

MEMORANDUM

August 16, 1995

To: Jeremy Gunn

From: Phil Golrick

Subject: U.S.-Switzerland Treaty on Mutual Assistance in Criminal Matters

Eric has obtained a copy of the above-referenced treaty and pertinent interpretive letters through 1975. The treaty was signed in 1973 and Eric advises that there was no comparable treaty before this one.

The treaty does not speak to use of information provided before the treaty came into effect. However, several provisions may be of interest.

Article 1.4.a expressly includes "ascertaining the whereabouts and addresses of persons" as one of the forms of assistance required under the treaty. Article 11 states: "If in the opinion of the requesting State information as to the location of persons who are believed to be within the territory of the requested State is of importance in an investigation or proceeding pending in the requesting State, the requested State shall make every effort to ascertain the whereabouts and addresses of such persons in its territory."

Article 5.1 provides: "Any testimony or statements, documents, records or articles of evidence or other items, or any information contained therein, which were obtained by the requesting State from the requested State pursuant to the Treaty shall not be used for investigative purposes nor be introduced into evidence in the requesting State in any proceeding relating to an offense other than the offense for which assistance has been granted." The subsequent paragraphs of Article 5 contain exceptions to and limitations on this prohibition. An interpretive letter dated May 25, 1973, and concurred in by the Swiss government provides that "limitations on use set forth in Article 5 are not intended to restrict the use of information which has become public any more than the use of information which has become public would be restricted in the requested State."

Article 15 states: "Evidence or information disclosed by the requested State pursuant to paragraph 2 of Article 10 shall, if in the opinion of that State its importance so requires and an application to that effect is made, be kept from public disclosure to the fullest extent compatible with constitutional requirements in the requesting State." Paragraph 2 of Article 10 deals exclusively with "facts which a bank is required to keep secret or are manufacturing or business secrets."

A separate interpretive letter dated May 25, 1973, explains that the Sixth Amendment right to a public trial, as presently construed by U.S. courts, requires public access "to documents introduced in evidence which relate to the guilt or innocence of the defendant However, since the question . . . is not entirely free from doubt, the United States Government will seek" from the courts protection of "documentary evidence furnished by Switzerland pursuant to the Treaty as to which Switzerland makes a request pursuant to Article 15." In its response to this letter, also dated May 25, 1973, the Swiss government expressed its hope "that the efforts to be made by the Government of the United States according to your letter to obtain a higher degree of protection for such evidence or information will be successful and -- as your legal system evolves -- go beyond the limits you indicated." However, the Swiss Government acknowledged that "evidence or information described in paragraph 2 of Article 10 and provided by Switzerland pursuant to that paragraph, probably cannot be kept secret if it is introduced into evidence or otherwise used in a criminal trial in the United States to the extent the Swiss Government would consider appropriate."