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Obstacles to Investigation and Prosecution Summary Criminal law is usually territorial. It is a matter of the law of the place where it occurs. Nevertheless, a number of American criminal laws apply extraterritorially outside of the United States. Application is generally a question of legislative intent, express or implied. There are two exceptions. Second, neither the statute nor its application may violate due process or any other constitutional prohibition. Claims of implied extraterritoriality must overcome additional obstacles. Federal laws are presumed to apply only within the United States, unless Congress clearly provides otherwise. Moreover, the courts will also presume that Congress intends its statutes to be applied in a manner that does not offend international law. Historically, in order to overcome these presumptions, the lower federal courts have read certain vintage Supreme Court cases broadly. National Australia Bank, Ltd. European Community, however, suggest a far more restrictive view. Although the crimes over which the United States has extraterritorial jurisdiction may be many, so are the obstacles to their enforcement. For both practical and diplomatic reasons, criminal investigations within another country require the acquiescence, consent, or preferably the assistance, of the authorities of the host country. The United States has mutual legal assistance treaties with several countries designed to formalize such cooperative law enforcement assistance. It has agreements for the same purpose in many other instances. Cooperation, however, may introduce new obstacles. Searches and interrogations carried out jointly with foreign officials, certainly if they involve Americans, must be conducted within the confines of the Fourth and Fifth Amendments. And the Sixth Amendment imposes limits upon the use in American criminal trials of depositions taken abroad. To facilitate the prosecution of federal crimes with extraterritorial application Congress has enacted special venue, statute of limitations, and evidentiary statutes. This report is an abridged version of a report, which with citations to authority, footnotes, attachments, and bibliography, appears as CRS Report , Extraterritorial Application of American Criminal Law , by [author name scrubbed]. Extraterritorial Application of American Criminal Law: An Abbreviated Sketch Introduction Crime is ordinarily proscribed, tried, and punished according to the laws of the place where it occurs. American criminal law applies beyond the geographical confines of the United States, however, under certain limited circumstances. A surprising number of federal criminal statutes have extraterritorial application, but prosecutions have been relatively few. This may be because when extraterritorial criminal jurisdiction does exist, practical and legal complications, and sometimes diplomatic considerations, may counsel against its exercise. Constitutional Considerations Legislative Powers: The Constitution does not forbid either congressional or state enactment of laws that apply outside the United States. Nor does it prohibit either the federal government or the states from prosecuting conduct committed abroad. In fact, several passages suggest that the Constitution contemplates the application of American law beyond the geographic confines of the United States. It speaks, for example, of "felonies committed on the high seas," "offences against the law of nations," "commerce with foreign nations," and of the impact of treaties. Nevertheless, the powers granted by the Constitution are not without limit. Other limitations appear elsewhere in the Constitution, most notably in the due process clauses of the Fifth Amendment. A related due process challenge is based on notice. It is akin to the concerns over secret laws and vague statutes, the exception to the maxim that ignorance of the law is no defense. Conceding this outer boundary, however, the courts fairly uniformly have held that questions of extraterritoriality are almost exclusively within the discretion of Congress; a determination to grant a statutory provision extraterritorial applicationâ€”regardless of its policy consequencesâ€”is not by itself constitutionally suspect. Statutory Construction For this reason, the question of the extent to which a particular statute applies outside the United States has generally been considered a matter of statutory, rather than constitutional, construction. General rules of statutory

construction have emerged that can explain, if not presage, the result in a given case. The first of these rules holds that a statute that is silent on the question of its application abroad will be construed to have only domestic application unless there is a clear indication of some broader intent. At least until recently, the second rule of construction stated that the nature and purpose of a statute may provide an indication of whether Congress intended a statute to apply beyond the confines of the United States. Although hints of it can be found earlier, the rule was first clearly announced in United States v. Early indications were that the courts and commentators were unwilling to go that far. There may be some real question of the extent to which the Court still considers Bowman good law. The final rule declares that unless a contrary intent is clear, Congress is assumed to have acted so as not to invite action inconsistent with international law. International law supports rather than dictates decisions in the area of the overseas application of American law. Neither Congress nor the courts are bound to the dictates of international law when enacting or interpreting statutes with extraterritorial application. Yet Congress looks to international law when it evaluates the policy considerations associated with legislation that may have international consequences. For this reason, the courts interpret legislation with the presumption that Congress or the state legislature intends its laws to be applied within the bounds of international law, unless it indicates otherwise. Members of another category of explicit extraterritorial federal criminal statutes either cryptically declare that their provisions are to apply overseas or describe a series of jurisdictional circumstances under which their provisions have extraterritorial application, not infrequently involving the foreign commerce of the United States in conjunction with other factors. The Supreme Court in RJR Nabisco did endorse implied extraterritoriality in the case of "piggyback" statutesâ€”conspiracy, attempt, aiding and abetting, among themâ€”whose provisions are necessarily predicated on some other crime and whose overseas application matches that of its predicates. Obstacles to Investigation and Prosecution Federal crimes committed abroad present investigators and prosecutors with legal, practical, and often diplomatic obstacles that can be daunting. Thus, while a state may take certain measures of nonjudicial enforcement against a person in another state, Failure to comply can result in strong diplomatic protests, liability for reparations, and other remedial repercussions, to say nothing of the possible criminal prosecution of offending foreign investigators. Mutual Legal Assistance Treaties and Agreements: Congress has endorsed diplomatic efforts to increase multinational cooperative law enforcement activities. The United States has over 70 mutual legal assistance treaties in force. They ordinarily provide clauses for locating and identifying persons and items; service of process; executing search warrants; taking witness depositions; persuading foreign nationals to come to the United States voluntarily to present evidence here; and forfeiture-related seizures. American law enforcement officials have historically used other, often less formal, cooperative methods overseas to investigate and prosecute extraterritorial offenses. Over the last few decades the United States has taken steps to facilitate cooperative efforts. In addition to the more traditional presence of members of the Armed Forces and State Department personnel and contractors, federal civilian law enforcement agencies have assigned an increasing number of personnel overseas. Search and Seizure Abroad: Overseas cooperative law enforcement assistance occasionally has Fourth Amendment implications. Verdugo-Urquidez decision makes it clear that the Fourth Amendment does not apply to the search of the overseas property of foreign nationals unless the property owner has some "previous significant voluntary connections with the United States. Prior to Verdugo-Urquidez, neither the Fourth Amendment nor its exclusionary rule were considered applicable to foreign searches and seizures conducted by foreign law enforcement officials, except under two circumstances. The first covered foreign conduct that "shocked the conscience of the court. Since Verdugo-Urquidez, the courts have held as a general rule the Fourth Amendment is inapplicable to searches or seizures of U. Like the Fourth Amendment protection against unreasonable searches and seizures, the Fifth Amendment self-incrimination clause and its attendant Miranda warning requirements do not apply to statements made overseas to foreign officials subject to the same "joint venture" and "shocked conscience" exceptions. The Fifth Amendment and Miranda requirements do apply to custodial interrogations conducted overseas by American officials regardless of the nationality of the

