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International Law

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Abstract

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KEYWORDS: banking, exports, imports

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I. Introduction

This survey collects and discusses noteworthy international cases reported in Florida between December 1, 1987 and September 30, 1988.[1] Although there were many important decisions during the surveyed period, one case, *Yoos v. State*,[2] stood out by casting a spotlight on the relationship between Florida law and international law.

Scott Yoos and Michael Fowler were arrested for trespass while demonstrating against the testing of a Trident II nuclear missile at the Kennedy Space Center. At trial, they attempted to introduce evidence that their actions were authorized by international law as being necessary to prevent the commission of a crime against humanity. The State objected to the defense, claiming that it was nothing more than an attempt to provide the defendants with a forum in which to argue their views on war, world peace, and the sovereignty of international law. The trial court agreed with the prosecution, and prohibited the defendants from going forward with their international law defense. The defendants subsequently entered a plea of nolo contendere, and the trial court certified the following question to the Fifth District Court of Appeal: "[Does] international law authoriz[e] an individual to commit . . . trespass on [another's] property . . . if the person reasonably believes such a violation is necessary to prevent the commission of a war crime or a crime against humanity[?]"[3] The appellate court had no difficulty in answering the certified question. In a brief per curiam opinion it wrote, "International law is not paramount to, and does not in any way supersede, Florida criminal law. *Accordingly, international law does not provide a valid legal defense to a violation of the criminal laws of this state.*"[4]

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1. This work also is intended to be a continuation of Jarvis, *International Law*, 12 Nova L. Rev. 547 (1988), which reviewed the period from December 1, 1986, to November 30, 1987.

2. 522 So. 2d 898 (Fla. 5th Dist. Ct. App. 1988).

3. *Id.* at 899.

4. *Id.* (emphasis supplied). That the defendants' position was doomed from the outset was obvious, since every previous attempt to raise an international law defense has been rejected. *See, e.g.*, Sanchez-Espinoza v. Reagan, 770 F.2d 202 (D.C. Cir. 1985); Greenham Women Against Cruise Missiles v. Reagan, 755 F.2d 34 (2d Cir. 1985); Crockett v. Reagan, 720 F.2d 1355 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1251 (1984); United States v. Sisson, 294 F. Supp. 515 (D. Mass. 1968).

II. Bilateral Relations[5]

A. India

Gugliani v. Shipping Corp. of India[6] posed the question of whether an Indian merchant marine cadet could sue India's national shipping company. The plaintiff was injured on the high seas while the defendant's vessel was en route from New Orleans to Miami. Upon arriving in Miami the plaintiff brought suit against the defendant in state court in Dade County. The defendant moved for summary judgment on the grounds that it was immune from suit by virtue of the Foreign Sovereign Immunities Act (FSIA).[7] Accepting the defendant's position, the trial court dismissed the suit.

On appeal, the Third District Court of Appeal affirmed the trial court's decision. Finding no dispute as to the defendant's status as an instrumentality of the Indian government, the court considered whether any exception existed under the FSIA which would permit the plaintiff to proceed with its suit. Because it found no nexus between the United States and the defendant's commercial activities, the court focused on the FSIA exception which permits foreign sovereigns to be sued for injuries they cause within the United States.[8] Although recognizing that the plaintiff's injury was due to shifting cargo which had been improperly stowed in New Orleans, the court found that the relevant situs for application of the FSIA was not the place of the alleged wrongful act. Instead, the court looked to the place at which the injury

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5. In addition to the cases discussed below, there was one other important bilateral relations case during the surveyed period. As noted in last year's survey, *see* Jarvis, *supra* note 1, at 556-58, the government of Haiti is engaged in a worldwide attempt to recover the millions of dollars which had been spent by the country's former leader, Jean-Claude Duvalier. In January 1988, this operation began to bear fruit when District Judge Scott of the Southern District of Florida, in an opinion which remained unpublished at the close of the surveyed period, held that the Haitian people were entitled to collect at least $504 million from the exiled president and his wife. *See* Ditlev-Simonsen, *Judge: Duvalier Owes $504 Million to Haiti*, Ft. Lauderdale Sun-Sentinel, Jan. 20, 1988, at 1, col. 2. The government of Haiti immediately announced that it would take whatever steps were necessary to collect the money. *See* Rhor, *Lawyer Vows to Take Any Steps Necessary to Get Duvalier Money*, Ft. Lauderdale Sun-Sentinel, Jan. 21, 1988, at 12A, col. 5.

6. 526 So. 2d 769 (Fla. 3d Dist. Ct. App. 1988).

7. 28 U.S.C. §§ 1602-1611 (1982). For a discussion of the legislative history of the FSIA, *see* Jarvis, *supra* note 1, at 551.

8. *See* 28 U.S.C. § 1605(a)(5) (1982).

occurred, and found that the plaintiff had failed to meet the statute's territorial prerequisite: "the accident took place on the high seas, rather than, as is indispensable for the application of this exception, within the territorial limits of the United States."[9]

B. Panama

The surveyed period saw a lengthy attempt by the United States to oust General Manuel Antonio Noriega from his position as head of the Panamanian army and, by virtue of that position, his status as de facto ruler of Panama.[10] Several Florida court decisions arose as a product of the United States' efforts.

The first resulted from the United States' decision to seek an indictment against General Noriega for his role in an alleged international conspiracy to import cocaine into the United States. On February 4, 1988, such an indictment was returned by a Southern District of Florida grand jury.[11] Shortly thereafter, General Noriega moved for

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9. *Gugliani*, 526 So. 2d at 771.

10. This policy subsequently was declared a failure following the revelation that the United States had tried to bribe General Noriega to leave Panama. *See* Cloud, *From Hubris to Humiliation: The U.S. Failure in Panama Stems from Backbiting, Bluster and Gross Miscalculation*, TIME, June 6, 1988, at 15; Billington, *U.S. Tried to Bribe Noriega: Administration's Latin Policy Dealt Crushing Blow*, Ft. Lauderdale Sun-Sentinel, May 27, 1988, at 1A, col. 2; *U.S. Fails to Oust Noriega: Schultz Says Negotiations Dead, No Further Talks Planned*, Ft. Lauderdale Sun-Sentinel, May 26, 1988, at 1A, col. 2; Sciolino, *Panama's Chief Defies U.S. Powers of Persuasion*, N.Y. Times, Jan. 17, 1988, § 4, at 3, col. 1 (nat'l ed.).

11. For details of the indictment, *see* Zuckerman, *Wanted: Noriega — The U.S. Indicts Panama's Strongman for Pushing Drugs*, TIME, Feb. 15, 1988, at 16; Nevins, *Indictments Link Panama's Chief to Colombian Cocaine Mobsters*, Ft. Lauderdale News/Sun-Sentinel, Feb. 6, 1988, at 1A, col. 2; *U.S. Indicts Noriega on Drug, Racket Charges, Sources Say*, Ft. Lauderdale Sun-Sentinel, Feb. 5, 1988, at 1A, col. 2. Several months after being indicted in Florida, General Noriega was indicted on similar charges in Louisiana. *See New Indictment Links Noriega to Drug Ring*, Ft. Lauderdale News/Sun-Sentinel, June 19, 1988, at 3A, col. 2. When many foreign policy analysts questioned the wisdom of indicting foreign leaders, see, e.g., Bruck, *Nabbing Noriega, Letting Him Escape: How Attempts to Conduct Foreign Policy By Indictment Backfired*, Broward Rev., July 12, 1988, at 1, col. 1, the Reagan Administration reversed course and ordered federal prosecutors to obtain express Presidential approval before attempting to indict any more foreign leaders. *See* Pear, *Reagan Gets Say in Indictment of Foreign Leaders*, N.Y. Times, June 27, 1988, at 6, col. 2 (nat'l ed.). By the time this policy went into effect, however, several more foreign leaders either had or were about to be indicted. Colonel Jean-Claude Paul, for example, was indicted one month after General Noriega on charges that he used his position as a high ranking

permission to enter a special appearance to challenge the jurisdiction of the Florida courts and the sufficiency of the indictment.

In *United States v. Noriega*,[12] the General's request was granted. Since both sides agreed that the court had the discretion to grant the

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member of the Haitian government to help drug dealers import 200 pounds of cocaine into the United States. *See Indictment of Military Officer Sheds Light on Haiti's Drug Role*, Ft. Lauderdale News/Sun-Sentinel, Mar. 13, 1988, at 12A, col. 1; Treaster, *U.S. Charges Haitian Officer Provided Airstrip for Drug Smuggling*, N.Y. Times, Mar. 11, 1988, at 4, col. 2 (nat'l ed.); *Officer in Haiti Indicted by U.S. on Drug Counts*, N.Y. Times, Mar. 10, 1988, at 6, col. 1 (nat'l ed.); *Drug Charges Leveled Against Haiti Colonel*, Ft. Lauderdale Sun-Sentinel, Mar. 10, 1988, at 16A, col. 1; *Witness Links Haitian Leader, Others to Cocaine Trafficking*, Ft. Lauderdale Sun-Sentinel, Feb. 16, 1988, at 7B, col. 1. Shortly after Colonel Paul's indictment, Colombia's Acting Attorney General, Alfredo Guiterrez Marquez, resigned following rumors that his family was involved in the drug trade. *See Colombian Attorney General Linked to Drugs*, Ft. Lauderdale Sun-Sentinel, Mar. 29, 1988, at 6A, col. 1. Mr. Guiterrez had been serving as Attorney General because the previous Attorney General, Carlos Hoyos Jimenez, had been assassinated by Colombia's drug lords. *See* Serrill, *Day of the Assassins: The Drug Lords Carry Out A Bloody Attack to Silence A Top Lawman*, TIME, Feb. 8, 1988, at 42; *Top Colombia Foe of Drug Traffic is Presumed Slain*, N.Y. Times, Jan. 26, 1988, at 1, col. 1 (nat'l ed.); *Colombia's Chief Prosecutor Murdered*, Ft. Lauderdale Sun-Sentinel, Jan. 26, 1988, at 6A, col. 1. Attorney General Guiterrez's resignation, in turn, was followed by the indictment of Rigoberto Regalado Lara, the Honduran Ambassador to Panama, following his arrest at Miami International Airport for possession of 25.85 pounds of cocaine. *See* Kinzer, *Trust in Honduran Leaders Plummets with Drug Arrest*, N.Y. Times, May 25, 1988, at 9, col. 1 (nat'l ed.), and *A Honduran Ex-Envoy Indicted in Drug Case*, N.Y. Times, May 25, 1988, at 9, col. 1 (nat'l ed.). After General Humberto Regalado, the president of Honduras, announced that he would prosecute his half-brother to the full extent of Honduran law, *see Honduran Government to Try Ex-Ambassador*, Ft. Lauderdale Sun-Sentinel, May 18, 1988, at 10 A, col. 1, Ambassador Lara pleaded guilty to the charges. *See Honduran Admits Drug Link*, N.Y. Times, July 30, 1988, at 2, col. 2 (nat'l ed.). Finally, new details came to light during the surveyed period regarding allegations that Bahamian Prime Minister Lynden O. Pindling received payrolls totalling $800,000 to protect drug trafficking operations in the United States. *See Drug Smuggler Says Bribes Paid*, Ft. Lauderdale Sun-Sentinel, June 3, 1988, at 11A, col. 1; Pear, *U.S. Investigating if Bahamas Leader Took Drug Smugglers' Payoffs*, N.Y. Times, Apr. 29, 1988, at 5, col. 1 (nat'l ed.); *Key Witness: Bribe Meant for Pindling*, Ft. Lauderdale Sun-Sentinel, Jan. 26, 1988, at 9A, col. 1. Prime Minister Pindling soon was joined by Cuban president Fidel Castro, who was accused of taking bribes to protect a different drug ring which had brought cocaine into the United States through Cuba. *See Man Held As Chief Smuggler: Tape Raises Ties to Cuba, 'Fidel'*, Ft. Lauderdale Sun-Sentinel, Mar. 10, 1988, at 14A, col. 6.

12. 683 F. Supp. 1373 (S.D. Fla. 1988). For a further discussion of the decision, see *Federal Judge Orders Freeze Against Panama*, Ft. Lauderdale Sun-Sentinel, Mar. 9, 1988, at 12A, col. 5.

request, the only issue faced by the court was whether to exercise that discretion. Despite numerous arguments to the contrary by the government, the court wrote that it believed it was important to exercise its discretion in favor of the defendant. The court stressed that:

> The present indictment is surrounded with special circumstances which militate in favor of allowing the defendant to attack its validity. Specifically, this appears to be a case of first impression. Arguments of counsel will be helpful in resolving the delicate issues presented. The case is fraught with political overtones. . . . The best way to avoid the appearance that this indictment has assumed the character of a political proceeding, rather than a legal one, is to determine its legal validity upon the arguments of counsel. In that way, the integrity of our legal system will best be served.[13]

The other Florida decision involving General Noriega during the surveyed period grew out of the decision of Panamanian president Eric Arturo Delvalle to dismiss General Noriega as Commander of the Panamanian Defense Forces. General Noriega refused to abide by President Delvalle's order and on February 26, 1988 arranged for the Panamanian National Assembly to remove President Delvalle from office. Subsequently, President Delvalle went into hiding and the Panamanian Cabinet Council named Manuel Solie Palma as the new President of Panama. President Delvalle declined to accept President Palma and instead announced that he remained the lawful president of the country. On March 2, 1988, the United States withdrew its recognition of President Palma and renewed its recognition of President Delvalle.

When Juan B. Sosa, the Panamanian ambassador to the United States, announced his decision to oppose President Palma, President Delvalle directed the ambassador to institute proceedings to ensure that no United States-based funds belonging to the Republic of Panama would be transferred to Panama while President Palma remained in power. Ambassador Sosa complied, filing a suit in Florida against various banks, including Citizens and Southern International Bank, Republic National Bank, and Barnett Bank. Upon learning of the lawsuit, Banco Nacional de Panama (BNP), Panama's central bank, together with General Noriega and President Palma, sought permission to intervene in the action. Their request was denied in *Republic of Panama v. Citizens & Southern International Bank*.[14]

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13. *Noriega*, 683 F. Supp. at 1374-75.
14. 682 F. Supp. 1544 (S.D. Fla. 1988).

In a lengthy and detailed opinion, the district court explained that it would not permit the intervention of President Palma and General Noriega because "[t]he Executive branch's exclusive power to recognize and legitimize a foreign government is binding upon the courts and precludes a suit in United States courts by an unrecognized government. . . . This doctrine completely precludes the Palma government's intervention and participation in this litigation."[15] For similar reasons, the court denied BNP's request to intervene. The court wrote, "it is inappropriate to allow BNP to intervene in this action because it is the central bank of Panama and the plaintiff is the only lawfully recognized representative of the Panamanian people allowed access to our courts."[16]

C. Trinidad and Tobago

There were two cases during the period involving relations between the United States and the Republic of Trinidad and Tobago. In the first, Trinidad's Minister of External Affairs and International Trade requested that Carl L. Hoi-Pong be extradited from Miami to stand trial in Trinidad on embezzlement charges. When the request was granted by the magistrate assigned to the case, Mr. Hoi-Pong asked the district court to review the decision. In *Hoi-Pong v. Noriega*,[17] the district court affirmed the magistrate's decision.

