction and



Dr. Frei



Special Agent Ralston

sentence. Information from the registry is furnished, upon request, to foreign police forces, investigative agencies, and courts.

The Identification Section is the central Swiss repository for fingerprints and performs functions similar to identification divisions worldwide; the Central Offices Section is a small investigative office which investigates white slave traffic, counterfeiting, narcotics, and illegal trafficking in war weapons.

Switzerland provides police cooperation through the Interpol network or through the FBI Legal Attache at the U.S. Embassy in Bern. Requests for police assistance to the Interpol Section, Swiss Central Police Bureau, are received from Interpol Washington, as well as other national central bureaus. The other U.S. requests for police assistance can be initiated by the local FBI field office, through FBI Headquarters, to the Legal Attache.

Switzerland also provides formal legal assistance to the United States in accordance with the provisions of the Legal Assistance Treaty. These requests and responses are handled directly between the two central authorities—The Office of International Affairs, U.S. Department of Justice, and the Office of the Central Authority in the International Legal Assistance Section, Swiss Federal Office for Police Matters.<sup>1</sup>

The International Legal Assistance Section is responsible for submitting requests from Swiss cantons (any of the states in the Swiss Republic) for legal assistance to countries throughout the world and for receiving foreign requests and transmitting them to the appropriate cantonal authorities. A special office in this section, the Swiss Central Authority, was created to handle requests from the U.S. Department of Justice under the treaty provisions, and in return, makes Swiss requests to the United States on behalf of cantonal authorities. This office decides whether American requests meet the formal requirements of the treaty, whether U.S. representatives should be permitted to be present when the request is executed, and whether compulsory process

can be employed. It can also issue decrees ordering that business or bank records be produced, for example, to seize evidence or to block the removal of assets which might be fruits of the crime or other evidence.

Practically all police matters in Switzerland are within the jurisdiction of the cantons, although there is only one penal code for the whole nation. Thus, in matters of legal assistance and police cooperation, the requests are transmitted by the Swiss Central Authority to the appropriate cantonal authority for processing.

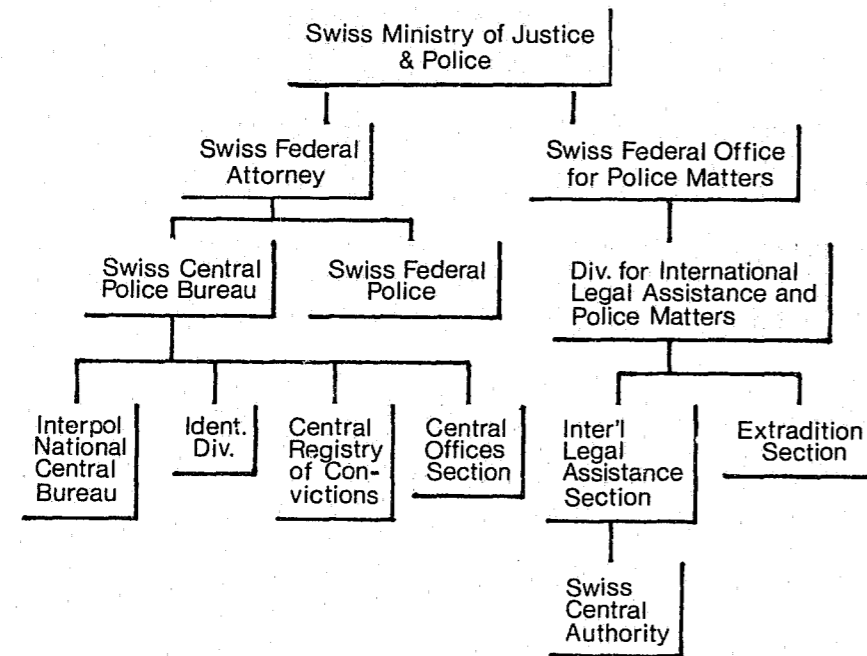
## Requests for Assistance

In deciding which channel to use to make a request for assistance, the U.S. law enforcement officer or agency should bear in mind the capabilities of each.