defendant. As a general rule to be admissible at trial in this country, however, any confession or other criminating statements must have been freely made. Section and Related Matters: As a general rule, prosecution of federal crimes must begin within five years. Federal capital offenses, certain federal sex offenses, and various violent federal terrorist offenses, however, may be prosecuted at any time. Prosecution of nonviolent federal terrorism offenses must begin within eight years. Moreover, the statute of limitations is suspended or tolled during any period in which the accused is a fugitive. Whatever the applicable statute of limitations, Section authorizes the federal courts to suspend it in order to await the arrival of evidence requested of a foreign government. Extradition is perhaps the oldest form of international law enforcement assistance. It is a creature of treaty by which one country surrenders a fugitive to another for prosecution or service of sentence. The United States has bilateral extradition treaties with roughly two-thirds of the nations of the world. Treaties negotiated before and still in effect reflect the view then held by the United States and other common law countries that criminal jurisdiction was territorial and consequently extradition could not be had for extraterritorial crimes. Subsequently negotiated agreements either require extradition regardless of where the offense occurs, permit extradition regardless of where the offense occurs, or require extradition where the extraterritorial laws of the two nations are compatible. As an alternative to extradition, particularly if the suspect is not a citizen of the country of refuge, foreign authorities may be willing to expel or deport him under circumstances that allow the United States to take him into custody. In the absence of a specific treaty provision, the fact that the defendant was abducted overseas and brought to the United States for trial rather than pursuant to a request under the applicable extradition treaty does not deprive the federal court of jurisdiction to try him. Federal crimes committed within the United States must be tried where they occur. Crimes committed outside the United States are tried where Congress has provided. Congress has enacted both general and specific venue statutes governing extraterritorial offenses. The phrase "first brought" as used in Section means "first brought while in custody. Courts are divided over whether Section may be applied even though venue may have been proper without recourse to its provisions. Testimony of Witnesses Outside the United States: Federal courts may subpoena a U. They ordinarily have no authority to subpoena a foreign national located in a foreign country. Mutual legal assistance treaties and similar agreements generally contain provisions to facilitate a transfer of custody of foreign witnesses who are imprisoned overseas and in other instances to elicit assistance to encourage foreign nationals to come to this country and testify voluntarily. Unable to secure the presence of foreign witnesses located aboard, federal courts may authorize depositions to be taken abroad, under "exceptional circumstances and in the interests of justice," and under even more limited circumstances, they may admit such depositions into evidence in a criminal trial. When a deposition is taken abroad, the courts prefer that the defendant be present, that his counsel be allowed to cross-examine the witness, that the deposition be taken under oath, that a verbatim transcript be taken, and that the deposition be captured on videotape; but they have permitted depositions to be admitted into evidence at subsequent criminal trials in this country, notwithstanding the fact that one or more of these optimal conditions are not present. In nations whose laws might not otherwise require, or even permit, depositions under conditions considered preferable under U. The Sixth Amendment promises a criminal defendant the right to confront the witnesses against him, even a witness who presents classified information to the jury. The CIPA permits the court to approve prosecution-prepared summaries of classified information to be disclosed to the defendant and introduced in evidence, as a substitute for the classified information.

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Herz-Roiphe During the fall of , two American sailors bound for Rio de Janeiro hatched a plan to defraud the United States government. Instead, in United States v. It helped give rise to a comparatively liberal approach to the extraterritorial application of criminal law that has endured for decades. National Australia Bank, 7 the Court significantly limited the extraterritorial reach of section 10 b of the Securities Exchange Act of , holding that this provision only barred frauds committed in connection with domestic securities transactions. Yet Morrison did not make this point explicit. In August , the Second Circuit offered a definitive answer: This Comment argues that the court should have taken a different approach. While the Second Circuit rightly concluded that nothing about the substance of criminal law renders the presumption against extraterritoriality inapplicable in criminal contexts, it ignored a relatedâ€”and far more relevantâ€”distinction between the civil shareholder suit evaluated in Morrison and the criminal fraud prosecution in Vilar: This Comment accordingly argues that it would be wise to limit Morrison to its facts, reading the case to apply to private lawsuits but not government enforcement actions. This approach would ensure an effective regulatory regime that avoided unnecessary conflicts with foreign laws and faithfully effectuated congressional intent. While the action in Morrison was brought by private plaintiffs Australian ones, no less , the Vilar case was filed by the executive branch of the United States government. While the presumption could be seen as nothing more than a background assumption against which Congress can legislate, this approach is unsatisfying. Arabian American Oil Co. Extraterritorial public enforcement poses a considerably smaller threat to international comity than extraterritorial private rights of action do. It seems reasonable, in line with accepted principles of deference, for courts to take this guidance into account. So have separately or jointly such international and foreign organizations as [list of organizations]. The transactional test we have adopted. And every single one stated that its primary concern was private shareholder actions. Private securities actions, in contrast, present a significant risk of conflict. Justice Stevens more or less summed it up in his concurrence: Barring extraterritorial public enforcement actions seriously hamstrings securities regulators in a world where close to forty percent of American investors hold some foreign assets. It seems apparent that Morrison responded to the particular set of problems posed by private shareholder litigation. Its precedent should not be stretched beyond the circumstances to which its reasoning most clearly applies. An earlier draft of section P extended extraterritorial jurisdiction to all suits under section 10 b , but its language was modified to refer only to actions brought by the SEC and DOJ in the final version. Its very existence indicates that Congress sees an important distinction between public and private enforcement of section 10 b and does not wish to have the former hampered by strict territorial limitations. This fact cannot be ignored because the presumption against extraterritoriality is, at its root, an assumption about how Congress is likely to think. Of course, section P provides more powerful evidence about the intentions of the th Congress, which passed Dodd-Frank in , than about the desires of the 73rd Congress, which created the Exchange Act in While Morrison may speak in broad terms about the extraterritorial application of the Exchange Act, it is evident that much of its reasoning responds to specific features of private shareholder lawsuits that public enforcement actionsâ€”including criminal prosecutionsâ€”do not share. In securities law, as in many other areas, the presumption against extraterritoriality is not nearly as compelling when applied to public, rather than private, rights of action. The executive branch is institutionally well-positioned to weigh the consequences of extending law extraterritorially, and should be given broader leeway than private plaintiffs to do so. In order to preserve an effective securities regulation regime and faithfully implement the will of Congress, courts should remove strict territorial bars to public enforcement of the Exchange Act.