Since United States practice permits an individual to be extradited from the United States to a foreign country only if an extradition treaty exists between two countries,[18] the key question on review was whether the magistrate had been correct in finding that the United States-Trinidad extradition treaty was a valid treaty. In 1931, the United States and the United Kingdom had entered into an admittedly valid extradition treaty which included the then-British colony of Trinidad. In 1962, however, Trinidad gained its independence from Great Britain, and in 1977 the United States-United Kingdom extradition treaty expired. Mr. Hoi-Pong was arrested in the United States in 1987.

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15. *Id.* at 1545.
16. *Id.* at 1547.
17. 677 F. Supp. 1153 (S.D. Fla. 1988). It should be noted that the Noriega referred to in the case is Carlos A. Noriega, the United States Marshal for the Southern District of Florida, and not Manuel A. Noriega, the Panamanian dictator referred to in the cases discussed *supra* notes 10-16.
18. See *supra* note 1, at 606 n.180.

Although Trinidad has been independent for more than two decades, the United States has never entered into a new extradition treaty with Trinidad, nor has the United States ever expressly confirmed the continuing effectiveness of the 1931 treaty. As a result, Mr. Hoi-Pong argued that no valid treaty existed by which his extradition could be ordered.

Despite the creativity of Mr. Hoi-Pong's argument, the court ruled that "Trinidad and the United States, through their conduct, agree the 1931 treaty is binding."[19] The court found it significant that both countries had continued to make requests to each other under the treaty, that neither country had ever denounced the treaty, and that the United States had continued to record the treaty in its official publication, *Treaties in Force*.[20]

The other case involving Trinidad and the United States concerned the continuing battles of Joseph Azar. The Attorney General of Trinidad had requested the assistance of Florida's courts in a criminal investigation which he was conducting to determine whether certain individuals, including Mr. Azar, had violated the Trinidad Exchange Control Act. In particular, the Attorney General wanted to review certain bank records belonging to Mr. Azar located in the Union Savings Bank of Florida. He therefore asked that a subpoena be issued ordering the bank to turn over the records. After the subpoena was granted, Mr. Azar moved to have it quashed. As readers of last year's survey may remember, Mr. Azar's attempt was twice rebuffed by the district court.[21]

In *In re Request for Assistance from Ministry of Legal Affairs of Trinidad & Tobago*,[22] the United States Court of Appeals for the Eleventh Circuit affirmed both decisions of the district court. As had been true before the district court, Mr. Azar's chief argument before the Eleventh Circuit was that the statute under which the subpoena had been issued[23] could only be utilized in connection with a foreign court proceeding, and not in an investigation designed to gather sufficient information to initiate such a proceeding. In rejecting this argument, the Eleventh Circuit found that the Attorney General's request had been made "in connection with" a proceeding contemplated by the statute,

19. *Hoi-Pong*, 677 F. Supp. at 1155.
20. *Id.*
21. *See* Jarvis, *supra* note 1, at 559-61.
22. 848 F.2d 1151 (11th Cir. 1988).
23. *See* 28 U.S.C. § 1782 (1982).

and that the district court therefore had the authority to grant the Attorney General's request.[24] The Eleventh Circuit also found that the district court had not abused its discretion in assisting the Attorney General because of the district court's reasonable conclusion that the Attorney General was more than likely to institute criminal proceedings against Mr. Azar in the near future.[25]

D. United Kingdom

There were two cases during the surveyed period involving the United Kingdom, and both involved extradition matters. In *Na-Yuet v. Hueston*,[26] the British Crown Colony of Hong Kong sought the extradition of Jennie Cheng Na-Yuet to stand trial on kidnapping charges.[27] After a magistrate found her extraditable, the petitioner asked for review by the district court, which it denied. She then moved for a rehearing or a remand to the magistrate on the basis that she had discovered new evidence which would rebut the case against her. Finding that the new evidence cast substantial doubt on the sufficiency of the evidence presented against the petitioner at her extradition hearing, the court ordered that a new hearing be held by the magistrate.[28]

The other extradition case was *United States v. Herbage*.[29] The defendant, a British citizen, had been extradited to the United States and had pled guilty to mail fraud and to the transportation of fraudulently obtained money. As part of the plea arrangement, the defendant reserved the right to appeal his conviction on the ground that it violated

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24. *In re Request*, 848 F.2d at 1155.

25. *Id.* at 1156. Many South Florida bankers reacted to the decision with concern that it would lead foreign depositors to remove their accounts from the state. *See* Simenhoff, *Ruling Opens Foreigners' U.S. Bank Records*, Broward Rev., July 14, 1988, at 1, col. 1, and Simenhoff, *Banking on Privacy: Court Case Jeopardizes "Safe Haven" for Foreign Investors*, Broward Rev., Apr. 25, 1988, at 1, col. 2.

26. 690 F. Supp. 1008 (S.D. Fla. 1988).

27. For details of the 1983 kidnapping scheme whose target was a millionaire Hong Kong businessman, *see* Petit, *The Two Faces of Jennie Pau: Mastermind or Dupe in $11 Million Kidnapping? S. Fla. Court Must Decide Whether to Extradite Her*, Miami Rev., July 25, 1988, at 1, col. 2.

28. The district court's opinion did not provide the exact details of the petitioner's new evidence, because, "Petitioner's in camera proffer . . . was accompanied by a motion that it be sealed because of the 'real and present fear that persons in other countries will prevent the cooperation of said witness and the ability to obtain said testimony.'" *In re Azar*, 690 F. Supp. at 1011 n.11.

29. 850 F.2d 1463 (11th Cir. 1988).

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the "principle of speciality." Under the principle of speciality, a defendant may not be charged with crimes which were not contained in the instrument by which the person's extradition had been requested.[30] According to the defendant, the United States was guilty of violating the principle because it had charged and convicted him of crimes which were not included in the extradition warrant which the United States had presented to the British government in August 1985.

On appeal, the Eleventh Circuit found that the United States had not violated the principle. After noting that the English courts had had an exact copy of the defendant's federal indictment when they ordered the defendant extradited to the United States, the Eleventh Circuit wrote, "[I]t is evident that Herbage was convicted of the identical crimes for which he was extradited."[31]

III. Foreign Trade

A. Banking

During the surveyed period, several international banking cases were decided.[32] Chief among these were three cases growing out of the long running saga of Alberto Duque, son of a prominent Colombian coffee family, and his now bankrupt Miami-based General Coffee Corporation (GCC).

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30. For a further discussion of the principle, *see* Jarvis, *supra* note 1, at 606.

31. *Herbage*, 850 F.2d at 1466.

32. In addition to the cases discussed in the text, the reader also is referred to Amvest Capital Corp. v. Banco Exterior de España, S.A., 675 F. Supp. 640 (S.D. Fla. 1987) (unjust enrichment dispute between an American bank and a Spanish bank), and Bank of Miami v. Banco Industrial y Ganadero del Beni, S.A., 515 So. 2d 1038 (Fla. 3d Dist. Ct. App. 1987), *rev. dismissed*, 520 So. 2d 583 (Fla. 1988) (dispute between an American bank and a Bolivian bank over the honoring of checks). Even more interesting than the cases adjudicated during the subject period, however, was the sudden growth in business recorded by international banks located in Miami. As explained in Jarvis, *supra* note 1, at 562 n.43, international banking became one of the mainstays of Florida's economy in the 1980's, fueled in large part by South American drug money. In 1988, however, drug money was joined by "flight capital," millions of dollars from Panama and other Latin American countries seeking a safe haven to wait out the political problems of their troubled homelands. This money, which already may amount to as much as $4 billion, has touched off fierce competition between Miami's international banks and has led to the creation of an array of private, specialized services that cater to wealthy Latin American customers. *See* Spetalnick, *Miami's Banks Capitalize on Latin American Crises*, Ft. Lauderdale Sun-Sentinel, July 4, 1988, *in* Weekly Business (Magazine), at 4, col. 1.

Mr. Duque had wanted to increase his family's share of the American coffee market. To accomplish this goal, Mr. Duque had GCC purchase a Miami bank and obtain the rights to Chase & Sanborn, a well-known American coffee brand. To finance these acquisitions, GCC borrowed heavily from a number of American and foreign banks. When GCC was unable to repay the loans, Mr. Duque created and negotiated numerous false bills of lading in Colombia. As a result, Mr. Duque was convicted of violating the Federal Bills of Lading Act (FBLA).[33] Although he appealed on the grounds that the FBLA did not apply to foreign bills of lading, the Eleventh Circuit disagreed and upheld the conviction in a case reported on in last year's survey.[34]

In *United States v. Castro*,[35] both Mr. Duque and the government asked the panel to rehear the appeal. The government's request stemmed from its interpretation of a footnote in the court's opinion dealing with the elements necessary to prove a violation of the crime of misapplication of bank funds. Believing that the footnote would prevent if from retrying one of Mr. Duque's co-defendants, the government asked the court to clarify the footnote. After rereading the footnote, the Eleventh Circuit denied the government's request on the grounds that the footnote neither changed the elements nor prohibited the government from retrying the co-defendant.[36]

Mr. Duque's request for a rehearing concerned the court's reading of the United States Code heading of the FBLA. In its earlier opinion, the court had based its decision in part on the fact that the title to section 81 of the FBLA contains the words "Transportation included." Upon further research, the court concluded that these words were not part of the statute as passed by Congress but had been added after its enactment by those responsible for its codification. Thus, the court concluded that it had been wrong in ruling that the title could be used as an aid in determining the intent of Congress in passing the FBLA.[37]

Nevertheless, the Eleventh Circuit reaffirmed its original opinion

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33. 49 U.S.C. §§ 81-124 (1982).

34. *See* Jarvis, *supra* note 1, at 564-66.

35. 837 F.2d 441 (11th Cir. 1988). Mr. Duque was not the only defendant during the surveyed period convicted of circulating false bills of lading. In United States v. Scardar, 850 F.2d 1457 (11th Cir.), *cert. denied*, 109 S. Ct. 326 (1988), the defendant, a commodities broker working in Miami, was convicted for issuing false bills of lading in connection with shipments from Miami to Iran and Qatar. *See also infra* notes 65-67 and accompanying text.

36. *Castro*, 837 F.2d at 442.

37. *Id.*

by finding that even if section 81 was limited in its scope, section 121 of the FBLA was meant to include both domestic and foreign bills of lading because of its use of the phrase "shipment among the several States or with foreign nations."[38] Although admitting that at some point international law places limits on Congress' power to reach extra-territorial acts, the court found that the limits had not been reached in Mr. Duque's case because the false bills of lading had been used to defraud an American bank.[39] As a result, Mr. Duque received no more from the Eleventh Circuit than an order amending its earlier opinion by deleting several paragraphs relating to section 81.[40]

The second case arising out of the collapse of GCC was *Nordberg v. Granfinanciera, S.A.*[41] In that case, GCC's bankruptcy trustee sued two Colombian corporations to recover $1.68 million which the defendants had received from GCC. According to the trustee, the transfers were fraudulent because they were made at a time when GCC was insolvent and because GCC received no, or less than, reasonable consideration in return for the payments. In response, the defendants argued that the court lacked jurisdiction to hear the trustee's case.

Both defendants were served in Bogota, Colombia, in December 1985. Two weeks later, the Government of Colombia nationalized one of the defendants. Thereafter, both defendants filed motions to dismiss the suits against them on the grounds that the bankruptcy court lacked both personal and subject matter jurisdiction. When both the bankruptcy court and the district court found that jurisdiction existed, both defendants appealed.

In the Eleventh Circuit the defendants renewed their claim that neither personal nor subject matter jurisdiction was present. In addition, Granfinanciera, the defendant which had been nationalized by the Colombian government, argued that it was immune from suit by virtue of the Foreign Sovereign Immunities Act (FSIA).[42]

The Eleventh Circuit rejected all of the contentions raised by the defendants. With respect to personal jurisdiction, the court found that the service was valid since both defendants had been served in Bogota pursuant to Rule 4(e) of the Federal Rules of Civil Procedure. Under Rule 4(e), service may be made outside the United States if a federal

38. *Id.* at 445.
39. *Id.* at 445 n.5.
40. *Id.* at 446.
41. 835 F.2d 1341 (11th Cir. 1988).
42. *See supra* note 7.

statute authorizes nationwide service of process; if no applicable federal statute authorizes such service, then Rule 4(e) requires that service be made pursuant to the long-arm statute of the state in which the court sits. Since the trustee had not complied with the dictates of Florida's long-arm statute, the defendants argued that they had not received proper service. The Eleventh Circuit, however, found that there was no need for the trustee to have looked to the Florida statute because Federal Bankruptcy Rule 7004 authorizes nationwide service of process. As such, the Eleventh Circuit found that the courts below had obtained personal jurisdiction over the defendants.[43]

The question of subject matter also was quickly disposed of by the Eleventh Circuit. Finding that GCC was a Miami-based company subject to American bankruptcy laws, the court had no difficulty finding that subject matter jurisdiction existed.[44] The court also found that there was no other more convenient forum in which to resolve the tangled affairs of GCC, and the court noted that the inconvenience to the defendants in travelling from Bogota to Miami was slight.[45]

The court made even shorter work of the FSIA defense, finding that since the nationalization had occurred after the transfers and after the institution of the suit, Granfinanciera's claim to immunity was baseless.[46] In an afterword, the court also stated that Granfinanciera had failed to prove that the transactions were governmental in nature and thus entitled to protection.[47]

The final case growing out of the bankruptcy of GCC was *Nordberg v. Societe General*.[48] In a case with facts almost identical to those in the proceeding against Granfinanciera, the bankruptcy trustee sought to recover a $500,000 wire transfer from GCC to Colombian Coffee Corporation (CCC)[49] through the New York branch of the

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43. *Nordberg*, 835 F.2d at 134.

44. *Id.* at 1346-47.

45. The court explained that the defendants "are good-sized banking concerns which, presumably, have access to at least telephone lines, if not the more sophisticated electronic telecommunication equipment available today." *Id.* at 1346.

46. *Id.* at 1347-48.

47. *Id.* at 1348. Following their defeat in the Eleventh Circuit, the defendants requested and were granted certorari by the United States Supreme Court. *See* 108 S. Ct. 2818 (1988). By the time the surveyed period came to a close, a decision had not been reached by the Court.

48. 848 F.2d 1196 (11th Cir. 1988).

49. As explained in last year's survey, *see* Jarvis, *supra* note 1, at 564, CCC was a New York-based coffee trading house owned by Victor Duque, Alberto Duque's

French banking house Societe General (SG).

SG responded by arguing that it was merely a commercial conduit through which the money had flowed, and not, as alleged by the trustee, an initial transferee. When both the bankruptcy court and the district court agreed with SG, the trustee appealed to the Eleventh Circuit.

