



U.S. Department of Justice

MEMORANDUM

Washington, D.C. 20530

TO: John Harris

FROM: Meg Murray

DATE: August 8, 1991

Re: Legal Issues Raised by El Salvador's Request for Depositions

Today you asked me to research several legal issues which might potentially arise concerning the affidavits of several United States Army officers. These affidavits will be forwarded to El Salvadoran officials pursuant to their letter rogatory request to the United States. The following memorandum sets forth the questions presented by the El Salvadoran letter rogatory and the responses my initial research has provided.

- I. From what authority do court reporters derive their ability to administer oaths to individuals prior to that individual's deposition?

In the District of Columbia, private court reporters; i.e., court reporters who do not work solely for a United States court, must also be certified notary publics. Diversified Reporting and Miller's Reporting Services, two private court reporting companies, both confirmed that pursuant to local custom, they do not hire court reporters who are not already certified notary publics for the District of Columbia.

17 DCMR Chapter 24 § 24.02 et seq., empowers notary publics to administer oaths to deponents before the deposition begins. These same regulations authorize the Notary Division of the District of Columbia municipal government to certify an individual as a notary public only after the individual has successfully completed the following requirements:

- they must be eighteen years or older;
- they must live and/or work in the District of Columbia;
- they must successfully pass an oral exam which seeks to confirm that the candidate fully understands the responsibilities which the office of notary public carries;
- they must be bondable;

-they must provide three letters of reference regarding the candidate's character; and

-they must remit a \$30 application fee.

Once the candidate has been sworn in by the Notary Division, he or she is deemed to be an officer of the court. (11)

**II. What authority empowers a United States District Court to execute a letter rogatory request from a foreign tribunal?**

28 United States Code § 1781 empowers the Department of State to transfer a letter rogatory from a foreign tribunal to the United States court or agency for execution. Moreover, a United States court or agency is empowered to execute a letter rogatory received directly from a foreign tribunal.

**III. What authority empowers a United States District Court magistrate to administer oaths to individuals attesting to the truthfulness of their depositions?**

28 United States Code §1782(a) authorizes the federal district court, of the district within which a particular deponent is found, to order the testimony of that deponent pursuant to a letter rogatory request from a foreign tribunal or upon the application of any interested person (emphasis added). That person, appointed by the district court to handle the matter, may administer any necessary oaths to the deponent. 28 USC 1782(a) 6301

Moreover, 28 USC §1782(b) provides that §1782(a) does not preclude any person within the United States from voluntarily giving his testimony for use in a proceeding in a foreign tribunal to any person and in any manner acceptable to the individual. (11)

**IV. In the event that a deponent is found to have falsely sworn to his statement either before the court reporter or the United States magistrate, what authority provides for his prosecution for perjury?**

18 United States Code § 1621 states that whoever, having taken an oath before a competent tribunal or officer of the court that his deposition is true, subsequently states a material matter which he does not believe to be true, is guilty of perjury. Moreover, he shall be fined \$2,000, imprisoned for not more than five years, or both. (11)

## V. LEGAL ANALYSIS

For our purposes, the above-cited authorities suggest the following legal argument. The United States, as executor of the El Salvadoran letter rogatory, can attest to the truthfulness of the Army officers' depositions given that the deponents twice swore to the truthfulness of their statements on penalty of prosecution for perjury. First, as an officer of the court by virtue of her status as a notary public, certified by the Notary Division of the District of Columbia municipal government, any perjury committed before the court reporter would violate 18 U.S.C. § 1621. Similarly, any false testimony made before the United States District Court magistrate would also violate 18 U.S.C. § 1621.

Thereafter, prosecution proceedings for perjury could be instituted in the United States District Court for the District of Columbia given that this court would have subject matter jurisdiction over the El Salvadoran letter rogatory as provided by 28 U.S.C. § 1781. Despite that there have been no actual proceedings before the court, caselaw suggests that so long as a United States court has personal or subject matter jurisdiction over a matter in which the testimony was given, that court may hear the subsequent perjury proceedings.<sup>1</sup> Consequently, the depositions sworn to before a court reporter and a United States magistrate were part of an execution of a letter rogatory which falls under the jurisdiction of the United States District Court for the District of Columbia. Any deponent giving false oaths before the court reporter and/or United States magistrate could thus be prosecuted for violation of 18 U.S.C. § 1621.

**\*\*Caselaw on the above issues will be forthcoming.**