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Vanessa Reid examines the ever-expanding jurisdiction of UK criminal courts over extra-territorial conduct, persons, and property. They apply to persons and property located anywhere in the world, and the suspected criminal conduct need not have taken place in the UK. The presumption against extra-territoriality There is a "well-established" canon of statutory construction that, in the absence of clear language to the contrary, an Act of Parliament should not be given extra-territorial effect. Law enforcement agencies, on the other hand, have repeatedly pushed for ever-expanding powers to combat financial crime, including the power to address extra-territorial misconduct and seize assets held overseas. King v Director of the SFO: In King, the South African prosecuting authority petitioned the UK for assistance in obtaining restraint and disclosure orders against the assets of a British subject residing in South Africa who had been charged with large-scale fraud, money laundering, and racketeering. The petition referred to assets "whether. The Crown Court judge determined that he had the power to make such a worldwide order. Both courts found that orders made in response to external requests were limited to property in England and Wales. The Act provides that courts enforcing the new individual bribery offences have jurisdiction over conduct which occurred entirely overseas if the individual who committed the act or omission has a "close connection" to the UK. The failure-to-prevent offence for commercial organisations establishes still broader extra-territorial jurisdiction. Section 12 of the Act provides that any commercial organisation carrying on a business or even part of a business in the UK may be prosecuted in the UK, regardless of where the relevant conduct took place or whether the person who committed the act or omission has any ties to the UK. The Serious Organised Crime Agency SOCA therefore sought and obtained disclosure and property freezing orders against the appellant and his family members in respect of all of their assets worldwide. None of the respondents were located in the UK at the time the orders were issued. The Supreme Court held that POCA did not permit courts to issue freezing orders, disclosure orders, or civil recovery orders regarding property or persons located outside the jurisdiction. The Perry decision was expressly overridden by Parliament in the Crime and Courts Act , which amended POCA to authorise the making of a civil recovery or freezing order under Part 5 in respect of property "wherever situated" and a person "wherever domiciled, resident or present" as long as there was some connection between the case and the UK. Court of Appeal establishes jurisdiction over extra-territorial money laundering Similar principles were soon extended to overseas money laundering. In the case R v Rogers, the Court of Appeal found that an individual can be prosecuted under POCA Part 7 for committing a money laundering offence even if the relevant conduct took place entirely outside the UK, so long as a significant part of the underlying criminal scheme took place in the UK and the scheme had harmful consequences in the UK. A business may mount a reasonable procedure defence, wherein it will not be held liable where it can show that it had implemented reasonable prevent procedures or where it can show that, in the circumstances, it would have been unreasonable or unrealistic to have expected it to have had procedures in place. Where there has been evasion of UK taxes, any company based anywhere in the world can be haled into a UK court, regardless of whether it conducts any business at all in the UK. Where foreign taxes have been avoided, a company may be liable if it is incorporated under the law of the UK, carrying on a business or part of a business in the UK, or the conduct constituting the criminal facilitation takes place within the UK. UWOs and the on-going expansion of extra-territorial jurisdiction over financial crimes As noted above, the introduction of UWOs by the CFA represents the latest advance in the steady expansion of the extra-territorial powers of UK criminal courts and law enforcement agencies over financial crime, money laundering, and corporate crime. Moreover, knowingly or recklessly providing a materially false or misleading statement in response to a UWO is a criminal offence. Thus far, the focus of the prosecuting agencies requesting UWOs appears to be property situated in the UK.

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The Law Commission (LAW COM. No. 91) CRIMINAL LAW REPORT ON THE TERRITORIAL AND EXTRATERRITORIAL EXTENT OF THE CRIMINAL LAW Laid before Parliament by the Lord High Chancellor.

Bibliography Summary Criminal law is usually territorial. It is a matter of the law of the place where it occurs. Nevertheless, a number of American criminal laws apply extraterritorially outside of the United States. Application is generally a question of legislative intent, express or implied. There are two exceptions. Second, neither the statute nor its application may violate due process or any other constitutional prohibition. Claims of implied extraterritoriality must overcome additional obstacles. Federal laws are presumed to apply only within the United States, unless Congress clearly provides otherwise. Moreover, the courts will also presume that Congress intends its statutes to be applied in a manner that does not offend international law. Historically, in order to overcome these presumptions, the lower federal courts have read certain vintage Supreme Court cases broadly. National Australia Bank Ltd. European Community, however, suggest a far more restrictive view. Although the crimes over which the United States has extraterritorial jurisdiction may be many, so are the obstacles to their enforcement. For both practical and diplomatic reasons, criminal investigations within another country require the acquiescence, consent, or preferably the assistance, of the authorities of the host country. The United States has mutual legal assistance treaties with several countries designed to formalize such cooperative law enforcement assistance. It has agreements for the same purpose in many other instances. Cooperation, however, may introduce new obstacles. Searches and interrogations carried out jointly with foreign officials, certainly if they involve Americans, must be conducted within the confines of the Fourth and Fifth Amendments. And the Sixth Amendment imposes limits upon the use in American criminal trials of depositions taken abroad. To further facilitate the prosecution of federal crimes with extraterritorial application Congress has enacted special venue, statute of limitations, and evidentiary statutes. This report is available in an abridged version, stripped of its attachments, bibliography, footnotes, and most of its citations to authority, as CRS Report RS, Extraterritorial Application of American Criminal Law: An Abbreviated Sketch , by [author name scrubbed]. State prosecution for overseas misconduct is limited almost exclusively to multi-jurisdictional crimes, that is, crimes where some elements of the offense are committed within the state and others are committed beyond its boundaries. This may be because when extraterritorial criminal jurisdiction does exist, practical and legal complications, and sometimes diplomatic considerations, may counsel against its exercise. Constitutional Considerations Legislative Powers The Constitution does not forbid either congressional or state enactment of laws that apply outside the United States. Nor does it prohibit either the federal government or the states from prosecuting conduct committed abroad. In fact, several passages suggest that the Constitution contemplates the application of American law beyond the geographical confines of the United States. It speaks, for example, of "felonies committed on the high seas," "offences against the law of nations," "commerce with foreign nations," and of the impact of treaties. The other two Commerce Clause powers permit Congress to regulate interstate commerce and commerce with the Indian tribes. The courts often speak of these two in exceptionally sweeping terms. One found that Congress did indeed have the legislative power to proscribe illicit overseas commercial sexual activity by an American who had traveled from the United States to the scene of the crime. Court of Appeals for the Fourth Circuit has gone even further and ruled that the Foreign Commerce Clause embodies not only the "channels" and "instrumentalities" authority, but also encompasses the power to regulate any "activities that demonstrably affect [U. For example, although the Constitution reserves to the states the residue of governmental powers which it does not vest elsewhere, the primacy it affords the federal government in the area of foreign affairs limits the authority of the states in the field principally to those areas where they are acting with federal authority or acquiescence. While the enumerated powers may carry specific limits which govern the extent to which the power may be exercised overseas, the general restrictions of the Fifth Amendment Due Process