This time the Eleventh Circuit ruled against the trustee. Finding that CCC had a demand deposit account with SG's New York branch, the Eleventh Circuit accepted the trustee's contention that the transfer by GCC to CCC had been a fraudulent one. This finding, however, left the trustee with the burden of showing that SG was an initial transferee. In order to do so, the trustee would be required to demonstrate that the transfer had been made for SG's benefit.

To meet his burden, the trustee pointed out that CCC's deposit at SG contained an overdraft privilege which CCC had called on prior to receiving the transfer from GCC in order to cover a $1.7 million check which it had written to Banco Popular Bogota (BPB). According to the trustee, since the payment from GCC to CCC was used to retire the overdraft extended to CCC by SG, the payment by GCC, although made to CCC, was actually for the benefit of SG. Thus, in the trustee's view, SG was an initial transferee who could be held accountable for the money which it had received from GCC.

Needless to say, SG took a different view of the transaction. Arguing that no debtor-creditor relationship had been established between itself and CCC, SG contended that it had done no more than deposit the GCC money into CCC's account and then used that money to satisfy the BPB check.

After considering both positions, the Eleventh Circuit agreed with SG's interpretation. Finding from the record that SG had no banking faith in CCC and never would have agreed to lend over one million dollars to CCC, the Eleventh Circuit concluded that the only reason why SG had acted in the manner it had was because it knew with certainty that money was on the way to replenish CCC's account. Thus, SG never was a creditor of CCC, but instead was merely a facilitator of what was essentially a simultaenous exchange of funds. Given this version of the facts, the Eleventh Circuit held that SG was not an initial transferee and therefore was not liable to the trustee.[50]

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50. *Societe General*, 848 F.2d at 1202. The biggest winner in the GCC sweep-[illegible] the City National Bank of Miami (CNBM), which was

Alberto Duque's failed dream was not the only international bankruptcy case heard during the surveyed year. In *Kroitoro v. Chase Manhattan Bank, N.A.*,[51] a person declared bankrupt under the laws of Panama filed a suit against his creditors in state court in Dade County. The creditors moved to have the suit dismissed on the grounds that under Panamanian law, such a suit could be brought only by the Panamanian bankruptcy trustee. In response, the plaintiff claimed that the bankruptcy laws of Panama were repugnant to the public policy of the United States. The trial court rejected this contention and granted the creditors' motion to dismiss.

On appeal, the court found that the Panamanian bankruptcy laws were entitled to recognition. In support of its decision, the appellate court recited a passage from a motion which the plaintiff had filed two years earlier in successfully resisting an involuntary bankruptcy in Miami. Taking the position that the American bankruptcy court should defer to the Panamanian courts, where an involuntary bankruptcy proceeding was already in progress, the plaintiff had stated, "While not identical in form to American law there is certainly nothing vicious, wicked, immoral or shocking to the prevailing American moral sense in the Panamanian law outlined."[52]

The appellate court also considered the plaintiff's claim that the Panamanian bankruptcy trustee had a conflict of interest which made it necessary for the plaintiff, rather than the trustee, to sue the creditors. Without deciding whether a conflict was present, the court noted that if a conflict did exist, Panamanian law provided that the plaintiff could ask the Panamanian courts to appoint a different trustee. Finding this remedy to be sufficient to avoid any potential prejudice to the plaintiff,[53] the appellate court affirmed the dismissal of the plaintiff's suit.

A different kind of banking question was posed in *Fraser v. United States*.[54] In connection with an investigation of the petitioner, an attorney, a Florida federal grand jury sought to obtain various Swiss bank-

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the bank which Alberto Duque had purchased to finance GCC's acquisition of Chase & Sanborn. In a decision which shocked the Miami banking community, CNBM was given priority over all other creditors and was awarded $7 million, thereby taking the lion's share of the funds in the bankruptcy estate. *See* Petit, *Bank Loans Foundations Shaken by Ruling*, Miami Rev., June 6, 1988, at 1, col. 1.

51. 522 So. 2d 1061 (Fla. 3d Dist. Ct. App. 1988).

52. *Id.* at 1061 n.1.

53. *Id.* at 1062.

54. 834 F.2d 911 (11th Cir. 1987), *cert. denied*, 108 S. Ct. 2035 (1988).

ing records. After the grand jury made its request, the petitioner filed an opposition with the Swiss government, whereupon the Swiss government informed the United States that it would not produce the requested information. The United States then asked the petitioner to provide it with a copy of the opposition. When the petitioner refused, the United States moved for and received an order from the district court directing the petitioner to comply with the request.

On appeal, the Eleventh Circuit ruled that it could not review the district court's decision because it was a non-final order. Noting that the case was one of first impression, the Eleventh Circuit wrote, "The order at issue here does not resolve an issue completely separate from the merits because the opposition and bank records are directly tied to the grand jury's investigation. . . . In addition, effective appellate review is available once the criminal prosecution, if any, has concluded."[55]

The final international banking case of the period revived the long-standing debate over what to do with Cuban monies held by American banks. In *De Cuellar v. Baker*,[56] Margarita Rosa De Cuellar, a Florida resident who had fled from Cuba following the rise of Fidel Castro, was the last remaining beneficiary of a personal trust. The corpus of the trust was a $127,000 bearer bond issued by the Republic of Cuba in 1937 pursuant to an indenture contract between the Republic and Manufacturers Hanover Trust (MHT). Between 1937 and 1960 the Republic made regular payments of principal and interest to MHT in New York City, which collected the money in a sinking fund held in trust for the bondholders.

In 1987, ten years after the bond's final maturity, Mrs. De Cuellar sought a license from the Office of Foreign Assets Control (OFAC) to liquidate and distribute the proceeds of the bond. The OFAC refused the request on the grounds that the Republic's contingent reversionary interest in the bond required the continued blocking of the fund pursuant to the Cuban Assets Control Regulations.[57] Mrs. De Cuellar then brought suit to challenge the OFAC's determination that she was not entitled to a license.

The Cuban Assets Control Regulations were instituted in July 1963. They prohibit all financial transactions between nationals of the United States and nationals of Cuba without the express authorization

55. *Id.* at 915.
56. 686 F. Supp. 890 (S.D. Fla. 1988).
57. *Id.* at 891-92.

of the United States Secretary of the Treasury. The Regulations, however, do permit American banks to distribute shares of principal or income to all persons who are legally entitled to the same. Based on this exception, Mrs. De Cuellar argued that she was entitled to redeem the bond. In response, the government argued that the exception was meant to apply only to private trusts and not those established by the Cuban government.

After a careful review of the government's position, the court ruled in favor of Mrs. De Cuellar. Applying the plain language test, the court first found that the regulations required only that the trust be administered by a bank or trust company incorporated under the laws of the United States.[58] Since MHT is such an institution, the court moved on to the more difficult inquiry: Was Mrs. De Cuellar a person legally entitled to the bond's principal or income?

The government contended that Mrs. De Cuellar was merely a secured creditor because she did not have legal title to the bond. As a result, the OFAC claimed that even if the exception applied to government-created trusts, it did not apply to Mrs. De Cuellar. Once again, the court found for Mrs. De Cuellar. It held that the government's definition of the term "legally entitled" was overly restrictive and overlooked the fact that as the holder of a bearer bond, Mrs. De Cuellar had a legally cognizable right to enforce the irrevocable contract obligations represented by the bond.[59] The court also found that the fact that the trust indenture did not vest legal title in bondholders such as Mrs. De Cuellar was not enough to defeat her right to the funds.[60]

B. Exports

There were two export cases of note during the period. In *United States v. Adames*,[61] the defendant was the vice-consul of Panama and resided in Florida. Her brother owned and operated a security company in Panama. In order to assist her brother's business, the defendant arranged for the shipment of handguns and shotguns to Panama. As a result of this assistance, the defendant was charged with having violated the Arms Export Control Act (AECA).[62]

58. *Id.* at 893-94.
59. *Id.* at 896.
60. *Id.*
61. 683 F. Supp. 255 (S.D. Fla. 1988).
62. 22 U.S.C. § 2778 (1982). For another AECA case decided during the sur-

The AECA requires an export license to be obtained from the United States Secretary of State before certain firearms may be exported from the United States to a foreign country. In response, the defendant argued that since she was unaware of the license requirement, she did not have the purposeful intent necessary to sustain a conviction under the AECA. While conceding the necessity to prove the existence of specific intent, the government asserted that the defendant had the requisite intent because she knew that the firearms required an export license. As proof of the defendant's knowledge, the government pointed to the sales receipt which the defendant had received at the time she purchased the weapons.

The district court disagreed and entered a judgment of acquittal. It found that the export notice stamped on the sales receipt was too vague to place the defendant on notice and also found that none of the sales personnel with whom the defendant had dealt had told her of the licensing requirement. And while the court agreed that the defendant was "an intelligent woman who was vice-consul of Panama, this position does not catapult her into an expert in AECA."[63]

The court also rejected the government's contention that the defendant's refusal to sign subsequent invoices demonstrated her knowledge of the AECA's requirements. Instead, the court accepted as true the defendant's explanation that she did not want to be involved in any further shipments "due to her fear that she would become embroiled in political issues arising out of the current Noriega crisis between the United States and Panama."[64]

The other export case of note was *United States v. Gafyczk*.[65] The defendants were accused of participating in an elaborate operation to smuggle cigarettes out of the United States and into Italy without paying the substantial duty levied by Italy on imported cigarettes. The scheme, which utilized mislabeled containers shipped from Miami to

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veyed period, see United States v. Pinto, 838 F.2d 1566 (11th Cir. 1988) (conviction for attempt to obtain fraudulent end user certificates for export of military equipment subject to the AECA). As the surveyed period was winding to a close, yet another AECA case was instituted. Charged in the case was Colin Breeze, an English arms broker caught trying to sell ten American-made military helicopters to Iran for $30 million. *See* Stromberg, *Briton Held in Iran Copter Deal*, Ft. Lauderdale Sun-Sentinel, June 30, 1988, at 7B, col. 4.

63. *Adames*, 683 F. Supp. at 257.

64. *Id.* at 258. The crisis referred to by the court is discussed *supra* notes 10-16 and accompanying text.

65. 847 F.2d 685 (11th Cir. 1988).

various ports in Italy, was carried on for more than five years. Eventually, the defendants were caught and convicted after a jury trial of issuing false bills of lading and of misleading the United States Customs Service by arranging for the preparation of incorrect Shippers' Export Declarations (SEDs).

On appeal, the Eleventh Circuit reversed the convictions with respect to the bills of lading but affirmed them as to the SEDs. Finding that the defendants had been convicted of defrauding the government by issuing false bills of lading, when in fact the government had not suffered any loss due to the bills, the Eleventh Circuit concluded that these convictions could not stand because they were not supported by the evidence.[66] The SEDs, however, presented a different story. Because the Customs Service relies on SEDs to carry out its responsibility for monitoring the types, amounts, and destinations of goods exported from the United States, the Eleventh Circuit had no difficulty in concluding that the defendants had willfully interfered with the government when it arranged for the false SEDs to be issued.[67]

C. Imports

Florida courts handled a number of cases during the year in which defendants were accused of illegally importing goods into the United States.[68] They also wrapped up *Ortho Pharmaceutical Corp. v. Sona Distributors*,[69] a case which readers of last year's survey are likely to remember.[70]

The defendants in *Ortho* were found guilty of having obtained various pharmaceutical products from a company in Hong Kong by telling it that the products would be sold in China. Rather than forward-

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66. *Id.* at 689-90.
67. *Id.* at 691.
68. Although these cases usually concerned grave matters, they sometimes provided humorous moments as well. When nearly 1.5 million foreign-made condoms on their way from Korea to Minneapolis were detained in Miami by the Customs Service because they contained too many holes, the Assistant United States Attorney handling the resulting court proceedings found herself nicknamed the "Condom Queen," and explained in an interview that both she and the importer's attorney "have to be real careful in court what we say because the court reporter is there." *See* Greenberg, *Case of Leaky Latex Filled with Holes: U.S. Attorney, Lawyer Argue Over Fate of Porous Condoms*, Broward Rev., May 18, 1988, at 1, col. 1.
69. 847 F.2d 1512 (11th Cir. 1988).
70. *See* Jarvis, *supra* note 1, at 575-77.

ing the goods to China, however, the defendants sent them to the United States. Once in the United States, the goods were sold at a price far below that of the manufacturer.

Prior to being found guilty, the defendants made a motion to have the suit dismissed. The district court denied the motion and granted the plaintiffs' request that sanctions be imposed pursuant to Rule 11 of the Federal Rules of Civil Procedure. The district court subsequently set the dollar amount of the sanctions at $35,851.55, to be paid by the defendants and their attorneys, the well-known Miami law firm of Sandler & Travis, which specializes in the handling of international matters. During the surveyed period, the district court's decision to impose sanctions reached the Eleventh Circuit.

The Eleventh Circuit affirmed the trial court's decision. After finding that it had jurisdiction to review the issue, the appellate court considered Sandler & Travis' defense. According to the firm, the dismissal motion had been filed in haste before the true facts could be ascertained. By way of explanation, the firm cited the pressure of having to comply with an expedited discovery schedule, respond to a request for a restraining order, and investigate events which had occurred in Hong Kong. The appellate panel was not moved. Noting that the firm had never sought to gain an extension of time, it held that the time crunch which the firm had experienced had been of its own making.[71] The court also noted that the dismissal motion was not abandoned until after the trial court ordered the production of various documents which Sandler & Travis knew would shed light on the viability of its motion, but which it had not bothered to obtain.[72]

The remainder of the importation cases focused attention on the Lacey Act,[73] which makes it unlawful to import or purchase wildlife which is being transported or sold in violation of the laws of another country. As such, the Lacey Act is an extraordinary piece of legislation because it is one of the few instances in which the United States has made the violation of a foreign country's laws a violation of United

71. *Ortho*, 847 F.2d at 1518.

72. *Id.* Not only did Sandler & Travis have to read about its defeat several days later in a popular Florida legal newspaper, see Housen, *Sanction for Frivolous Motion Upheld: Reimbursement of Almost $36,000 Ok'd by Appeals Court*, Miami Rev., July 6, 1988, at 13, col. 1, two weeks later it had to suffer through an account in the same newspaper of the great success being enjoyed by Valdes-Fauli, Cobb & Petry, another Miami firm specializing in international law. *See* Leff, *Culture Club: Valdes-Fauli Thrives on Multiethnic Diversity*, Miami Rev., July 18, 1988, at 1, col. 1.

73. 16 U.S.C. §§ 3371-3378 (1982).

States law.

In *United States v. Rioseco*,[74] the defendant was accused of violating the fishing laws of the Bahamas. As his defense, the defendant claimed that the Lacey Act was unconstitutional. When the district court disagreed, the defendant appealed but was rebuffed. Finding that such a challenge had been rejected as far back as 1910,[75] the Eleventh Circuit concluded that the Lacey Act's reference to foreign law is merely a convenient means of distinguishing between wildlife which may be placed in the stream of commerce from wildlife which is excluded from such commerce.[76]

A different tack was taken by the defendant in *United States v. Shelhammer*.[77] The defendant also had been caught removing fish from Bahamian waters without the required permit. As his defense, the defendant argued that the Bahamian permit system should not be enforced because of the Magnuson Fishery Conservation and Management Act (MFCMA).[78] The MFCMA states that it is Congress' sense that the United States should not recognize the claim of any foreign nation to a fishery conservation zone which is located beyond that nation's territorial sea.[79] According to the defendant, he had been fishing in an area beyond the territorial sea of the Bahamas. In response, the prosecution argued that it was the policy of the United States to recognize some areas claimed by the Bahamas and that the defendant had been fishing in such an area.