Swiss police officers are able to provide police cooperation which does not involve any compulsory process. They can locate a person, interview a witness who voluntarily submits to interview, check public information, check hotel registration records, identify telephone subscribers, provide from registers of commerce, interview a suspect or victim, verify alibis, locate persons, place lookouts for stolen goods, etc. Such requests can be submitted either through the Interpol or Legal Attache channel. Swiss federal authorities prefer the Legal Attache channel because his extensive knowledge of Swiss law enforcement procedures and individuals results in easier, more efficient, and more reliable handling of the case.

However, if the U.S. authority requires a higher level of assistance, it is necessary for the Office of International Affairs, U.S. Department of Justice, to file a formal request under the Legal Assistance Treaty. Examples of higher level assistance are obtaining bank or business records (because a subpoena must be issued), taking sworn testimony (because it must be done by a magistrate), serving compulsory process, compelling a witness to testify, requesting execution of search warrants, or requesting seizure of evidence or fruits of a crime.

**An Organizational Overview of Swiss Authorities**



These requests are carried out according to the Code of Criminal Procedure of the canton where executed and returned to the Swiss federal authority, which examines it to insure the execution was proper and complete, prior to returning it to the requesting foreign authority.

In fact, requests for the most extreme form of legal assistance—extradition—are also processed through the Office of International Affairs but are then formally made through diplomatic channels to Switzerland in accordance with our Extradition Treaty to the Extradition Section of the Swiss Federal Office for Police Matters. It decides whether the request will be granted and issues the necessary warrants. In addition, it handles requests for tracing offenders and stolen vehicles. Its decisions can be appealed only directly to the Swiss Supreme Court.

The procedure for sending a formal request for legal assistance might be regarded by some as a cumbersome process which will bring no results whatsoever. However, experi-

ence to date shows that this is not true.

To appreciate the Legal Assistance Treaty, one has only to consider that since January 23, 1977, the United States has formally submitted 119 requests to Switzerland. Of these, 89 were executed, 3 were denied, 6 were withdrawn, and 21 were still pending as of May 1, 1981. Of these requests, 90 involved various kinds of white-collar crime, such as fraud, embezzlement, or receiving stolen property.

It is important to note that the Office of International Affairs, U.S. Department of Justice, was merely the formal requesting agency. Most of the requests were made on behalf of U.S. attorneys' offices, but many were also made for the FBI and State and local prosecutors, as well as other U.S. Federal agencies.

In about 75 percent of the cases, the purpose of the request was to obtain Swiss business or banking records. The persistent and widely spread myth that Swiss banking and business secrecy laws were impenetrable was, in fact, never true; Swiss

magistrates could always issue a process to compel production of business and banking records for a Swiss criminal investigation. Such a process takes legal precedence over business and bank secrecy laws. What is new is that the Legal Assistance Treaty grants the United States access to this compulsory process provided, of course, that the other requirements of the treaty are met.

However, it is practical cases which give deeper meaning to the above statistics and which underline what the statistics say about the Legal Assistance Treaty.

An important example was the case of Mark Stanley Rifkin, who allegedly transferred fraudulently \$10.2 million from the Security Pacific National Bank in California to a Zurich bank and used most of the proceeds to buy Russian diamonds in Geneva which he then smuggled back into the United States. Pursuant to a request under the Legal Assistance Treaty, evidence and sworn testimony were taken in Zurich and Geneva in the presence of U.S. attorneys, counsel for defense, and U.S. court reporters.

In another similar case, not only were bank records furnished, but a bank account was blocked which contained over \$1.5 million in funds defrauded from investors. Although the treaty does not provide for the return of such funds, the damaged parties have the right to obtain them through civil process in Switzerland. In this case the funds were released to the bankruptcy referee.

It is beyond question that the Italian financier Michele Sindona could never have been convicted of numerous counts for his role in the collapse of the Franklin National Bank in New York without the bank records from Zurich and Geneva which were obtained under the treaty. The importance of this case is demonstrated by the 25-year sentence imposed.

But assistance under the treaty is not limited to business and banking records. Pursuant to such requests, for example, Switzerland has also formally questioned witnesses and made formal

service of court documents upon Swiss residents.

However, Switzerland will not grant legal assistance for political crimes, and as a general rule, will not grant legal assistance for violation of tax or fiscal laws or regulations, although the Legal Assistance Treaty provides an important exception. To assist in the prosecution of organized crime figures, Switzerland will also furnish legal assistance in tax and fiscal cases. Starting in 1983, Switzerland may also be able to furnish legal assistance in other cases of tax or customs fraud.