Clause have traditionally been mentioned as the most likely to define the outer reaches of the power to enact and enforce legislation with extraterritorial application. A few courts describe a due process requirement that demands some nexus between the United States and the circumstances of the offense. The commentators have greeted this analysis with some hesitancy, 34 and some courts have simply rejected it. It is akin to the concerns over secret laws and vague statutes, the exception to the maxim that ignorance of the law is no defense. Citizens, for instance, might be expected to know the laws of their own nation; seafarers to know the law of the sea and consequently the laws of the nation under which they sail; everyone should be aware of the laws of the land in which they find themselves and of the wrongs condemned by the laws of all nations. Statutory Construction For this reason, the question of the extent to which a particular statute applies outside the United States has generally been considered a matter of statutory, rather than constitutional, construction. The first of these holds that a statute that is silent on the question of overseas application will be construed to have only territorial application unless there is a clear indication of some broader intent. Although hints of it can be found earlier, 42 the rule was first clearly announced in United States v. Early indications were that the courts and commentators were unwilling to go that far. There may be some real question of the extent to which the Court still considers Bowman good law. Neither Congress nor the courts are bound to the dictates of international law when enacting or interpreting statutes with extraterritorial application. For this reason, the courts interpret legislation with the presumption that Congress or the state legislature intends its laws to be applied within the bounds of international law, unless it indicates otherwise. To what extent does international law permit a nation to exercise extraterritorial criminal jurisdiction? The question is essentially one of national interests. What national interest is served by extraterritorial application and what interests of other nations suffer by an extraterritorial application? The most common classification of these interests dates to a Harvard Law School study which divided them into five categories or principles corresponding to the circumstances under which the nations of the world had declared their criminal laws applicable: It indicates that reasonableness defines the latitude that international law affords a country to enact, try, and punish violations of its law extraterritorially; its assessment of reasonableness mirrors a balancing of the interests represented in the Harvard study principles. Yet, it also encompasses laws governing conduct on its territorial waters, conduct on its vessels on the high seas, conduct committed only in part within its geographical boundaries, and conduct elsewhere that has an impact within its territory. United States, following the contempt conviction of an American living in Paris who ignored a federal court subpoena. Although the concept of the special maritime and territorial jurisdiction of the United States once embraced little more than places over which the United States enjoyed state-like legislative jurisdiction, U. It now supplies an explicit basis for the extraterritorial application of various federal criminal laws relating to: Armed Forces overseas and those accompanying them; 82 human trafficking and sex offenses abroad by federal employees, U. The obligations and principles of various international treaties, conventions, or agreements to which the United States is a party supply the theme for a second category of federal criminal statutes with explicit extraterritorial application. Some have extraterritorial application only when the offender is an American. In fact, they construed Bowman and Ford to suggest that American extraterritorial criminal jurisdiction includes a wide range of statutes designed to protect federal officers, employees, and property; to prevent smuggling; and to deter the obstruction or corruption of the overseas activities of federal departments and agencies. A logical extension of earlier law would have been to conclude that statutes enacted to prevent and punish the theft of federal property apply worldwide. And there seemed no obvious reason why statutes protecting the United States from intentional deprivation of its property by destruction should be treated differently from those where the loss is attributable to theft. The RJR Nabisco Court, however, did endorse implied extraterritoriality in the case of "piggyback" statutesâ€”conspiracy, attempt, aiding and abetting, among themâ€”whose provisions are necessarily predicated on some other crime. Earlier cases occasionally expressed the view that an individual might be guilty of conspiracy to violate a federal law within the United States notwithstanding the fact he never entered the United States; it was enough that he was a member of a conspiracy to violate the

American law. The Constitution seems to have preordained this result when it vested responsibility for protecting American interests and fulfilling American responsibilities overseas in the federal government. And the Supremacy Clause also renders treaties to which the United States is a party binding upon the states and therefore beyond their legislative reach. Investigators and prosecutors face legal, practical, and often diplomatic obstacles that can be daunting. Some of these are depicted in the description that follows of some of procedural aspects of the American investigation and prosecution of a crime committed abroad. With respect to diplomatic concerns, the Restatement observes: Thus, while a state may take certain measures of nonjudicial enforcement against a person in another state, Mutual Legal Assistance Treaties and Agreements Congress has endorsed diplomatic efforts to increase multinational cooperative law enforcement activities. The United States has over 70 mutual legal assistance treaties in force. They ordinarily provide similar clauses, with some variations, for locating and identifying persons and items; service of process; executing search warrants; taking witness depositions; persuading foreign nationals to come to the United States voluntarily to present evidence here; and forfeiture-related seizures. The procedure is governed by statute and rule. The process, through diplomatic channels, is time consuming, cumbersome, and lies within the discretion of the foreign court to which it is addressed. In addition to the more traditional presence of members of the Armed Forces and State Department personnel and contractors, federal civilian law enforcement agencies have assigned an increasing number of personnel overseas. Immigration and Customs Enforcement agency operates out of 75 locations; and the Secret Service has 20 such offices. For instance, the Foreign Evidence Request Efficiency Act of authorizes Justice Department attorneys to petition federal judges for any of a series of orders to facilitate investigations in this country by foreign law enforcement authorities. Verdugo-Urquidez decision makes it clear that the Fourth Amendment does not apply to the search of the property of foreign nationals outside the United States, unless the property owner has some "previous significant voluntary connections with the United States. Prior to Verdugo-Urquidez, neither the Fourth Amendment nor its exclusionary rule were considered applicable to overseas searches and seizures conducted by foreign law enforcement officials, except under two circumstances. The first covered foreign conduct which "shocked the conscience of the court. In the days when MLATs were scarce, however, the courts rarely, if ever, encountered circumstances sufficient to activate either exception. Since Verdugo-Urquidez, the courts have held, as a general rule, that the Fourth Amendment is inapplicable to searches or seizures of U. S law enforcement officials. With some exceptions, a warrant issued by the neutral magistrate upon a finding of probable cause is the hallmark of a reasonable Fourth Amendment search or seizure in this country. Upon application of the United States, filed before return of an indictment, indicating that evidence of an offense is in a foreign country, the district court before which a grand jury is impaneled to investigate the offense shall suspend the running of the statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country. It is a creature of treaty by which one country surrenders a fugitive to another for prosecution or service of sentence. Federal crimes committed within other countries are more likely than not to be the work of those who live there. Yet, the "most common type of treaty provision provides that neither of the contracting parties shall be bound to deliver up its own citizens or subjects. Consequently, treaties forged over the last several years frequently include some form of limitation on the exception, often accompanied by a discretionary right to refuse politically or otherwise discriminatorily motivated extradition requests. The Controlled Substance section outlaws overseas possession with intent to import into the United States. Roberts or in Maryland v. Washington that "testimonial" hearsay could not be considered reliable and admitted into evidence without the safeguard of cross examination. Crawford repudiates the suggestion that Roberts permits anything less than actual confrontation in the case of "testimonial" hearsay in the form of a deposition or any other form. A deposition taken overseas that has survived scrutiny under Rule 15 of the Federal Rules of Criminal Procedure and the Confrontation Clause is likely to be found admissible. The states enjoy only residual authority, but