After considering the matter, the court sided with the government. Finding that the MFCMA's provision was a mere suggestion, it held that the MFCMA was not meant to change the Lacey Act and in fact was too vague to have caused a change.[80] As a result, the court found no reason to dismiss the indictment against the defendant.

The final Lacey Act case of the surveyed period was a civil forfeiture action entitled *United States v. 2,507 Live Canary Winged Parakeets (Brotogeris Versicolorus)*.[81] The claimant, a company known as Pet Farm, Inc., had arranged to import 2,507 wild parakeets from

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74. 845 F.2d 299 (11th Cir. 1988).
75. *See* Rupert v. United States, 181 F. 87, 90-91 (8th Cir. 1910).
76. *Rioseco*, 845 F.2d at 302.
77. 681 F. Supp. 819 (S.D. Fla. 1988).
78. 16 U.S.C. §§ 1801-1882 (1982).
79. *Id.* at § 1822(e). For a discussion of the concept of the territorial sea, *see* T. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 2-14, at 32 (1987).
80. *Shelhammer*, 681 F. Supp. at 820.
81. 689 F. Supp. 1106 (S.D. Fla. 1988).

Peru. Such parakeets, whose scientific name is brotogeris versicolorus, are found in the forest region of Peru. Peruvian law specifically prohibits the exporting of any wildlife from Peru's forest region. Although an export permit had been obtained for 3,000 parakeets, the species listed on that permit was brotogeris pyrrhopterus and not brotogeris versicolorus. As a result, officers from the United States Fish and Wildlife Service arranged to seize the parakeets as they entered the United States.

Based on the foregoing, the district court ordered the parakeets to be forfeited. In the course of a long and careful opinion, the court had the opportunity to consider not only the Lacey Act, but also the Convention on International Trade in Endangered Species (CITES),[82] and the Endangered Species Act.[83] After considering the three instruments, the court made two important findings. First, it held that a claimant in a Lacey Act proceeding cannot raise the defense of "innocent owner,"[84] under which the claimant alleges that having done all that it could to prevent a violation of the Lacey Act, it cannot be held responsible for any violations which do occur. Although recognizing that no published opinion had addressed the innocent owner defense within the context of a Lacey Act proceeding, the court found support for its decision in the statute's legislative history, which describes the Lacey Act's forfeiture provision in terms of strict liability.[85]

The court also held that the claimant could not raise the Act of State defense[86] to preclude the court from scrutinizing whether an official at the Peruvian Department of Forest and Fauna had the authority to grant the disputed export license. While acknowledging the importance of the Act of State doctrine as a "prudential limitation . . . designed . . . to avoid harming relations with other nations,"[87] the court

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82. For an overview and discussion of the treaty, see *Symposium: The Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 5 B.U. INT'L L.J. 225 (1987).

83. 16 U.S.C. §§ 1531-1543 (1982). For an article which ties together the Lacey Act, CITES, and the Endangered Species Act, see Kosloff & Trexler, *The Convention on International Trade in Endangered Species: Enforcement Theory and Practice in the United States*, 5 B.U. INT'L L.J. 327 (1987).

84. *2,507 Live Canary*, 689 F. Supp. at 1117.

85. *Id.*

86. The Act of State Doctrine prohibits American courts from sitting in judgment on the actions taken by a foreign government. For a discussion of the doctrine, *see* Bazyler, *Abolishing the Act of State Doctrine*, 134 U. PA. L. REV. 325 (1986).

87. *2,507 Live Canary*, 689 F. Supp. at 1120.

found that CITES "*requires* member nations to ensure the validity" of all licenses which are issued."[88]

D. Intellectual Property

Issues of intellectual property arose in a variety of international settings during the subject period. In *U.S. Philips Corp. v Windmere Corp.*,[89] for example, the longstanding battle between the Norelco rotary razor and the Ronson rotary razor moved out of the marketplace and into the courtroom. According to the plaintiffs, American and Dutch companies who manufacture the Norelco razor, the defendants, American and Japanese companies who manufacture the Ronson razor, had committed patent infringement and engaged in unfair competition in designing and marketing their razor. The defendants counterclaimed, alleging that the plaintiffs' patent was invalid and that the plaintiffs had attempted to illegally monopolize the electric razor market in the United States. After the plaintiffs moved for and were granted a directed verdict on the defendants' counterclaim, a jury found for the plaintiffs on the patent infringement claim and against them on the unfair competition claim.

P & D International v. Halsey Publishing Co.[90] turned the court's attention from patent law to copyright law. The plaintiff, a Cayman Islands corporation, sued the defendants, an American corporation and a British corporation, for copyright infringement, unfair competition, and misappropriation. The defendants moved to dismiss the complaint for lack of subject matter jurisdiction, *forum non conveniens*, and failure to join an indispensable party.

The events leading up to the filing of the complaint grew out of a film produced and copyrighted by the plaintiff which was shown aboard the British defendant's ships. According to the plaintiff, a subsequent film was produced by the American defendant which incorporated, without permission, substantial portions of the plaintiff's film. This new film, the plaintiff asserted, was then shown without the plaintiff's consent aboard the British defendant's ships in place of the plaintiff's film.

The district court denied the defendants' motion. With respect to the question of subject matter jurisdiction, the court found that such jurisdiction was present because the plaintiff's film had been copy-

88. *Id.* (emphasis in original).
89. 680 F. Supp. 361 (S.D. Fla. 1987).
90. 672 F. Supp. 1429 (S. D. Fla. 1987).

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righted under the laws of the United States.[91] Although acknowledging that United States copyright law has no extraterritorial effect,[92] the court rejected the defendants' contention that the case was beyond the court's reach. Noting that the plaintiff had alleged that at least some of the infringing acts had occurred in the United States, the court held that "to the extent that part of an 'act' of infringement occurs within this country, although such act be completed in a foreign jurisdiction, those who contributed to the act within the United States may be liable under U.S. copyright law."[93]

The court then turned to the question of forum non conveniens and declined to grant the defendants' request to dismiss the case in favor of the United Kingdom. While admitting that "the Southern District of Florida is a heavily congested federal district,"[94] the court pointed to three factors which necessitated its retention of the case. First, unlike the United Kingdom, Florida had personal jurisdiction over both defendants. Second, Florida had a direct interest in the litigation since the initial allegedly infringing act had occurred in South Florida. Finally, the United States had a strong interest in seeing that its copyright laws were applied to protect "valuable property interests especially where infringements within United States borders are alleged."[95] Finding none of the defendants' remaining contentions to be valid, the court then ordered the suit to proceed.

The final two intellectual property cases during the surveyed period involved issues of trademark law. In *Louis Vuitton, S.A. v. After Dark Boutique*,[96] the plaintiff, a French company, sued the defendant and its principal to prevent their further sales of merchandise designed to look like that produced by the plaintiff. When the defendant's principal failed to appear at the trial, the court entered judgment in favor of the plaintiff. In addition to permanently enjoining the defendants from imitating or copying the plaintiff's trademark, the court also ordered the defendants to turn over to the plaintiff all items in their possession bearing the plaintiff's trademark, reimburse the plaintiff for the money it had spent on attorneys, and pay treble the profits which the defend-

91. *Id.* at 1432.
92. *Id.*
93. *Id.* at 1432-33.
94. *Id.* at 1434.
95. *Id.* at 1434-35.
96. 680 F. Supp. 1507 (N.D. Fla. 1988).

ants had collected through the sale of the counterfeit items.[97]

Lastly, in *Moishe's Inc. v. Moishe's Steak House & Seafood, Inc.*,[98] the defendants opened a restaurant in North Miami Beach using a name and a logo which were similar to that of a well-known Montreal steak house which had been in business for fifty years. When the Montreal restaurant learned of the existence of the North Miami Beach restaurant, it filed suit in Broward County and sought a temporary injunction to prevent what it saw as trademark infringement. The trial court denied the motion and the Montreal restaurant appealed.

The appellate court affirmed the trial court's denial of the motion. Persuaded that the Montreal restaurant had suffered no harm to its business, the appellate court pointed out that the North Miami Beach restaurant had taken steps to inform the public that it was not related to the Montreal restaurant. It also found that there was insufficient proof to establish that the Montreal restaurant had ever used its name in Florida and that there was no proof that the two restaurants were in competition with one another.[99]

E. Transportation

1. Airlines

There were several interesting aviation cases during the surveyed period.[100] In *Williams v. Brandt*,[101] a Cayman Island corporation was formed to purchase the residual rights in an Irish airplane for eventual sale to a Nigerian concern. A Bahamian corporation also was formed to hold the plaintiff's interest in the Cayman operation. When a dispute developed between the parties, the plaintiff filed suit in Miami, claiming that the defendants had violated the securities laws of the United States. The defendants then moved to have the case dismissed for lack of jurisdiction.

After first allowing the parties to engage in discovery limited to

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97. *Id.* at 1513.

98. 528 So. 2d 519 (Fla. 4th Dist. Ct. App. 1988).

99. *Id.* at 520.

100. In addition to the cases discussed in this section, the reader's attention also is drawn to Challenge Air Transport, Inc. v. Transportes Aereos Nacionales, S.A., 520 So. 2d 323 (Fla. 3d Dist. Ct. App. 1988) (dispute between an American airline and a Honduran airline regarding the former's agreement to honor tickets issued by the latter).

101. 672 F. Supp. 507 (S.D. Fla. 1987).

the jurisdictional issue, the court granted the defendants' motion. Finding that the parties had from the outset intended to engage in an offshore transaction, the court found that the "[p]laintiff cannot now contend that he may invoke the protections of U.S. laws for alleged wrongs stemming from this exclusively foreign deal-gone-sour."[102]

Venezolana Internacional de Aviacion, S.A. v. International Association of Machinists & Aerospace Workers, AFL-CIO[103] resulted in the strangest case of the surveyed period. VIASA, the national airline of Venezuela, filed an action against a union. When the union filed a motion to dismiss with a title that was 67 words long, the court sua sponte ordered the title reduced to 10 words. In explaining the need for action, the court quoted Alexander Pope, the 18th century essayist: "Words are like leaves; and where they most abound, Much fruit of sense beneath is rarely found."[104]

Pesquera Navimar, S.A. v. Ecuatoriana de Aviacion[105] returned the court to more serious matters. The plaintiff, an Ecuadorian company, shipped a quantity of frozen shrimp from Ecuador to Miami aboard one of the defendant's airplanes. The shrimp arrived damaged, leading the consignee to reject the shrimp and forcing the plaintiff to resell the shrimp at a substantial loss. When the plaintiff sued, the defendant moved for summary judgment on the ground that the plaintiff had failed to provide written notice of the loss to the defendant as required by the Warsaw Convention.[106]

The trial court denied the defendant's motion. Finding that the agent who collected the shrimp in Miami had made a notation on the air waybill which read "415 sof [sic] & wet . . . temp 36 degrees Catalina not responsible for damages or temp,"[107] the court found that the plaintiff had provided sufficient notice to the defendant.[108]

State v. Air Jamaica Ltd.[109] raised an interesting tax question. The defendants, foreign airlines which fly to and from Florida, challenged various provisions of the Florida tax laws. The airlines and the State subsequently entered into a written stipulation whereby it was

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102. *Id.* at 508.
103. 118 F.R.D. 151 (S.D. Fla. 1987).
104. *Id.*
105. 680 F. Supp. 1526 (S.D. Fla. 1988).
106. For a discussion of the Warsaw Convention, *see* Jarvis, *supra* note 1, at 578-79.
107. *Pasquera*, 680 F. Supp. at 1527.
108. *Id.*
109. 522 So. 2d 446 (Fla. 1st Dist. Ct. App. 1988).

agreed that the airlines could self-accrue the taxes during the pendency of the proceedings. Ultimately, the case was heard by the United States Supreme Court, which ruled in favor of Florida.[110] The state then sued to recover the tax as well as statutory interest. The airlines refused to pay the interest, claiming that the stipulations entered into by the State precluded it from collecting the interest. When the trial court agreed with the airlines, the State appealed.

The appellate court reversed the trial court and ordered the defendants to pay the interest. Reviewing the stipulations, the appellate court concluded that nothing in them could be construed as a waiver of the State's right to interest. The court also rejected the airlines' contention that by placing the money in the escrow accounts the money had passed to the State, and that as a result no interest was due. Finding that the money had remained under the control of the airlines while in the escrow accounts, the court concluded that the airlines had never paid the tax to the State.[111]

The final noteworthy aviation case of the period was *Garcia v. Public Health Trust*.[112] The plaintiff, a flight attendant employed by Iberia Airlines, the national airline of Spain, sued the airline and others for the inadequate care which he had received following an attack sustained while on a layover in Miami. The plaintiff brought his suit after he had recovered workers' compensation in Spain. Pointing to the plaintiff's recovery in Spain, Iberia moved for a dismissal of the plaintiff's suit against both itself and the Iberia medical employee who had attended the plaintiff. The district court, finding that a double recovery by the plaintiff would violate Florida workers' compensation statute, granted the airline's motion.

On appeal, the Eleventh Circuit affirmed. Although recognizing that Spanish law would permit a double recovery by the plaintiff, the appeals panel held that Florida's interest in the action, as evidenced by the fact that both the attack and the subsequent medical care had been administered in Florida, made the application of Florida law proper.[113] And while the court agreed with the plaintiff that Iberia might not qualify as an employer under Florida law, it refused to consider the

110. *See* Department of Revenue v. Wardair Canada, Ltd., 455 So. 2d 326 (Fla. 1984), *aff'd*, 477 U.S. 1 (1986), and Department of Revenue v. Air Jamaica, Ltd., 455 So. 2d 324 (Fla. 1984), *appeal dismissed*, 477 U.S. 901 (1986).

111. *Air Jamaica*, 522 So. 2d at 449.

112. 841 F.2d 1062 (11th Cir. 1988).

matter because the plaintiff had failed to make this argument while before the trial court.[114]

2. *Automobiles*

There were three cases during the surveyed period which raised questions in connection with the use of automobiles. In *Avis Rent-A-Car Systems, Inc. v. Abrahantes*,[115] the plaintiffs, a group of Miami residents who were injured when they were thrown from a rented jeep while on vacation in the Cayman Islands, brought suit in Dade County against the rental car company. After the trial court refused to permit the defendants to plead and prove that the accident was governed by the law of the Cayman Islands,[116] a jury found in favor of the plaintiffs. The defendant and its insurer then appealed.

