

Transnational Litigation—Part I

Introduction

The National Institute, entitled “Transnational Litigation: Practical Approaches to Conflicts and Accommodations” and sponsored by the American Bar Association’s Sections of Litigation and International Law and Practice, explored problems infrequently addressed—indeed a decade ago the problems barely existed. The Institute discussed issues created by civil, administrative and criminal litigation on an international level.

The Institute drew on the experience of government officials from ten countries and leading attorneys from the U.S. and foreign countries. The goal was to develop a better understanding of the problems attendant to transnational litigation and to share, on a case-by-case basis, available courses of action which have been used in the past. The panelists discussed the problems, and laid the groundwork for developing solutions to the problems.

The panelists began by reviewing conflicts and resolutions in the transnational setting, and then discussed the current international framework. The foreign representatives presented their nations’ views of transnational litigation. Considerable time was devoted to discussing legal and practical aspects of commencing a private civil litigation in a transnational context. On the second day, the panelists explored securing evidence from abroad in criminal and civil cases. They discussed topics such as representing targets, coping with secrecy and blocking laws and resolving conflicting demands between two sovereigns. Finally, there was a review of special litigation problems in the tax and customs areas.

*Mr. Fedders is Director of the Division of Enforcement of the Securities and Exchange Commission. The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private statement by any of its employees. The views expressed here are those of Mr. Fedders and do not necessarily reflect the views of the Commission, or of Mr. Fedders’ colleagues on the staff of the Commission.

Interestingly, what some viewed as a discussion of conflicts of law and jurisdictions, others viewed as a debate over the extraterritorial application of law. Some viewed blocking and secrecy laws as impeding one nation's law enforcement activities, while others viewed the provisions of their blocking laws as protecting their nation's sovereign interests. While these tensions were not resolved, the varying views expressed by the participants and the dialogue between them and the audience exceeded expectations. Not surprisingly, one agreement reached was that transnational litigation presents pressing problems for governments and civil litigants alike that demand efforts to reduce the cost, time and uncertainty associated with this type of litigation.

The Institute established that there is a small but growing watershed of experience in transnational litigation situations. The number of cases and fact patterns confronted by even experienced international litigators has been limited. What in the past has been an obscure area of the law is becoming a critical practice area.

To advance understanding of the problems and interests at stake in this increasingly complex and important area of law, *THE INTERNATIONAL LAWYER* is presenting a several part series on Transnational Litigation. With the cooperation of a number of the Institute's participants, this issue introduces the subject with a useful overview of international judicial assistance by Bruno Ristau. Davis Robinson addresses the conflict of jurisdictions controversy involved in compelling discovery and evidence in international litigation. Last, Judge Wilkey contributes a seldom-provided perspective and offers advice to transnational litigators.