they too may and have enacted criminal laws which apply beyond the territorial confines of the United States. Prosecutions are relatively few, however, perhaps because of the practical, legal, and diplomatic obstacles that may attend such an endeavor.

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One aspect of the debate surrounding the Bribery Act has been its broad extra-territorial reach. By contrast, little attention has been paid to the extra-territorial ambit of the Serious Crime Act and the offences of encouraging or assisting an offence. This might be thought surprising given these offences possess an equally striking jurisdictional scope to the bribery offences and may be equally important in an international business context. Liability under sections 44, 45 or 46 of the Act may arise where an English-incorporated company advises a Dutch client, for example, on the execution of a financial transaction in Zimbabwe, even though the client could commit no offence if it was to carry out that transaction see paragraph 19 below. This article offers an overview of the extra-territoriality provisions of the Act and aims to highlight some of the issues they raise. The nature of extra-territorial jurisdiction 2. Before turning to the Act, however, it is helpful, briefly, to say something about the ambit of the English criminal law. Traditionally the position at common law has been that jurisdiction is inherently territorial. Absent express terms, a strong presumption arises that statutory offences are similarly constrained. Different principles have developed in relation to offences occurring across jurisdictions. Prior to the case of Director of Public Prosections v Treacy [] AC , the orthodoxy was that the final element completing the offence needed to occur within England and Wales to establish jurisdiction. Since then a less rigidly technical approach has emerged, see for example R v Smith Wallace Duncan No. Inchoate offences present particular difficulties in the context of jurisdiction. At common law the general rule for conspiracy is that the location of the principal offence is determinative: This latter position is, however, reversed by section 1A of the Criminal Law Act Though no authority exists on the point, it may be assumed that prior to the Act, jurisdiction over incitement at common law followed the position at common law in relation to conspiracy. Overview of the Act 4. It was intended from the outset that the new statutory offences of encouraging or assisting an offence in the Act would have extra-territorial effect. The provisions derive largely from the recommendations of the Law Commission in their report: Section 52 and Schedule 4 of the Act contain the relevant provisions. In overview, they extend the reach of the offences contrary to sections 44, 45 and 46 in three categories of conduct with a foreign element, namely where: Section 52 1 applies where the principal offence might take place within the jurisdiction. It is relatively straightforward: This example is based on one used by the Law Commission in their Report at paragraph 8. Section 52 2 applies where D does not know or believe that the anticipated offence might take place in England, in other words, the anticipated offence might occur outside the jurisdiction. Paragraph 2 of Schedule 4 is the least complex. It provides for the extra-territorial application of the offences where: That is to say, the anticipated offence must amount to an offence recognised both within the jurisdiction and in the overseas territory. For example, where D, in London, encourages P, in Brisbane, to commit a robbery, D may be convicted of an offence: It was expressly intended by the Law Commission that this provision was to mirror section 1A of the Criminal Law Act In addition, the Act provides for the extra-territorial application of sections 44, 45 and 46, in relation to a second type of conduct with a foreign aspect: It is this principle that underlies paragraphs 1 and 2 of Schedule 4. Paragraph 1 of Schedule 4 extends jurisdiction where: Hence D may be convicted for an offence where, within the jurisdiction, D encourages, for example: The difficulty which arises, however, is what exactly D must anticipate. That term is not defined but on an ordinary reading must mean an offence contrary to the laws of England and Wales. Thus, for an offence to be committed extra-territorially, section 52 3 requires D to anticipate that P will commit an offence contrary to English law. Paragraph 1 of Schedule 4, however, by its nature contemplates acts of P which may only amount to offences under English law in certain circumstances, or if P has certain characteristics. What if P does not in fact possess those characteristics - does D anticipate an offence contrary to English law nevertheless? Put shortly, D commits an offence where he assists or encourages an offence which is capable of being tried before the English courts notwithstanding that it occurs

abroad. It is not necessary that P would, in fact, commit an offence contrary to English law. A natural reading supports this broad approach, as does the symmetry it enjoys with paragraph 2: Paragraph 3 of Schedule 4 presents similar problems. It provides for extra-territorial application where: This example is used in paragraph of the Explanatory Notes to the Act. D may be tried in England because he is a British citizen and the anticipated offence is one which could be tried in England because D is a British citizen. Adopting an approach analogous to that outlined above, D need not anticipate that P, in murdering V, will commit an offence contrary to English law viz. It is also a matter of practical importance. Under paragraph 1 or 3 of Schedule 4, an English-incorporated company may commit an offence by advising a Dutch client, say, on the execution of a financial transaction in Zimbabwe, even though the client could commit no offence if it was to carry out that transaction. It follows that, if a British advisor was to advise a foreign client to take certain steps in contravention of those Regulations, notwithstanding that the foreign client, if it took such steps, could not in fact commit any offence, the British adviser may be liable under the Act nonetheless. Moreover the conduct element of the offences contrary to sections 44, 45 and 46 is widely drawn. Encouragement or assistance might take any form: A safeguard exists under section 53 of the Act in that proceedings for an offence punishable by virtue of Schedule 4 may only be instigated by, or pursued with the consent of, the Attorney General. While this may mitigate the risk of a prosecution being pursued however, it may be scant consolation for the company operating internationally for whom an alleged commission of an offence may trigger defaults in its financing arrangements or breach of its contractual terms. The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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6: Extraterritorial Application of American Criminal Law - www.enganchecubano.com

This report is an abridged version of a report, which with citations to authority, footnotes, attachments, and bibliography, appears as CRS Report , Extraterritorial Application of American Criminal Law, by [author name scrubbed].