The appellate court reversed and remanded the case for a new trial. Finding that the accident had occurred in the Cayman Islands, that the jeep had been rented in the Cayman Islands from a Cayman Islands rental car company, and that the rental contract referenced Cayman law, the appellate court ruled that the lower court had erred in declining to apply Cayman law.[117]

The next automobile case raised a very different question. In *Sims v. State*,[118] the owner of an imported vehicle sued the Florida Department of Highway Safety and Motor Vehicles. Under the rules of the Department, owners of imported cars may acquire title and vehicle registration certificates only after they have obtained documentation from the federal government which shows that their cars meet federal emission and safety standards. While this requirement is easily met in the case of foreign automobiles which are manufactured to comply with United States pollution and crashworthiness rules, it poses a significant problem when a person such as the plaintiff buys a foreign car which was built in a foreign country for sale in that country.[119] Such cars are

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114. *Id.* at 1066-7.

115. 517 So. 2d 25 (Fla. 3d Dist. Ct. App. 1987).

116. Despite wanting to grant the defendant's request, the trial court believed it was bound by a contrary ruling made by the judge previously assigned to the case. *Id.* at 26.

117. *Id.* at 27.

118. 832 F.2d 1558 (11th Cir. 1988).

119. The plaintiff purchased a 1976 Mercedes-Benz 450 SEL from a resident of Bonn, West Germany. Since the car had been manufactured in West Germany for sale in West Germany, it did not meet American standards. For a further discussion of the

typically referred to as "grey market" cars.[120]

Under regulations promulgated by the federal government, a nonconforming car may be conditionally admitted into the United States if the importer posts an entry bond with the United States Customs Service in an amount equal to the value of the car plus the customs duty. Once in the country, the car must be modified so as to meet the federal standards. If the modifications are made, the Customs Service releases the bond. As a further check on the importation of grey market cars, the Florida Legislature in 1984 enacted a statute[121] which prevents a motor vehicle from being titled and registered prior to certification by the federal government that all applicable emission and safety standards have been met.

The plaintiff's car was shipped from Bonn to Jacksonville. Upon arrival in Jacksonville, the plaintiff posted the necessary bond and caused the car to be modified so as to meet all federal regulations. Nevertheless, she was unable to acquire Florida title and registration certificates because she did not have the necessary federal forms indicating that her car was now in compliance. Her inability to produce the required paperwork was caused by a backlog of work at the United States Department of Transportation, which at the time was attempting to review 14,000 compliance forms.

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facts surrounding the case, *see* Cohen, *Florida Couple Battle Red Tape for Imported Car*, Ft. Lauderdale Sun-Sentinel, June 8, 1988, at 3A, col. 2.

120. Gray market goods are articles whose importation into a given country violates copyright and trademark rights which have been secured legally by third parties. *See further* Staaf, *The International Gray Market: The Nexus of Vertical Restraints, Price Discrimination and Foreign Law*, 19 U. MIAMI INTER-AM. L. REV. 37 (1987). As last year's survey closed, the subject of gray market goods had reached the United States Supreme Court in a case known as K Mart Corp. v. Cartier, Inc. *See* Jarvis, *supra* note 1, at 572 n.69. The Court's eagerly awaited decision was delivered on May 31, 1988, and upheld, by a vote of 5 to 4, the Customs Services's rules which permit such goods to be imported into the United States. *See* 108 S. Ct. 1811 (1988). *See generally* Joelson & Griffin, *'Gray Market' Goods: US Supreme Court Decides*, 16 INT'L BUS. LAW. 346 (1988); Taylor, *High Court Backs Selling of Imports on 'Gray Market'*, N.Y. Times, June 1, 1988, at 1, col. 1 (nat'l ed.); Young, *Court Upholds Customs Rules Permitting 'Gray Market' Imports*, J. Com., June 1, 1988, at 1, col. 2; *Top Court Allows Sale of Lower-Priced Imports*, Ft. Lauderdale Sun-Sentinel, June 1, 1988, at 4A, col. 1. Although some commentators hailed the decision, *see, e.g.*, Barmash, *Gray Market Ruling Expected to Stabilize Prices*, N.Y. Times, June 1, 1988, at 34, col. 1 (nat'l ed.), others complained that the decision left too many unanswered questions. *See, e.g.*, Palladino, *Court Fails to Clear Fog Shrouding Gray Market*, Manhattan Law., July 5-11, 1988, at 16, col. 1.

121. FLA. STAT. § 320.02(9) (1985).

Unable to drive her car because of the lack of title and registration certificates, the plaintiff, together with an import trade association, brought suit against the state on the grounds that its refusal to title and register her car was a violation of federal law and an impermissible burden on foreign and interstate commerce. The district court agreed, found the Florida statute unconstitutional, and enjoined its enforcement.

On appeal to the Eleventh Circuit, the district court's judgment was affirmed in part and remanded. After finding that the plaintiffs had standing to contest the statute, the court held that the Florida statute was preempted by the federal Clean Air Act,[122] which expressly prohibits any state from adopting or attempting to enforce emission standards. The appellate court also found the Florida statute violative of the federal commerce clause.[123] Nevertheless, the panel ruled that the case had to be remanded to the trial court so that it could consider the state's assertion of sovereign immunity under the eleventh amendment.[124]

In a thoughtful dissent, Circuit Judge Tjoflat argued that the Florida statute was constitutional. Finding the statute to be neither preempted by federal legislation nor a burden on commerce, Judge Tjoflat concluded that, "There simply is no rational, legal reason why an importer would be discouraged from importing a gray market automobile into Florida as opposed to another state."[125]

The final automobile case of the period was *State v. Book*.[126] Like *Sims*, it too involved a grey market Mercedes-Benz. The defendant had purchased the car for $44,000. After it was stolen from Miami International Airport in December 1985, he provided his insurance company with an affidavit in which he stated that the car had been purchased for $50,000. Based on a fraudulent invoice which the defendant later obtained from the seller, the insurance company settled the claim for $54,500, which it subsequently reduced to $48,010.25.

When the true facts came to light, the defendant was charged with grand theft, the filing of a false insurance claim, and perjury. The trial

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122. 42 U.S.C. § 7522 (1982).

123. *Sims*, 832 F.2d at 1569-70.

124. *Id.* at 1570.

125. *Id.* at 1582. Judge Tjoflat's view may still carry the day. By the time the surveyed period came to a close, the Eleventh Circuit had voted to vacate the panel's decision and had agreed to rehear the case en banc. *See* 840 F.2d 778 (11th Cir. 1988).

126. 523 So.2d 636 (Fla. 3d Dist. Ct. App. 1988).

court, however, dismissed the grand theft and insurance indictments. On appeal, the key question turned on whether the defendant's misstatement as to the price he had paid for the car was material. Recognizing that grey market vehicles do not have a readily ascertainable market value, the court decided to look at the price actually paid by the defendant. Finding that price to be dispositive, it wrote in part: "What an insured buyer pays for a somewhat unique item indicates what he believes is the item's fair market value. . . ."[127] Since the amount paid by the defendant was less than that subsequently claimed by him, the court reinstated the dismissed counts and remanded the case for trial.

3. *Steamships*

There were three cases during the subject period which involved steamships. In *Chantier Naval Voisin v. M/Y Daybreak*,[128] two French marine repair contractors brought suit against a yacht to recover for services and materials which they had rendered to the yacht while she had been in France. The yacht, which was registered under the laws of Panama, had sailed from France to Spain and then to the United States, finally coming to rest in Fort Lauderdale. Because the plaintiffs sued in the United States, they claimed that their rights were governed by American maritime law. The defendant, pointing to the fact that the work had been contracted for and performed in France, argued that French law should apply. The varying positions taken by the parties stemmed from the fact that the plaintiffs' rights against the vessel were greater under American law than under French law.

After a careful review of both laws, the district court found that the plaintiffs' rights grew out of and therefore were governed by French law. The court stressed, however, that its finding did not require it to divest itself of the case nor did it require an application of French procedural law.[129] The court also held that although the plaintiff had billed the defendant in French francs, the court was obliged to issue its judgment in American dollars using the exchange rate in effect on the day of the court's judgment.[130] After disposing of the claims of several

127. *Id.* at 638.
128. 677 F. Supp. 1563 (S.D. Fla. 1988).
129. *Id.* at 1569.
130. *Id.* at 1571-72. The rule that American courts must issue their judgments in American dollars, as well as the problems which the rule has spawned, is discussed in

intervening plaintiffs, whose claims arose from services provided to the yacht while in Florida, the court granted to the French plaintiffs a portion of the amount claimed by them.

Tamblyn v. River Bend Marine, Inc.[131] raised another question growing out of the application of American maritime law to a foreign plaintiff. In *Tamblyn*, the plaintiff sued to set aside the sale of a vessel on which he held a mortgage. The defendant had purchased the vessel at a judicial sale which was held to satisfy a lien which the defendant had asserted against the vessel. The district court denied the plaintiff's claim, finding that the sale had been held in accordance with United States maritime law.

The plaintiff, a Canadian citizen, argued that he had never been given personal notice of the planned sale and stated that he had not seen the Florida newspaper in which the notice had been placed. The Eleventh Circuit, although extending its sympathy to the plaintiff, affirmed the dismissal of the plaintiff's suit, writing in part that, "[While w]e sympathize with appellant, a Canadian citizen who did not read the Florida paper that published the notice . . . we cannot find any grounds for setting aside the . . . proceedings . . . [because the plaintiff] received all the notice due him by law."[132]

The final noteworthy shipping case was *State Establishment for Agricultural Product Trading v. M/V Wesermunde.*[133] The plaintiff had shipped a cargo of fresh eggs aboard the Wesermunde from Tampa to Aqaba, Jordan. Although the vessel arrived safely in Aqaba, a fire destroyed the eggs before they could be discharged from the ship. The plaintiff then sued the vessel, her owners, operators, and liability underwriter in Florida. The defendants, in turn, moved to have the proceedings stayed while the case was heard in arbitration in London pursuant to the arbitration agreement contained in the bills of lading under which the eggs had been transported.

The plaintiff argued that the arbitration agreement was invalid because it violated the United States Carriage of Goods by Sea Act (COGSA),[134] which invalidates any term or condition of a contract

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Jarvis, *supra* note 1, at 563-64.

131. 837 F.2d 447 (11th Cir. 1988).

132. *Id.* at 448.

133. 838 F.2d 1576 (11th Cir.), *cert. denied sub nom.* United Kingdom Mutual Steamship Assurance Ass'n (Bermuda) Ltd. v. State Establishment for Agricultural Product Trading, 109 S. Ct. 273 (1988).

134. 46 U.S.C. §§ 1300-1315 (1982).

which lessens the liability of the shipowner. The district court, disagreeing with the plaintiff's interpretation of COGSA, found that the plaintiff had delayed its prosecution of the case and dismissed the case with prejudice.

On appeal, the Eleventh Circuit found that an arbitration clause requiring a plaintiff to arbitrate in London a claim arising out of a shipment from the United States to Jordan did violate COGSA.[135] It also found that the plaintiff had not delayed prosecution of its case, but had merely chosen to seek a reversal of the district court's opinion rather than accept its order to arbitrate in London.[136] The Eleventh Circuit then ordered the district court's decision vacated and the plaintiff's case reinstated and remanded for trial.

IV. Human Rights

A. Immigration

Like the year which preceded it, the surveyed year produced numerous immigration cases.[137] None, however, attracted more attention

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135. *State Establishment*, 838 F.2d at 1580-82.

136. *Id.* at 1582-83.

137. Much of the surveyed period's immigration news concerned the implementation of the Immigration Reform and Control Act of 1986 (IRCA). As part of its unprecedented provisions, IRCA authorized a one year program to persuade up to 4 million illegal aliens to apply for legal status and required massive reforms in the documenting of alien farm workers, who are known as Seasonal Agricultural Workers (SAWs). As the surveyed period came to a close, the legalization program was being lamented as a failure because only 2 million persons had applied for amnesty, see Hill-Morgan, *Aliens Flood Offices to Beat Deadline*, Ft. Lauderdale Sun-Sentinel, May 5, 1988, at 1B, col. 1, while the SAW program was grinding to a halt due to a massive Florida class action suit which claimed that the government's concern about fraud had led to the imposition of unreasonable review requirements. *See* Nordheimer, *Judge Backs Alien Farm Workers And Rules I.N.S. Too Restrictive*, N.Y. Times, Aug. 24, 1988, at 13, col. 5 (nat'l ed.), and Stromberg, *Judge Rules in Favor of Alien Farm Workers*, Ft. Lauderdale Sun-Sentinel, Aug. 23, 1988, at 3B, col. 2. The suit was brought after Florida's farmers became concerned that the new policies would make it difficult to find enough workers to tend the fields. *See* Nordheimer, *Aliens Rush to Farmhands' Amnesty*, N.Y. Times, July 17, 1988, at 8, col. 1 (nat'l ed.), and Altaner, *INS Alien Policy May Hurt State's Farmers*, Ft. Lauderdale News/Sun-Sentinel, May 1, 1988, at 8A, col. 1.

The remaining immigration news of the surveyed period focused on heartbreaking stories of people attempting to enter or stay in Florida. *See, e.g.*, Stromberg, *Ailing Immigrant Gets 90-Day Deportation Reprieve*, Ft. Lauderdale Sun-Sentinel, July 28, 1988, at 4B, col. 1; Marcus, *Hard Amnesty Cases Promise Costly Appeals*, Palm

than *Florida Bar v. Matus*.[138] Holding himself out to be qualified to prepare and process immigration forms, the respondent had made a living by providing such services for a fee to illegal aliens living in Miami. Despite the fact that he was not an attorney and was not authorized by federal law to engage in such activities, the respondent regularly advertised his services in a Spanish-language publication circulated in Miami.

In an effort to put an end to the respondent's activities, The Florida Bar investigated the respondent[139] and then sued him for engaging in the unauthorized practice of law. When the respondent failed to contest the charges, the Florida Supreme Court issued an order enjoining the respondent from engaging in further immigration assistance activities.

As part of its rationale for enjoining the respondent, the supreme court found that the respondent's lack of legal training could result in great harm to his clients, including the possibility of deportation.[140] But as the facts in *State v. Sallato*[141] demonstrated, legal training is not necessarily enough.

The defendant in *Sallato* pled guilty to a crime after first being assured by his attorney that the plea would have no effect on his chances of remaining in the United States and becoming an American citizen. When the defendant later realized that this advice was incorrect, he moved to have the plea vacated. The trial court permitted the

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Beach Rev., July 19, 1988, at 3, col. 1; Miller, *The Odyssey of Satera Teresias*, Ft. Lauderdale News/Sun-Sentinal, May 8, 1988, at 1E, col. 2 (reporting on the legal battles surrounding a baby girl born aboard a United States Coast Guard ship just hours after the Coast Guard had detained the refugee vessel on which her mother had been sailing from Haiti to Florida).

138. 528 So. 2d 895 (Fla. 1988).

139. As part of its inquiry, The Florida Bar sent an investigator to the defendant's office who:

> indicated to Respondent that he wished to obtain permanent residence status for his girlfriend who had entered the United States illegally from Peru in 1980. Respondent informed [the investigator that he] . . . [c]ould complete the documentation required by the new amnesty program for a fee of two hundred and fifty (250) dollars.