The offenses for which legal assistance will be furnished under the treaty are contained in an annex to the treaty. Basically, they are commonlaw crimes which must also meet the standard of dual criminality—the acts must be considered criminal in both countries. In order that this standard is met, it is necessary that the request include specific information regarding the laws under which prosecution is contemplated, as well as detailed information regarding the criminal acts alleged and the pertinence of the assistance requested to those acts.

Other formal requirements are that the request contain identifying data regarding the subjects of the investigation: Date and place of birth, citizenship, and address, at a minimum; similar information regarding any person who might be affected by the request; and a translation of the request into the language of the area where it will be executed—French, German, or Italian.

As a general rule, the requesting authority should count on at least 3 months between the time the request is first formulated and results are received. However, it is more likely to take between 6 and 9 months.

It is in the interest of the requesting authority to insure that all necessary information is contained in the initial request so that unnecessary time is not wasted in asking for supplemental information.

The time necessary to process and execute a request makes it clear

that there is a basic problem with the Speedy Trial Act of 1974. This problem is compounded by the appeal rights that subjects or persons affected by the execution of a request have in Switzerland. In one case, the appeals lasted 2½ years.

Possible solutions to this conflict are filing the request at a preindictment stage and/or having the case designated as complex and obtaining judicial exemptions from the time limits imposed by the Speedy Trial Act. It is likewise advisable that the requesting authority consider from the beginning stages how the information requested will be introduced and received into evidence during trial.

U.S. authorities have made rather frequent and effective use of the provisions of the treaty whereby a U.S. attorney, district attorney, FBI Agent, the Legal Attache in Bern, or other law enforcement official can be authorized to be present when the request is executed. Such requests are granted if their presence is required by U.S. law in order to obtain admissible evidence, if it is likely to facilitate substantially the investigation or prosecution because the case and inquiries to be conducted in Switzerland are very complicated, or for other substantial reasons. However, it must be clear that authorization to attend the execution of the request is merely that. Control of the proceedings must remain in the hands of the Swiss official, and acts of the foreign officials present may be performed only through the Swiss magistrate's acting as an intermediary. However, authorization to attend the hearing also carries the advantage of the American participants being permitted to suggest supplementary questions for the Swiss magistrate to ask the witness and otherwise assist the Swiss magistrate.

For clarity's sake it is perhaps best to spell out what is implied from the above. No foreign officials may conduct official acts in Switzerland without prior authorization; to do so would be a serious violation of the Swiss Penal Code, Article 271. However, in some cases, such authorization will be granted, provided the circumstances justify

it. Requests for such authorization are also made through the Swiss Federal Office for Police Matters.

If an indictment has been returned, the defendants have a right to be present at the time of execution, and if they exercise that right, the U.S. prosecuting authority also has a right to attend. However, a frequent problem in such cases is the lack of court reporters in Switzerland, as they are known in the U.S. legal system. A witness' statement is recorded in summary form in a "process verbal," which is then signed by witness, magistrate, and clerk. This is not a verbatim recording of the hearing as is frequently required in America. Added to this is the fact that the hearings are conducted in the official language of the area where it is held. The meaningfulness of such hearings for American participants is directly proportional to their own language ability or that of a translator.

If a verbatim record of the hearing is necessary, some solutions are having U.S. court reporters at the hearing, making a tape recording (only possible with witness agreement), or possibly making a video tape. (The latter solution has been discussed, but never attempted.)

Finally, it is necessary to note the obvious: Requests for assistance under the Legal Assistance Treaty are complicated and intricate. However, there are three sources of experience and assistance which are available to all prosecutors and investigators in the United States and Switzerland: The Office of International Affairs, U.S. Department of Justice; Central Authority, Swiss Federal Office for Police Matters; and the Legal Attache, U.S. Embassy, Bern.

Both legal assistance and police cooperation between Switzerland and the United States are alive and well. The means are available for use in the common goal of combating international crime—they need only to be used.

FBI

**Footnote**

The Swiss Federal Office for Police Matters should not be confused with the Swiss Federal Police, which investigates internal security matters.

**END**