Their application to activities within a jurisdiction is reasonably clear. However, whether and to what extent they apply to events occurring outside the jurisdiction, especially outside Australia, depends on a number of factors including the express language of the relevant provision and the existence of a sufficient connection with the jurisdiction. In this review we look at the Australian approach to extraterritorial operation and the duty owed to overseas workers. Generally, the jurisdictions have chosen not to address this issue within the WHS Laws itself, however, some specific provisions directly or indirectly give or exclude extraterritorial operation. On the other hand, as is stated in the Explanatory Memorandum to the Model Work Health and Safety Bill, it is intended that inspection powers and powers of enquiry do not operate with respect to workplaces outside the jurisdiction. Typically, though, the WHS laws do not explicitly prescribe the rules for extraterritorial operation. A summary of the key extraterritoriality provisions of the Criminal Code in each jurisdiction is set out below: These are not addressed in this update. The duty owed to overseas workers Under the WHS laws, a Person Conducting a Business of Undertaking PCBU is required to take all reasonably practicable steps to ensure that all workers are not exposed to risks to their health and safety. Relevantly, this duty includes: In addition to these general aspects of the duty the WHS laws also impose some specific mandatory requirements on a PCBU including the provision of the following: What is required to fulfil the duty? A PCBU must take all reasonably practical steps to fulfil these duties. After assessing the extent of the risk and the ways the risk could be eliminated or minimised, the PCBU must consider whether the cost of the proposed step is grossly disproportionate to the risk, in which case it may not be reasonably practical to implement the proposed step. What is considered to be reasonably practicable will also be affected by the level of direction or influence the PCBU has over a worker or the workplace. This is particularly relevant when assessing whether the duty to overseas workers has been discharged. For example, if a PCBU exercises a high degree of control over the work being undertaken or how it is supervised or exercises a high level of management control over the workplace where the work is being done, then the scope of reasonably practical steps that are available is likely to be broader compared to a situation where such control levels are much less. There are a number of approved model Codes of Practice that provide guidance on fulfilling many of the specific duties identified above including: First Aid in the Workplace Code of Practice. Key actions to manage the risks and fulfil the duty In order to manage the risks associated with the health and safety of overseas workers, a PCBU should consider doing the following: Next steps The extraterritorial operation of the WHS laws has not yet been judicially considered and issues may arise as to whether the necessary jurisdictional nexus can, in fact, be established in circumstances involving offences committed in relation to overseas workers. However, it is clearly sensible for all PCBUs to understand the nature of the duty owed to overseas workers, adopt a cautionary approach and implement appropriately focused risk assessment and management processes to ensure the health and safety of workers performing work at workplaces overseas. For further information, please contact:

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7: - Maritime, Territorial And Indian Jurisdiction | JM | Department of Justice

Speed Read: Vanessa Reid examines the ever-expanding jurisdiction of UK criminal courts over extra-territorial conduct, persons, and property. As has been widely noted, the newly enforceable Unexplained Wealth Orders (UWOs)â€"created by the Criminal Finances Act â€"have an aggressively extra.

Introduction Most crime is territorial. It is proscribed, investigated, tried, and punished under the law of the place where it occurs. Yet in a surprising number of instances, federal criminal law does apply overseas whether the accused is an American or a foreign national. As long as there is some nexus to the United States, federal law authorizes prosecution â€" practical, diplomatic, and procedural impediments notwithstanding. Extraterritorial Jurisdiction The Constitution provides the power to enact criminal laws with extraterritorial application. The Constitution limits the manner in which the authority may be exercised. The due process clause of the Fifth Amendment, for instance, bars the extraterritorial application of federal criminal laws in the absence of a connection between the crime, the defendant, and the United States. Prosecution requires personal jurisdiction over the defendant and subject matter jurisdiction over the crime. In fact, the extraterritorial application of federal law is frequently 1 United States v. Columba- Coella, F. When the statute is silent, the courts begin with a presumption against extraterritorial application. Arabian American Oil Co. Haitian Centers Council, Inc. United States, U. Bin Laden, 92 F. Nothing in this paragraph shall be deemed to supersede any treaty or international agreement with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section a of this title. Section of the USA PATRIOT Act addresses a difference of opinion among the lower federal appellate courts over whether the federal laws that outlaw such crimes as murder, rape, and robbery when committed within federal enclaves in this country also apply on American governmental installations abroad. The Fourth and Ninth Circuits contend that the definition in subsection 7 3 includes areas in other countries over which the host nation has afforded the United States privileges akin to sovereignty. The Second Circuit argues that the subsection is intended to encompass only those areas over which Congress may exercise legislative jurisdiction of the kind ordinarily vested in the Several States. Within any fort, arsenal, dock-yard, magazine, or in any other place or district of country under the exclusive jurisdiction of the United States. United States, introduced the chapter with a jurisdictional statement, and then went on to list the crimes proscribed in such places. A state might reserve some jurisdiction to itself, thus conveying no more than concurrent jurisdiction to the United States, James v. Dravo Construction, U. Congress responded by qualifying the exclusivity language in the jurisdictional statement in subsection 7 3. After the Supreme Court found that civilian dependents of military personnel could not be tried by courts martial for crimes committed on military installations overseas, Reid v. United States ex rel. In the interim, however, the Fourth Circuit held that at least some areas located in other countries might be considered within the special territorial jurisdiction of the United States as described in subsection 7 3 , United States v. Erdos upheld the conviction of an American diplomat for the crime of manslaughter committed in the American embassy in Equatorial Guinea. Erdos saw two grounds for territorial jurisdiction within subsection 7 3: The crimes and offenses defined in this chapter shall be punished as herein prescribed: When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dock-yard, or other needful building. Murder is the unlawful killing of a human being with malice aforethought. Every person guilty of murder in the first degree shall suffer death. Unlike Erdos, it held that the American embassies abroad were not within the special territorial jurisdiction of the United States and that statutes outlawing murder and maiming within the territorial jurisdiction of the United States 18 U. It reversed a conviction under 18 U. Gatlin based its conclusion that subsection 7 3 has no extraterritorial application on three factors. First, a statute is presumed to have no 13 A later District Court held that an airport area assigned