Id. at 895-96.

140. *Id.* at 896. For a further discussion of the case, *see Court Orders Notary to Halt Immigration Practice*, Palm Beach Rev., June 7, 1988, at 9, col. 4, and Orrick, *Supreme Court Gives Guidance on Immigration UPL*, Fla. B. News, June 1, 1988, at 11, col. 1.

141. 519 So. 2d 605 (Fla. 1988).

plea to be stricken, and the appellate court affirmed. On appeal, the Florida Supreme Court quashed the affirmance.

The supreme court began its opinion by noting that the appellate court's affirmance was based on cases which recently had been disapproved of by the supreme court.[142] Reaffirming its earlier decision that a defendant does not receive ineffective counsel when he is not told that a guilty plea might result in deportation,[143] the supreme court recognized that this standard might not be appropriate in situations in which the defendant had asked about the potential effect. Accordingly, the supreme court remanded the case to the trial court to determine whether a different rule should apply in cases where the defendant has received "positive misadvice" from its trial counsel.[144]

The effect that a conviction may have on an alien's ability to remain in the United States also received judicial consideration in *United States v. Fadahunsi*.[145] Tony O. Fadahunsi, an alien who had been deported from the United States in 1981, was found in the United States several years later. Following his arrest, the defendant was tried for having violated a provision in the immigration laws[146] which prohibits the reentry of any person who has been previously deported unless the express consent of the United States Attorney General is obtained prior to the reentry.

As part of his defense, the defendant attempted to attack the validity of his 1981 deportation. The trial court ruled, however, that the previous deportation could not be collaterally attacked. After being found guilty, the defendant appealed to the Eleventh Circuit, which upheld the conviction.[147]

Several months after the Eleventh Circuit's decision, the United States Supreme Court ruled that prior deportations could be collaterally attacked.[148] As a result, the Eleventh Circuit vacated its affirmance of the trial court's conviction of Mr. Fadahunsi and remanded the case for further consideration.[149]

The government urged the trial court to ratify its earlier convic-

142. The cases referred to were Ginebra v. State, 498 So. 2d 467 (Fla. 3d Dist. Ct. App. 1986), and Edwards v. State, 393 So. 2d 597 (Fla. 3d Dist. Ct. App. 1981).
143. *See* State v. Ginebra, 511 So. 2d 960 (Fla. 1987).
144. *Sallato*, 519 So. 2d at 606.
145. 674 F. Supp. 862 (S.D. Fla. 1987).
146. 8 U.S.C. § 1326 (1984).
147. 806 F.2d 1068 (11th Cir. 1986).
148. *See* United States v. Mendoza-Lopez, 481 U.S. 828 (1987).
149. 822 F.2d 63 (11th Cir. 1987).

tion without a new trial. The trial court refused this request, however, finding that Mr. Fadahunsi was entitled to a new trial in which he would be given the opportunity to challenge the validity of his prior deportation.[150]

The relationship between past misdeeds and future status also set the stage for *Arauz v. Rivkind*.[151] The petitioner, a citizen of Nicaragua, left that country after the fall of the Somoza government in 1979. Signing aboard as a crewman on an American ship, he travelled to the United States and was granted a crewman's visa which obligated him to leave the United States aboard his ship. Once in the United States, however, the petitioner slipped away from his ship and soon was joined by his wife, mother, and five brothers.

Four years later, the petitioner was working on an American fishing boat. While in international waters the boat was intercepted by a United States Coast Guard cutter, which discovered more than two tons of marijuana aboard the fishing vessel. As a result of his participation in the operation, the petitioner served twenty months in jail.

Following the petitioner's release from jail, the government won an order to have him deported to Nicaragua on the grounds that his smuggling conviction made him a danger to the community. In response, the petitioner filed a habeas corpus petition to challenge the order. Although the district court found the deportation order proper, it held that the immigration judge had not considered with enough care the petitioner's alternative request that he be granted political asylum in the United States because of what might happen to him if he were to return to Nicaragua. On appeal, the Eleventh Circuit affirmed the district court's decision.

The Eleventh Circuit explained that although the narcotics offense did make the petitioner a danger to the United States, it was merely one factor to be considered in connection with the petitioner's request for political asylum. Thus, like the district court, the Eleventh Circuit

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150. *Fadahunsi*, 674 F. Supp. at 863. One month after the trial court's decision, the subject of deportation splashed across Florida's newspapers when it was reported that Anthony Magliulo faced deportation to Italy for a variety of offenses, including passport falsification. The June 1987 disappearance of Mr. Magliulo's four-year-old daughter Julie, and the resulting manhunt which was mounted to find her, had caused the South Florida family to become public celebrities. *See* Tolpin, *Missing Girl's Father Faces Deportation*, Ft. Lauderdale Sun-Sentinel, Jan. 6, 1988, at 3B, col. 5, and Thompson & Krause, *Julie's Father Charged with Passport Lies*, Ft. Lauderdale Sun-Sentinel, Jan. 1, 1988, at 3B, col. 2.

151. 845 F.2d 271 (11th Cir. 1988).

ruled that both the immigration judge and the Board of Immigration Appeals had been wrong to deny the petitioner's asylum request solely on the grounds of his narcotics conviction.[152]

The final immigration case of note during the year was *United States v. Garcia*.[153] In yet another case stemming from the 1980 Freedom Flotilla, in which numerous ships sailed from Key West to the Cuban port of Mariel and returned with thousands of Cuban nationals,[154] the Eleventh Circuit found that District Judge Hastings had acted rashly when he decided *sua sponte* to dismiss the sixty-two civil collection suits which had been assigned to him. The suits were among the hundreds that had been instituted by the government to enforce administrative fines which had been assessed against the shipowners that had participated in the flotilla.[155] Finding that the government's complaint failed to state a claim, Judge Hastings had dismissed all of the suits in a boiler plate order which gave the government thirty days to amend its complaint. After permitting the thirty days to expire, the government appealed to the Eleventh Circuit. When the Eleventh Circuit dismissed the appeal for lack of jurisdiction, the government tried without success to convince Judge Hastings to reverse himself. The government then appealed again to the Eleventh Circuit. This time, the Eleventh Circuit found that it had jurisdiction because the expiration of the District Court's thirty day period made the dismissal order final for purposes of appeal.[156]

Having established its right to hear the appeal, the Eleventh Circuit next considered what should be done about the dismissal of the suits. Disturbed by the government's decision to treat all sixty-two cases as though they were identical, the Eleventh Circuit reviewed every case and placed each into one of fifteen different categories. The categories were divided according to certain key factors, including whether service had been made in the case on one, none, or all of the defendants; whether any motions were pending at the time of the district court's dismissal order; whether a default judgment had been applied for; and whether the United States had improperly interpreted

152. *Id.* at 276.

153. 844 F.2d 1528 (11th Cir. 1988).

154. For a review of the events leading up to and surrounding the sailing of the Freedom Flotilla, *see* Jarvis, *supra* note 1, at 592.

155. Approximately 900 such suits were filed in the Southern District of Florida. As a result, each of the active judges in the District were assigned between sixty and ninety of the cases. *Garcia*, 844 F.2d at 1530.

156. *Id.* at 1531.

the provision under which the fine had been assessed. Once categorized, the Eleventh Circuit remanded all of the cases to Judge Hastings with instructions.[157]

B. National Treatment

In a number of cases during the year, parties claimed that their rights had been violated because of their national origin.[158] The most important of these cases was *Zaklama v. Mt. Sinai Medical Center*.[159] In July 1981, the plaintiff, a foreign medical graduate from Egypt, began a one year residency program with Jackson Memorial Hospital in Miami. As part of the program, the plaintiff was to work at four local hospitals for three months at a time. In October 1981 the plaintiff began a three-month cycle at the defendant hospital. In December 1981, following poor evaluations by its staff, the defendant barred the plaintiff from continuing to work under its supervision. As a result of this incident, the plaintiff was dismissed from the Jackson Memorial residency program.

The plaintiff subsequently brought suit against both Jackson Memorial and the defendant, claiming that he had been discriminated against because he was Egyptian. The district court dismissed the complaint as to Jackson Memorial, and the case proceeded to trial against the defendant. Following a three day jury trial, the plaintiff was awarded $85,000 in compensatory damages and $50,000 in punitive damages. When the defendant's motion for judgment notwithstanding the verdict was granted, the plaintiff appealed.

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157. *Id.* at 1533-37. Ironically, just a month before the Eleventh Circuit issued its opinion, it was announced that the United States and Cuba finally had reached an agreement which would provide for an orderly departure of Cubans to the United States. The stated purpose of the agreement was to ensure that incidents like the Freedom Flotilla would not be repeated. *See Cuba Quietly Ships Inmates to U.S. Exile*, Ft. Lauderdale Sun-Sentinel, July 24, 1988, at 6A, col. 1, and *Cuban Influx to Start: 10,000 Refugees to Leave Island*, Ft. Lauderdale Sun-Sentinel, Apr. 24, 1988, at 1A, col. 5.

158. *See, e.g.*, Avila v. Coca-Cola Co., 849 F.2d 511 (11th Cir. 1988) (plaintiff claimed that he had been denied a promotion because he was Cuban); Rodriguez v. Tisch, 688 F. Supp. 1530 (S.D. Fla. 1988) (plaintiff claimed that he was dismissed from his job with the postal service because of his Hispanic background); and Equal Employment Opportunity Comm'n v. Carolina Freight Carriers Corp., 686 F. Supp. 309 (S.D. Fla. 1988) (individual claimed that he was not hired due to his Hispanic background).

159. 842 F.2d 291 (11th Cir. 1988).

The Eleventh Circuit reversed the trial court's decision and remanded the case with instructions to reinstate the jury verdict. Finding that the jury's verdict was supported by substantial evidence, the appellate court chided the trial court for having substituted its judgment for that of the jury.[160]

Another foreign medical school graduate fared less well. In *Servi-ansky v. Department of Professional Regulation*,[161] the plaintiff, a foreign medical school graduate, applied for but was turned down for a medical license. He then sued the Board of Medicine, claiming that although he did not qualify under the statutory subsection which refers to foreign medical school graduates, he did qualify under a different statutory provision which refers to those who are licensed by examination in the United States. Neither the trial court nor the appellate court agreed with the plaintiff. Since the plaintiff had been educated outside the United States, they found that unless the plaintiff could meet the standards set forth for graduates of foreign medical schools, he was not entitled to a license.[162]

Doctors were not the only ones who claimed to have been discriminated against. In *Irizarry v. Palm Springs General Hospital*,[163] the plaintiff, a nurse, claimed that she had been discriminated against by the defendant because she was Puerto Rican. The plaintiff had been hired in 1981 by the defendant as a nurse and had been given subsidized housing as part of her employment contract. She was terminated and lost her housing several years later after having failed to pass the Florida examination for licensing as a Registered Nurse, as required by her employment contract.

Despite two years of discovery, the plaintiff was unable to provide evidence that her termination was due to any reason other than her failure to pass the licensing examination. As a result, the trial court granted the defendant's motion for summary judgment.[164] At the same time, the court rejected the plaintiff's alternative contention that she had been discriminated against because of her Puerto Rican husband's dark skin, finding that this allegation did not constitute a discrete

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160. *Id.* at 295. For a further discussion of the Eleventh Circuit's decision, see Marcus, *11th Circuit Reinstates Bias Award*, Miami Rev., Apr. 28, 1988, at 1, col. 1.

161. 523 So. 2d 772 (Fla. 3d Dist. Ct. App. 1988).

162. *Id.*

163. 680 F. Supp. 1528 (S.D. Fla. 1988).

164. *Id.* at 1530-31.

offense.[165]

There were also a number of cases during the year involving the use, as well as the non-use, of the English language by non-native speakers. The most noted case of this kind was *In re Advisory Opinion to the Attorney General*,[166] in which the Florida Supreme Court ruled in a *per curiam* opinion that the question of whether English should be made the official language of Florida had been phrased in a proper manner and therefore could be placed on the November 1988 ballot.[167] But there were other language cases, with more immediate consequences, which were less publicized.

In *Quintana v. State*,[168] the Second District Court of Appeal held that it was error for the trial court to sentence a Spanish-speaking defendant without an interpreter since an interpreter had been present at the trial. As a result, the appellate court ordered the defendant to be resentenced. But in *United States v. Bennett*,[169] the Eleventh Circuit found no violation of the federal Court Interpreters Act[170] when three Spanish-speaking defendants being tried together were assigned one joint interpreter instead of the three separate interpreters they had requested.

Other language cases stemmed from the problem of English-speaking police officers who were unable to communicate with non-

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165. *Id.* at 1529.

166. 520 So. 2d 11 (Fla. 1988). For a further report on the case, *see* Lassiter, *'Official Language' Vote OK'd*, Ft. Lauderdale Sun-Sentinel, Feb. 5, 1988, at 13A, col. 1.

167. The drive to make English the official language of Florida left many with a bitter taste in their mouths and led to claims that the campaign was racially motivated. *See, e.g., Miami Leaders Join to Deflate English-Only Bid*, Ft. Lauderdale Sun-Sentinel, June 21, 1988, at 7B, col. 1.; *English-Only Foes Push Spanish Plan*, Ft. Lauderdale News/Sun-Sentinel, Apr. 9, 1988, at 19A, col. 1; Marcus, *English Drive Called Racially Motivated*, Ft. Lauderdale News/Sun-Sentinel, Jan. 9, 1988, at 14A, col. 1; Lassiter, *English-Only Campaign No Tongue-in-Cheek Effort*, Ft. Lauderdale News/Sun-Sentinel, Jan. 3, 1988, at 1G, col. 1. While the petition battle wore on, the Paradise Towers co-op in Hallandale caused outrage in the Hispanic community by attempting to enforce a rule requiring all new renters and owners to prove that they could speak English. *See* Jung, *English Speaking Rule Sparks Flap*, Ft. Lauderdale Sun-Sentinel, Mar. 4, 1988, at 1B, col. 2. After a bout of adverse publicity, the co-op's board rescinded the rule. *See* Jung, *Hispanics Call Off Picketing: Hallandale Complex Drops Language Rule*, Ft. Lauderdale Sun-Sentinel, Mar. 11, 1988, at 1B, col. 5.

168. 520 So. 2d 313 (Fla. 2d Dist. Ct. App. 1988).

169. 848 F.2d 1134 (11th Cir. 1988).

170. 28 U.S.C. §§ 1827-1828 (1982).

English speaking suspects. In *Augustine v. State*,[171] for example, the appellate court found no violation of the defendant's rights when a police officer testified that the defendant had failed to answer when asked about the contents of a box which turned out to contain crack. The defense moved for a mistrial on the grounds that the testimony was a comment on the defendant's right to remain silent. The motion was denied and the defendant was found guilty. On appeal, the appellate court held that although the testimony was an impermissible comment, it was harmless error due to the fact that the jury knew that the defendant could neither speak nor understand English.[172]

The problem of criminal defendants who do not understand English proved particularly vexing for the First District Court of Appeal. In *Acosta v. State*,[173] it found that the defendant had not consented to a search of his automobile. Although the officer who had questioned him realized that the defendant was having trouble communicating in English, the officer did not advise the defendant of his right to refuse consent nor did he attempt to bring an interpreter to the scene. Two weeks later, however, in *Rodriguez v. State*,[174] the court found that the defendant had given a valid consent to have his automobile searched. While the defendant was of Spanish descent and was conversant in Spanish, the court found that there was no evidence that the defendant had difficulty communicating in English.