to U. Customs authorities in Nassau, Bahamas came within the territorial jurisdiction of the United States as defined by subsection 7 3 , Witten v. Over the years references to the overseas application of 18 U. Islamic Republic, F. Jurisdiction for the prosecution of Erdos upon his return to the United States was based on 18 U. Third, it pointed out that after Reid and Kinsella, Congress, the Executive Branch, and commentators had all described as beyond federal jurisdiction those crimes committed by dependents and contractors on overseas military bases â€" all assuming that subsection 7 3 had no extraterritorial application, F. The Ninth Circuit could not agree, United States v. Corey involved the conviction of a civilian postal employee for sexual abuse committed in military housing in Japan and in a residence rented by the U. Corey found the presumption against extraterritoriality unpersuasive and not particularly relevant. It found support in the history of subsection 7 3 which had been applied over time to territory beyond the confines of any admitted state or beyond the continental boundaries of the United States, F. The Military Extraterritorial Jurisdiction Act treats felonies, committed anywhere overseas by members of the armed forces or those accompanying or employed by them, as if they were committed within the territorial jurisdiction of the United States, 18 U. The split in the circuits remains of consequence for crimes committed in federal overseas facilities by foreign nationals who are not associated with the U. In the Fourth and Ninth Circuits, such crimes may come within the territorial jurisdiction of the United States. In the Second Circuit, they do not. Credit Card Fraud Overseas Fraud and Related Activity in Connection with Access Devices Abroad h Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsection a or b of this section, shall be subject to the fines, penalties, imprisonment, and forfeiture provided in this title if-- 1 the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and 2 the person transports, delivers, conveys, transfers to or through, or otherwise stores, secrets, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom. Alternatively, it might be construed as an explicit confirmation that the section applies under these circumstances, but without intending to foreclose other circumstances justifying application abroad. B with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving. Parts ; or vi an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States. D an offense under. The money laundering provisions of 18 U. B knowing that the transaction is designed in whole or in part. First, the statute prohibits transactions in this country related to certain crimes in other countries. Whether this is intended as an implicit repeal of the requirements subsection f is unclear. The amendment allows for extraterritorial application in instances where subsection f would not. The report of the House committee in which this proposal originated makes it clear that the provision was crafted to fill in gaps in existing law. Pioneer Hi-Bred International, Inc. Yet it is possible to read the amendment and subsection f consistently, i. Section of the Act supplements the 18 U. For instance, section of title 18, United States Code, makes it an offense to conduct a transaction involving a financial institution if the transaction involves criminally derived property. The offenses covered by the extradite-or-try clause of c 7 B vi include the foreign equivalents of 18 U. Contemporaneous with Senate approval of the International Conventions for the Suppression of Terrorist Bombings and of the Financing of Terrorism, Congress enacted implementing criminal provisions that feature extraterritorial components. Subsection f a 26 bans the unlawful use of nuclear materials, chemical weapons, explosives, or biological weapons against public places or governmental27 facilities and utilities or attempting or conspiring to do so. Violations are punishable in the same manner as violations of 18 U. The extraterritorial reach of the new statute runs parallel to several existing statues which prohibit international terrorism;28 the unlawful use of chemical29 or 26 18 U. No other connection to the United States is needed. The section does not become effective, however, until the treaty provisions it implements come into effect for the United States â€" a

limitation without which any claim to legislative jurisdiction in some instances might be suspect. Newly enacted section C condemns 1 providing or collecting funds to be used for terrorist purposes or 2 concealing information concerning funds used to support terrorism. Subsection C a , the financing provision which also outlaws attempts and conspiracies, applies where the funds are to be used in support of the commission of either an offense covered in any of the various specified anti-terrorism39 treaties or an act of terrorism intended to cause death or serious injury. The underlying treaty offenses include the following federal crimes and their foreign equivalents: The financing subsection applies overseas if the offender is an American, if the target of the underlying terrorism is the United States government, an American, or an American entity, or when the Financing Convention becomes effective for the U. The subsection has several counterparts elsewhere in federal law, most notably 18 U. The extraterritorial reach of subsection C a when it may be based on the presence of the offender of the United States is more sweeping than the most expansive of these. Section B proscribes aid to groups designated foreign terrorist organizations by the Secretary of State as threats to U.

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8: The Long Arm Of The Law: Extra-Territoriality And The Serious Crime Act - Criminal Law - UK

*' * The extra-territorial jurisdiction of the English court has been the subject of a preliminary study by the Law Commission: Working Paper No. www.enganchecubano.com Extraterritorial Extent of the Criminal Law.*

Criminal Resource Manual at To avoid conflict over investigative and prosecutive jurisdiction, the Attorney General and the Secretary of Defense executed a memorandum of understanding MOU relating to the investigation and prosecution of crimes over which the Department of Justice and Department of Defense have concurrent jurisdiction. The agreement provides generally that all crimes committed on military reservations by individuals subject to the Uniform Code of Military Justice shall be investigated and prosecuted by the military department concerned, with certain exceptions. The agreement permits civil investigation and prosecution in Federal district court in any case when circumstances render such action more appropriate. If questions arise concerning the operation of the agreement, the United States Attorney should contact the section of the Criminal Division having responsibility over the Federal statute allegedly violated. MEJA is codified at 18 U. MEJA subjects certain individuals to federal prosecution for felony offenses committed outside the United States, provided the offense would have been subject to federal prosecution within the special maritime and territorial jurisdiction of the United States. MEJA permits the exercise of criminal jurisdiction over crimes committed outside the United States if at the time of the offense the offender was 1 employed by the Armed Forces outside the United States; 2 accompanying the Armed Forces outside the United States; or 3 a member of the Armed Forces. No prosecution may be commenced against a member of the Armed Forces, however, unless at the time of prosecution the member is no longer subject to the Uniform Code of Military Justice "UCMJ" or the member is charged with committing the offense with one or more other defendants not subject to the UCMJ. Additionally, prosecution under MEJA may be limited regarding certain military retirees. Successful prosecution of these matters requires both careful coordination within the Department of Justice and careful coordination between the Department and senior officials in the foreign affairs and military communities. When HRSP receives a MEJA referral from a federal law enforcement agency, HRSP shall 1 make a preliminary determination whether the matter falls within MEJA; 2 ensure that there is sufficient information to gauge whether further investigation and prosecution is appropriate; and 3 make a preliminary decision regarding venue. HRSP shall then assign an attorney to work on the matter or promptly notify the USAO with venue over the offense and refer the case to that USAO to determine whether further investigation and prosecution is warranted. Where appropriate, HRSP may provide simultaneous notification to other Department components with subject matter jurisdiction over the offense. HRSP shall provide contact information sufficient to allow the USAO to locate contact points in the theater of operations or command which referred the prosecution to the Department of Justice. The notification should include the names and biographic information, if known, of the subjects of the investigation and a general overview of the investigation. If HRSP determines from the notification that there are related matters pending in another district that could be affected by the new matter, HRSP will so inform the notifying USAO and will advise the other district of the new matter. The DOJ command center is available at all other times. The written request must includeâ€” a prosecution memorandum; a copy of the proposed indictment, information, complaint; documentation relating to the foreign prosecution i. The office seeking approval is encouraged to seek informal advice from HRSP well before submitting a request for approval. The AUSA or other Department attorney submitting the request must allocate sufficient lead time to permit review, revision, discussion, and the scheduling of the grand jury. The information provided should indicate both the proposed date for the prosecutorial action and the proposed date by which the AUSA or other Department attorney needs a response. A well-written, carefully organized prosecution memorandum is the greatest guarantee that a request for prosecution will be considered quickly and efficiently. Exigent Circumstances If exigent circumstances require a USAO or other Department component to take immediate action in a MEJA matter without complying with