But language problems could arise even when the police officer spoke the same language as the suspect. In *Gomez v. State*,[175] the defendant was found guilty of trafficking in cocaine. On appeal, he challenged the fact that the officer had asked him where he was from, following a valid traffic stop. The officer was prompted to ask the question because the defendant's Spanish accent differed from that of the officer's Cuban accent. When the defendant answered that he was from Colombia but that his immigration papers were home, the defendant was taken into custody and a search of his home was made in the pres-

171. 523 So. 2d 691 (Fla. 2d Dist. Ct. App.), *rev. denied*, 531 So. 2d 167 (Fla. 1988).

172. *Augustine*, 523 So. 2d at 693. The decision prompted a strong dissent from Acting Chief Judge Schoonover, who wrote, "After a close examination of the permissible evidence . . . I cannot say that the state has met its heavy burden of establishing beyond a reasonable doubt that the comment . . . did not affect the verdict." *Id.* at 695.

173. 519 So. 2d 658 (Fla. 1st Dist. Ct. App.), *rev. denied*, 529 So. 2d 695 (Fla. 1988).

174. 519 So. 2d 1079 (Fla. 1st Dist. Ct. App. 1988).

175. 517 So. 2d 110 (Fla. 3d Dist. Ct. App. 1987).

ence of an immigration officer. Based on these facts, the appellate court refused to reversed the defendant's conviction.

The issue of language was not confined to criminal cases. In *Bertrand v. Jorden*,[176] the defendant, an employer of Haitian migrant workers, was found to have violated the law by failing to post in Creole the terms and conditions of their employment, as required by the Farm Labor Contractors Registration Act.[177] Similarly, in *Lee v. Chung*,[178] the plaintiffs sought to reform a business lease written in English on the grounds that they did not read or speak English. The defendants responded by making a motion to have the complaint dismissed for failure to state a claim. The trial court dismissed Count II of the complaint and gave the plaintiffs fifteen days to amend Count I. Unfortunately, the plaintiffs' attorney failed to amend the complaint in time, leading to a dismissal of the plaintiffs' entire claim.[179]

V. Jurisdiction and Procedure

Although almost any matter which involves a foreign party can lead to questions of jurisdiction and procedure, such questions normally are filtered through the underlying facts of the case. There were two decisions during the surveyed period, however, in which the subjects of jurisdiction and procedure were considered apart from the merits of the action.

The first such case was *Citrexsa, S.A. v. Landsman*.[180] When a commercial dispute arose between the parties, the defendants, residents of Mexico, contacted the plaintiffs and proposed that a settlement conference be held. The plaintiffs agreed and suggested that the parties meet in the Miami offices of the plaintiffs' attorney.

Prior to the arrival of the defendants, the plaintiffs filed a complaint and procured a summons. When the defendants arrived for the conference, a deputy sheriff served copies of the complaint and the summons on the defendants. The defendants filed a motion to quash the service on the grounds that it had been obtained by trickery. When the trial court denied their motion, the defendants filed an appeal.

The appellate court reversed the trial court's decision and re-

176. 672 F. Supp. 1417 (M.D. Fla. 1987).
177. 7 U.S.C. § 2045(e) (1982).
178. 528 So. 2d 1313 (Fla. 2d Dist. Ct. App. 1988).
179. *Id.* at 1316.
180. 528 So. 2d 517 (Fla. 3d Dist. Ct. App. 1988).

manded the case with instructions to enter an order quashing the service. The appellate court rejected the plaintiffs' contention that the service was valid because the plaintiffs had never told the defendants that they would not be served with process. Instead, the court found that the plaintiffs' calculated decision to file the complaint, to cause the summons to be issued, to suggest that the meeting be held in their attorney's office, and to arrange for service to be made prior to the start of the settlement conference demonstrated that the plaintiffs never had any intention to engage in earnest settlement discussions. As such, the court held that the defendants had been lured into Florida under a pretense which made the service void.[181]

The second such case was *Bonizo Properties N.V. v. Schroeder*.[182] In that case, the appellate court was asked to rule on whether the trial court had acted properly when it had ordered the defendants to turn over promissory notes and a mortgage located outside the United States for execution in Florida. After noting that the issue was moot because the defendants had in the interim posted a cash supersedeas bond, the appellate court stated that had it been forced to decide, it would have answered the question in the affirmative.[183]

VI. Marriage

A. Foreign Antenuptial Agreements

In *Gustafson v. Jensen*,[184] a premarital agreement was executed in Denmark between a citizen of Denmark (the wife) and a resident of the United States (the husband). Following a wedding in Denmark, the couple moved to Florida where the husband, a native of the Virgin Islands, had opened a furniture business in Coral Gables. Although the business flourished and the marriage produced two daughters, the wife filed a petition for dissolution of marriage after twenty years of marriage due to her husband's alcoholism.

At trial, the husband contended that the terms of the premarital agreement should control. Under the agreement all property brought to the marriage or acquired during it was to be considered the sole property of the partner who earned or acquired it. The agreement, which

181. *Id.* at 518.
182. 528 So. 2d 1304 (Fla. 4th Dist. Ct. App. 1988).
183. *Id.* at 1305.
184. 515 So. 2d 1298 (Fla. 3d Dist. Ct. App. 1987).

made no provision for the wife in the event of a divorce, had been signed in 1964, when the wife was 24 years old, had a high school education, was working as a hairdresser and living at home, and the husband was 40 years old, a graduate engineer, and working in the furniture business.

The trial court held that although the agreement had been made in Denmark, its enforceability depended on Florida law. Finding that the agreement was unenforceable under Florida law, the court awarded substantial alimony to the wife, including the couple's marital residence, realty in Coral Gables, $300,000 in cash (to be paid out over twenty years), and title to an automobile. On appeal by the husband's estate (he had died in the interim due to his years of drinking), the judgment was affirmed.

The appellate court found that the trial court had been correct to apply Florida law, reasoning that the interests of Florida significantly outweighed those of Denmark.[185] The court found further support for the application of Florida law by pointing out that under Danish law a husband's domicile determines the validity of a prenuptial agreement. Since the husband had been living in Florida at the time he travelled to Denmark to sign the agreement, and since the couple returned to Florida immediately after the wedding, the court found that Florida was the husband's domicile.[186]

As another blow to the husband's case, the appellate court held that even if the trial court had been wrong to choose Florida law over Danish law, the ultimate result would have been the same. Since a party wishing to rely on foreign law has the burden of proving such law, it was encumbent upon the husband to demonstrate that Danish law would permit the enforcement of an antenuptial agreement such as the one which the couple had signed. Because the husband was unable to meet this burden of proof, the appellate court found that the trial court had been correct in presuming that like Florida law, Danish law would not recognize an antenuptial agreement which made no provision for the wife.[187]

The issue of a foreign prenuptial agreement also arose in *Wach-*

185. *Id.* at 1300.

186. *Id.*

187. *Id.* In a later opinion, however, the court ruled that the wife was not entitled to attorneys' fees because of the large amount of alimony which had been granted to her. *See* 523 So. 2d 686 (Fla. 3d Dist. Ct. App. 1988).

smuth v. Wachsmuth.[188] The parties were married in West Germany in December 1977, having previously entered into a premarital agreement. At the time of the marriage, both parties were citizens and residents of West Germany. In 1980, the prenuptial agreement was modified at the request of the wife.

During the course of the marriage, the couple vacationed frequently in the United States, and in 1984 purchased a vacation home in Palm Beach County. In 1986, the wife and the couple's two children came to Palm Beach on a visitor's visa. Subsequently, the wife refused to return to West Germany. Following the husband's return to West Germany with the older of the two children, the wife filed a petition for alimony and child support. The petition did not include a request that the marriage be dissolved. The trial court granted temporary support, ordered the husband not to remove the younger child from the jurisdiction, and prohibited the husband from harassing the wife. When the husband's attempt to have the order vacated failed, he instituted divorce proceedings in West Germany. He then moved to have the Florida proceedings stayed or dismissed in deference to the West German divorce proceedings. When the trial court refused, the husband appealed.

The appellate court affirmed the trial court's refusal to stay or dismiss its proceedings. In a brief opinion, it held that the trial court could entertain a maintenance action unconnected with a dissolution proceeding, even where an antenuptial agreement was likely to determine the final disposition of the parties' property.[189]

B. Foreign Divorces

Keller v. Keller[190] presented the court with an interesting question. The husband had married his first wife in 1946 and divorced her in 1964 by procuring a Mexican divorce. Shortly thereafter, he remarried. After twenty years of marriage, the second wife filed a petition for dissolution of the marriage coupled with a claim for alimony. At trial, the husband asserted that the second marriage was void because the first marriage had ended in an unauthorized divorce. The trial court held that the husband was estopped from contesting the validity of the divorce; it also granted the petition and awarded substantial property and

188. 528 So. 2d 1201 (Fla. 4th Dist. Ct. App. 1988).
189. *Id.* at 1202.
190. 521 So. 2d 273 (Fla. 5th Dist. Ct. App. 1988).

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alimony to the wife.

On appeal, the appellate court affirmed the trial court. After citing and discussing numerous Florida and non-Florida cases, the appellate court held that the husband was estopped from alleging that the Mexican divorce was invalid.[191] Critical to the appellate court's conclusion was the fact that the second wife had not participated in the procurement of the Mexican divorce and had believed in its validity. The court also noted that the husband had begun to question the effectiveness of the divorce only after receiving a copy of the petition for dissolution.[192]

Three weeks after the Fifth District Court of Appeal's decision in *Keller*, the Fourth District Court of Appeal decided *Lambert v. Lambert*.[193] In *Lambert*, the husband had divorced his first wife by means of a quickie divorce obtained by flying to the Dominican Republic with his soon-to-be second wife. The Dominican divorce took one day to complete, after which the parties flew to Haiti and were married. They then returned to Canada and took up life as husband and wife.

Two years later, the husband's first wife obtained a divorce from him in Florida. Although the existence of this divorce was known to the second wife, she testified at trial that she did not remarry her husband following the first wife's Florida divorce because she thought it legally unnecessary.

Approximately ten years later, the second wife left the husband, moved to Florida, and filed a petition for dissolution of the marriage. In response, the husband argued that the Dominican divorce was invalid, thereby making the second marriage a void, bigamous union. The trial court agreed with the husband and dismissed the action.

On appeal, the appellate court reversed and remanded the action. It held that even if the Dominican divorce was invalid, the husband was estopped from raising its invalidity as a defense. Relying on *Keller*, the court explained that it would be inequitable to permit the husband to challenge the Dominican divorce decree in light of his prior conduct, which included declaring the second wife as his wife and dependent on his Canadian income tax returns during the period 1974 through 1985, hiring an attorney to help prove to the Canadian Immigration Department that the second wife was indeed his wife, and listing her as his wife on his pension plan at work.[194]

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191. *Id.* at 276.
192. *Id.*
193. 524 So. 2d 686 (Fla. 4th Dist. Ct. App. 1988).
194. *Id.* at 687.

A particularly novel set of facts emerged in *O'Keeffe v. O'Keeffe*.[195] The parties were allegedly divorced in Panama in 1974. Thereafter, according to the husband, they continued to hold themselves out as man and wife. More than a decade later, the husband brought suit in Dade County to have the marriage dissolved. Finding that the parties had been validly divorced in Panama, the trial court dismissed the suit. On appeal, the husband contended that the trial court's decision was incorrect. The appellate court disagreed.

It found that the wife had submitted sufficient evidence to prove that the Panamanian divorce was genuine. In response, the husband asserted that the "official" Panamanian court decree was a fake. The appellate court rejected this contention, noting that on cross-examination the husband's handwriting expert had admitted that he could not determine whether the husband's signature on the decree was a forgery. Finding that the husband had not produced sufficient evidence to support his contentions, the appellate court affirmed the dismissal of the suit.[196]

C. Venue

In *Montano v. Montano*,[197] the parties, a Guatemalan citizen (the husband) and an American citizen (the wife), were married in Miami in 1980. The ceremony was performed by a Guatemalan notary public and a certificate of marriage was issued and properly recorded in Guatemala. Thereafter the couple lived in a condominium in Dade County, a marital residence in Broward County, and a condominium in Guatemala. After several years of marriage, the wife filed for a dissolution of the marriage in Dade County.

Unable to make personal service on the husband, the wife resorted to constructive service by publication. Based on this service, the trial court granted the petition for dissolution. The trial court also ordered a distribution of the couple's real property in Florida and fixed an amount for child support, alimony, and attorneys' fees.

On appeal, the husband argued that the court had no jurisdiction to dissolve the marriage because the marriage had not been performed in accordance with Florida statutory formalities. The appellate court rejected this contention. Finding the marriage to be valid under the

195. 522 So. 2d 460 (Fla. 3d Dist. Ct. App. 1988).
196. *Id.* at 462.
197. 520 So. 2d 32 (Fla. 3d Dist. Ct. App. 1988).

laws of Guatemala, the appellate court ruled that it should be treated as valid in Florida for the purposes of a dissolution action. Thus, since the wife had resided in Florida for six months prior to filing the petition of dissolution and had made proper service on the husband, the appellate court found that the trial court had had *in rem* jurisdiction over the marriage.[198]

The appellate court took a different view, however, as to the remainder of the trial court's decision. With respect to the property distribution, the appellate court found that although the wife's petition described the couple's property, her published notice did not. This failure, the appellate court held, deprived the trial court of jurisdiction to adjudicate the parties' rights in the realty.[199]

The appellate court reached a similar conclusion as to the awarding of child support, alimony, and attorneys' fees. Applying the doctrine of "divisible divorce," it found that a court seized only of in rem jurisdiction may not consider issues such as child support, alimony, or attorneys' fees.[200]

Finally, in *Eckel v. Eckel*,[201] the parties were married in New York City in May 1981 and went to live in West Germany, where the husband served as a civilian employee of the United States Department of Defense. From 1964 to 1971 the husband had lived in Florida while serving as a member of the United States Air Force. From 1971 to 1975, he was stationed in West Germany while still a member of the Air Force. Retiring from the Air Force in 1975, he went to work for the Defense Department and lived in Florida for six months; thereafter he was transferred to West Germany.

The marriage was not a success, and in May 1983 the wife left West Germany and moved to Montgomery, Alabama. The husband then filed a petition for dissolution in Florida. By means of a special appearance, the wife contested the jurisdiction of the Florida courts, contending that neither she nor her husband had resided in Florida for the six months next preceding the filing of the petition as required by law. The trial court agreed with the wife and dismissed the suit.

On appeal, the appellate court reversed and remanded the suit. Finding that exceptions to the six month rule had been made for members of the military, the court held that the same type of exception

198. *Id.* at 53.
199. *Id.*
200. *Id.*
201. 522 So. 2d 1018 (Fla. 1st Dist. Ct. App. 1988).

should be made for members of the federal government stationed overseas.[202] The appellate court found support for its decision by noting that the husband had never evinced an intent to establish a domicile outside Florida and had retained close ties to Florida throughout his absences from the state. The court found it particularly impressive that at the time of filing his petition, the husband possessed a current Florida driver's license, an ownership interest in a home in Okaloosa County, an account at the Elgin Federal Credit Union, and a record of having voted in Florida for twenty years.[203]

VII. Transnational Offenses

A. Currency Reporting

The surveyed year produced only two noteworthy currency reporting cases.[204] In *United States v. Lafaurie*,[205] the defendant was convicted of conspiracy to cause certain banks to fail to file Currency Transaction Reports (CTRs). Under federal law,[206] banks must file CTRs whenever a currency exchange totalling more than $10,000 is made by a single person or his partners or associates in a single day, either in different branches of the same bank or at the same branch of a bank. Desiring to launder $4.5 million in illegal money, the defendant paid another defendant to hire various runners to purchase cashier's checks and money orders in amounts under $10,000. Upon receiving the checks and orders (more than 700 ultimately were purchased), the defendant would send them either to an account at Credit Swisse Bank in Switzerland or to an account at Banco Occidente in Panama.

At his trial, the defendant argued that he never intended to pre-

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202. *Id.* at 1020.

203. *Id.* at 1019.

204. A third case which raised somewhat similar issues was Young v. United States, 671 F. Supp. 1340 (S.D. Fla. 1987). Finding that the plaintiff was likely to remove his assets from the United States to a foreign country, thereby making it impossible for the Internal Revenue Service to collect any taxes which were or might become due, the court granted the government's request for permission to immediately determine the amount of the taxes owed by the plaintiff, declare them due, and institute collection procedures. For a discussion of the statute under which the government proceeded, *see* Comment, *Garzon v. United States: A Venue Gap is Closed for Non-Resident Aliens Under Internal Revenue Code Section 7429*, 19 U. MIAMI INTER-AM. L. REV. 155 (1987).

205. 833 F.2d 1468 (11th Cir. 1987), *cert. denied*, 108 S. Ct. 2015 (1988).

206. For a further explanation of the law, *see* Jarvis, *supra* note 1, at 599-600.

vent the banks from filing the necessary CTRs. Instead, the defendant claimed that the runners (who in reality were government informants) had failed to follow his instructions. Had the instructions been followed, the defendant asserted, no bank would have been required to file a CTR. The district court rejected the proffered explanation and sentenced the defendant to two years in jail plus the payment of a fine of $250,000. On appeal, the Eleventh Circuit affirmed the trial court's sentence, holding that there was sufficient evidence to find the defendant guilty of having participated in the alleged conspiracy.[207]

The defendant in *United States v. Harvey*[208] fared better. In a prior drug case, the defendant had been granted both transactional and use immunity by the government. Through an oversight, the agreement between the government and the defendant was never reduced to writing. In addition, no notes or records were made of the information which the defendant supplied to the government. Thereafter, the defendant was indicted by a federal grand jury on five counts of income tax evasion and one count of filing a false income tax return in connection with interest earned on funds deposited by the defendant in bank accounts in the Cayman Islands.

The magistrate assigned to the case found, after listening to fifteen hours of conflicting testimony, that the defendant had revealed information about the Cayman Islands account during his cooperation with the government on the prior drug deal. As a result, the magistrate recommended that the district court dismiss the indictment because the government had violated the defendant's immunity. The district court accepted the magistrate's recommendation and dismissed the case.

On appeal, the Eleventh Circuit affirmed. Finding that the confusion in the scope and breadth of the immunity was caused by the government's inexcusable failure to reduce the agreement to writing, the Eleventh Circuit wrote that the dictates of due process left it with no choice but to affirm the dismissal of the indictment.[209]

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207. *Lafaurie*, 833 F.2d at 1472.

208. 848 F.2d 1547 (11th Cir. 1988).

209. *Id.* at 1555. Circuit Judge Kravitch dissented from part of the opinion, finding that since the defendant "could not have invoked his fifth amendment privilege in 1980 on the ground that the information he was asked to reveal might incriminate him for future tax offenses, it follows . . . that neither . . . grant of . . . immunity . . . prevents the government from pursuing Harvey's prosecution . . . [now]. . . ." *Id.* at 1559. Perhaps Judge Kravitch is correct. By the close of the surveyed period the majority's opinion had been vacated and a rehearing en banc had been ordered. *See* 855 F.2d 1492 (11th Cir. 1988).

B. Drug Trafficking

As usual, there were numerous cases during the past year which involved the importation of illegal drugs into the United States.[210] Only one of these cases, however, posed a significant international issue.

In *United States v. Alvarez*,[211] the defendant was hired to serve as

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210. *See, e.g.*, United States v. Goggin, 853 F.2d 843 (11th Cir. 1988) (importation of cocaine from the Bahamas); United States v. Morse, 851 F.2d 1317 (11th Cir. 1988) (sale and purchase of an airplane to be used to smuggle marijuana into the United States); United States v. Benson, 846 F.2d 1338 (11th Cir. 1988) (importation of heroin from Africa); United States v. Pendas-Martinez, 845 F.2d 938 (11th Cir. 1988) (importation of marijuana from Bimini); United States v. Valera, 845 F.2d 923 (11th Cir. 1988) (importation of hashish from the Middle East). Indeed, almost any kind of drug importation case could be found, including several involving attorneys. *See, e.g.*, Florida Bar v. Nahoom, 523 So. 2d 1137 (Fla. 1988) and Florida Bar v. Dorsey, 520 So. 2d 269 (Fla. 1988). The biggest drug case of the period, however, was that of Colombian drug lord Carlos Lehder, who was found guilty after a lengthy trial. *See Colombian Guilty of Smuggling Tons of Cocaine to U.S.*, N.Y. Times, May 20, 1988, at 1, col. 4 (nat'l ed.) and *Drug Lord Found Guilty*, Ft. Lauderdale Sun-Sentinel, May 20, 1988, at 1A, col. 2. For the background of the charges against Mr. Lehder, *see* Jarvis, *supra* note 1, at 604-07. As predicted in last year's survey, *id.* at 607 n.186, Mr. Lehder's colleague, Jorge Ochoa, was able to persuade the Colombian government to turn down the United States' request for his extradition to stand trial on similar charges. *See* Shenon, *Colombia Frees Big Drug Dealer, Provoking an American Protest*, N.Y. Times, Jan. 1, 1988, at 1, col. 1 (nat'l ed.) and *U.S. Decries Reputed Drug Lord's Release*, Ft. Lauderdale Sun-Sentinel, Jan. 1, 1988, at 1, col. 2. This led to a severe strain in American-Colombian relations. *See* Matthews, *Ochoa Release Souring U.S.-Colombian Bonds*, Ft. Lauderdale News/Sun-Sentinel, Jan. 10, 1988, at 16A, col. 4.

Interestingly enough, Mr. Lehder's conviction came just as the government's much-vaunted "Zero Tolerance" anti-drug program was being introduced. Under the program, the government vowed to seize any plane or boat found to be carrying even small amounts of drugs. *See further Small Stash*, TIME, May 23, 1988, at 55; Stromberg, *Zero Patrol*, Ft. Lauderdale Sun-Sentinel, May 16, 1988, at 1B, col. 4; Stromberg, *U.S. Agents Seize Jet Under New Drug Policy*, Ft. Lauderdale Sun-Sentinel, May 12, 1988, at 1B, col. 1. As a result, the Monkey Business, the yacht on which Gary Hart's presidential ambitions began to crumble, was seized when an ounce of marijuana was discovered. *See* Krause, *Officials Find Drugs Aboard Famous Yacht*, Ft. Lauderdale Sun-Sentinel, May 15, 1988, at 1B, col. 2. As a result of these and other highly-publicized incidents, the new policy soon was criticized by a wide segment of the public. *See, e.g.*, Lassiter, *New Drug Policy Upsets Charter Boat Industry*, Ft. Lauderdale Sun-Sentinel, July 27, 1988, at 5B, col. 1; Stromberg, *Boaters, Fishing Industry Blast Zero Tolerance Policy*, Ft. Lauderdale Sun-Sentinel, June 28, 1988, at 1B, col. 2; Nordheimer, *Tighter Federal Drug Dragnet Yields Cars, Boats and Protests*, N.Y. Times, May 22, 1988, at 1, col. 2 (nat'l ed.).

211. 837 F.2d 1024 (11th Cir.), *cert. denied*, 108 S. Ct. 2003 (1988).

an engineer on a vessel scheduled to sail from Aruba to Miami. Stuffed into a secret compartment aboard the vessel was 6,400 pounds of marijuana and 159 pounds of cocaine.

While in the southeast Bahamas, the vessel was intercepted by the Coast Guard and the defendant, along with several others, was taken into custody. Charged with participating in a drug conspiracy, the defendant argued that he had been unaware that drugs had been placed aboard the vessel. The defendant also sought permission for his lawyer and a court reporter to travel to Aruba to take the deposition of a Mr. Johanes. According to the defendant, it was Mr. Johanes, acting on behalf of the Seamar Agency, who had hired the defendant to serve as the ship's engineer at the rate of $1,600 per month, even though the defendant had never before served as a ship's engineer.

The district court denied the request, and the defendant was found guilty. On appeal, the Eleventh Circuit affirmed. After noting that deposition testimony is frowned upon in criminal trials because such testimony is not subject to cross-examination,[212] the court turned to the real problem with the defendant's request. According to the defendant, Mr. Johanes was unable to appear at the trial due to the expense of traveling from Aruba to Miami. What the defendant could not explain, however, was how it would be cheaper to have his attorney and a court reporter travel to Aruba to take Mr. Johanes' deposition. Due to this flaw, the Eleventh Circuit found that the trial court had been correct to deny the defendant's request.[213]

C. Espionage

There was only one espionage decision during the year, a holdover from the previous year.[214] In *United States v. One Lear Jet Aircraft,*

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212. *Alvarez*, 837 F.2d at 1029.

213. *Id.*

214. Another holdover espionage case, however, did result in extensive press coverage. In 1986, the Christic Institute filed suit in federal court in Miami alleging that the Central Intelligence Agency was responsible for injuries which had been sustained by two journalists, Tony Avirgan and Martha Honey, when a bomb went off in La Penca, Nicaragua, during a Contra news conference. *See* Jarvis, *supra* note 1, at 611-13. After permitting the plaintiffs to take limited discovery, Chief Judge King dismissed the suit amid rumors that the move was intended to spare Vice President George Bush from what had promised to be an uncomfortable campaign issue. *See* Volsky, *U.S. Judge Dismisses Suit by Two Journalists in 1984 Nicaraguan Bombing*, N.Y. Times, June 24, 1988, at 6, col. 1 (nat'l ed.), and Stromberg, *Conspiracy Lawsuit*

Serial No. 35A-280, Registration No. YN-BVO,[215] the Eleventh Circuit again considered the fortunes of an airplane which had been used as an air taxi between North and South America and the Caribbean. In an earlier opinion discussed in last year's survey,[216] the Eleventh Circuit had held that the removal of the airplane by the government from the jurisdiction of the court did not destroy the court's in rem jurisdiction over the plane. Now, in an en banc opinion, the court reversed itself and held, by a vote of 6 to 5, that the plane's departure did destroy the court's in rem jurisdiction and required a dismissal of the appeal.

The en banc majority placed the blame for its startling decision squarely on the shoulders of the defendant. The majority pointed out that after the trial, the district court had ordered the plane forfeited to the government. The defendant filed a notice of appeal but failed to stay the order. As a result, the order became final ten days after being issued by the district court and, once final, the government was free to do with the plane as it saw fit. Thus, the majority reasoned, the government was at liberty to remove the plane from the court's jurisdiction and when it chose to do so, the court's in rem jurisdiction was destroyed.[217] When the dissenters asserted that the defendant lacked the financial resources to post a bond which would have stayed the trial court's judgment, the majority shot back that rather than impecuniousness, the defendant's failure to post a bond was due to its mistaken belief that it did not need to seek a stay because even if the court lost its in rem jurisdiction over the government, it would still have in per-

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Thrown Out: Christic Institute Case "Unfair, Uneconomic," Ft. Lauderdale Sun-Sentinel, June 24, 1988, at 1A, col. 5. But even as the Christic suit was fading from public attention, there were new reports of two other suits, both unrelated, in which private citizens were indicted for attempting to ship arms to the Nicaraguan Contras. *See* Stromberg & Melvin, *6 Indicted in Arms Case: Group Shipped Weapons to Contras from Airport, Grand Jury Charges*, Ft. Lauderdale Sun-Sentinel, Aug. 23, 1988, at 1A, col. 2, and Stromberg, *7 Accused of Waging Own War: Suspects Aided Contras, Unsealed Indictment Says*, Ft. Lauderdale Sun-Sentinel, July 14, 1988, at 1A, col. 2. At the same time, a man who pleaded guilty to running an American mercenary service intended to provide the Contras with fresh recruits received a one day sentence. *See* Stromberg, *Mercenary Gets a Day of Probation: Man Pleaded Guilty in Plot to Send Civilian-Soldiers to Contras' Aid*, Ft. Lauderdale News/Sun-Sentinel, July 23, 1988, at 1A, col. 2.

215. 836 F.2d 1571 (11th Cir. 1988).

216. *See* 808 F.2d 765 (11th Cir. 1987), discussed in Jarvis, *supra* note 1, at 609-10.

217. *One Lear Jet*, 836 F.2d at 1577.

sonam jurisdiction.[218]

The majority explained, however, that the court had never had in personam jurisdiction over the government. First, the forfeiture statute under which the government had moved did not confer in personam jurisdiction on the court.[219] Second, the government had specifically declined to consent to the exercise of in personam jurisdiction.[220] Although the dissenters argued that the government conferred in personam jurisdiction on the court when it invoked its assistance by filing the initial complaint, the majority rejected this position as being contrary to precedent, which the majority read as conferring in personam jurisdiction only if the plaintiff sues both the res and its owner.[221]

VIII. Conclusion

Shakespeare suggested that all the world is a stage. The just concluded period provided Florida's international lawyers with innumerable opportunities to perform, and they did, in the only place in the country where, as the *American Bar Association Journal* put it during the surveyed term, "the case of a lifetime is old news by the end of the week."[222]

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218. *Id.* at 1574 n.1.

219. *Id.* at 1575.

220. *Id.* at 1576.

221. *Id.* at 1576-77. It appears that we have seen the last of this case. Following the en banc decision, the Eleventh Circuit turned down a request for an en banc rehearing. *See* 842 F.2d 339 (11th Cir. 1988). This, in turn, was followed by the United States Supreme Court's refusal to grant the defendant's request for certorari. *See* 108 S. Ct. 2844 (1988).

222. Von Drehle, *Ohhhhh, Miami!*, A.B.A. J., Apr. 1, 1988, at 62.