the notification, concurrence, or prior approval requirements set forth above, the USAO or other Department component must promptly notify HRSP of any action taken and of the exigent circumstances that precluded adherence to this section. However, the Child Exploitation and Obscenity Section has responsibility for child abuse offenses, and other Sections, such as Organized Crime and Gang Section and the Human Rights and Special Prosecutions Section, should be consulted on questions involving the substantive elements of offenses within their areas of responsibility. The Criminal Section of the Civil Rights Division has expertise and should be consulted regarding color of law, hate crime, and human trafficking offenses. The principle of consultation has its roots in the unique relationship between the Federal Government and the governments of federally recognized Tribes. This government-to-government relationship has a more than year history, and is built on the foundation of the U. Constitution, treaties, legislation, executive action, and judicial rulings. Tribal consultation was recognized as formal Federal policy in Executive Order of November 6, Coordination between Tribes and the Department of Justice encompasses a variety of forms of communication that include formal consultation, listening sessions, meetings with individual Tribes, and informal discussions with Tribal leaders. Executive Order and this Policy focus on the more formal aspects of consultation. However, communication between Tribes and the Department of Justice is not limited to formal consultation. To this end, the Department of Justice will engage in ongoing communication with Tribes beyond formal consultation. Initiating Consultation The Department of Justice will consult with federally recognized Tribes before adopting policies that have Tribal implications. Nor does it include individual grants or contracts. In addition, the Office of Tribal Justiceâ€”in conjunction with affected Department componentsâ€”will consider requests from Tribes to engage in consultation on any new policy initiated by the Department of Justice, even if the Department has not previously identified that policy as having Tribal implications. Tribes may contact the Office of Tribal Justice to request a consultation. The affected component, in coordination with the Office of Tribal Justice, will prepare and send to the requesting Tribe or Tribes a written response to the request. Consultation Guiding Principles Given the wide variety of topics that may be the subject of consultation between Tribes and the Department of Justice, the structure of any individual consultation may vary. However, there are four guiding principles for all Tribal consultations conducted by the Department of Justice: Adequate Notice Adequate notice has two components. First, adequate notice means that relevant Tribal parties will be made aware of an upcoming consultation sufficiently in advance of the event to ensure an opportunity for participation. Second, adequate notice entails providing a full description of the topics to be discussed and typically should include draft materials if they are available at the time of the notice. Generally, every effort will be made to provide notice at least 30 days prior to a scheduled consultation. Invitations to consultations will be published on the Office of Tribal Justice and the Tribal Safety and Justice Web sites and sent by e-mail to appropriate individual Tribal leaders using an up-to-date Tribal leaders list, or sent by other means reasonably designed to reach all affected federally recognized Tribes. Adequate notice of a consultation should include sufficient detail about the topic to be discussed to allow Tribal leaders an opportunity to engage meaningfully in the consultation. This does not mean that the affected Department component has reached a preliminary decision on the issue that is the topic of the consultation. However, the Department should provide a brief discussion of the issues, a timeline of the process, potential outcomes, and, if possible, an overview of any specific questions on which the Department would like Tribal input. Accessibility Consultations should be accessible to the relevant Tribal audience. Depending on the circumstances, consultation may be conducted in person, via video conferencing, conference calls, interactive Web technology, or similar means. Written comments will also be accepted. If an issue that is the subject of the consultation primarily affects an individual reservation or region, the consulting component within the Department should ensure that the consultation will be accessible to the tribes that will be primarily affected. This will sometimes mean holding multiple consultation sessions. If the consultation involves joint action with other Federal agencies, the consulting component should attempt to hold a joint consultation with the other agencies. Meaningful Process Whenever possible, a consultation should involve individuals who have decision-making authority on the

issue that is the subject of the consultation. This will generally mean that the component should make every effort to ensure that elected Tribal leaders or their designees will be substantively involved in the consultation. Also, the component should ensure that political leadership or other relevant decision-makers for the Department of Justice are substantively involved in the consultation even if they are not personally able to attend. If the ultimate decision-makers are not present for the consultation, the Department representatives should ensure that those decision-makers are aware of the relevant issues in advance of the consultation and are apprised of Tribal input after the consultation and before relevant decisions are made. A meaningful process includes providing a full description of the topics to be discussed, and in most cases it will include written materials in advance of the event. Consultation will occur at a point in the deliberative process before the affected Department component has arrived at a decision. Consultation is not meaningful if the component has already decided the issue, and Tribal input is only pro forma. To this end, components need to be aware as early as possible of their duty to consult with Tribes and factor consultation into their deliberative process. Accountability At the conclusion of a consultation event, and after due consideration, the component will prepare, in consultation with the Office of Tribal Justice and any other component likely to have a specific interest in the subject matter of the consultation, a summary of the consultation. After input from the Office of Tribal Justice, the component will timely convey to all participants this summary of the issues discussed during the consultation. Some of these components have frequent and substantive contact with Tribal governments, while other components have limited interaction with Tribes. The Office of Tribal Justice is available to assist components with implementing this Policy for their Tribal consultation process. Components with frequent and substantive contact with Tribes may wish to supplement this section with more specific consultation guidance. Those components are encouraged to develop such guidance to assist in accomplishing their mission as it affects Tribes. Interagency Consultation Beyond issues requiring Tribal consultation by the Department of Justice, there may be overarching topics involving other Federal agencies that merit a broad policy discussion. Examples of such topics might include sacred sites, courts, law enforcement, crime-data collection, taxation, and juvenile justice. As necessary and appropriate, the Department may initiate an interagency Tribal consultation on such topics. Relevant Federal agencies will be invited, along with representatives from interested Tribes. This interagency consultation will ordinarily be convened in Washington, D. The purpose of such a consultation is to fully consider important existing policies with Tribal implications, many of which may pre-date Executive Order

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