



# A Few Notes on “Extradition & Prosecutorial Difficulties” in Counterproliferation Investigations & Prosecutions

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Thank You

# Take Home Message #1

- It is increasing the fact that, with regard to international cooperation and extraditions in Counterproliferation Criminal Prosecutions, the glass is . . .

# Half Full



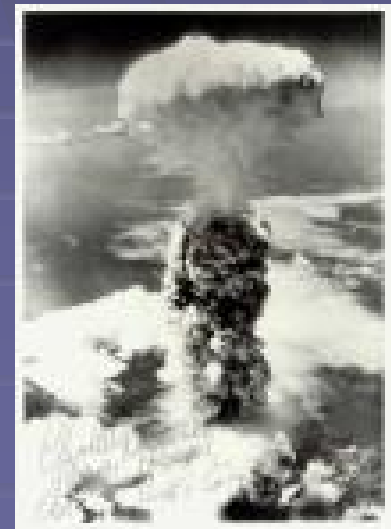
# Outline of Topics

- I. “Extra-Territorial” Criminal Prosecutions – A Misnomer or Definitional Problem
  - An Example of the Misnomer – U.S. v. Asher Karni
  - Cautionary Note about the Use of the Term “Extra-Territorial” Prosecutions
  - Misimpressions Created of Assertions of Sovereignty
  - Prejudicing our Efforts at Mutual Cooperation
- II. The Glass is Half Full
  - A. Recent Successful Extraditions in “Extraterritorial” Prosecutions
  - B. Swiss Bank Records
  - C. The Malaysian Strategic Trade Act
- III. A Couple Observations from a Prosecutor to Keep the Glass Half Full
  - A. Informal Sharing Agreements – Customs Mutual Assistance Agreements
  - B. Next Model Law or Push – Build upon the Requirements of Transparency and Honesty in Shipping Records to impose: (1) Duty of Due Diligence by Sellers and (2) End-User Verification Systems
  - C. Remember the Nature of Enforcement Agents and Investigators – The Dubai Book & Assistance to Our Front Line Investigators and Police
- IV. Never Say Never

# I. An “Extra-Territorial” Prosecution???

## U.S. v. Asher Karni

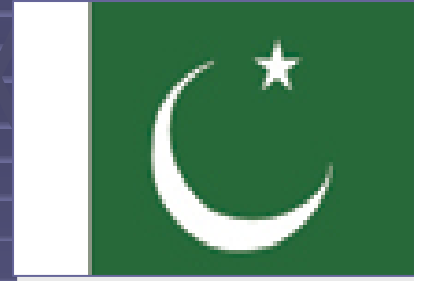
- Defendant Karni, an Israeli national operating out of South Africa, was the principal in an import/export business known as Top-Cape Technology.
- In July 2003, U.S. Commerce and Customs agents learned that Karni was in the process of acquiring 200 triggered spark gaps (shown in photo) from a company in Massachusetts and that he planned to have the triggered spark gaps sent to Top-Cape in South Africa, from where the items, at his instruction, would be transshipped to Pakistan.
- Triggered spark gaps are high-speed electrical switches that are capable of sending synchronized electronic pulses.
- They can be used as detonators of a nuclear device.



# An “Extra-Territorial” Prosecution?

## **U.S. v. Asher Karni**

- U.S. export laws and regulations require the issuance of a license for the export of triggered spark gaps to Pakistan.
- At the request of investigating agents, the manufacturer agreed to disable the triggered spark gaps before they were shipped to Karni’s company in South Africa through a broker.
- In Oct. 2003, Karni’s company illegally sent the triggered spark gaps to Islamabad, Pakistan via Dubai, UAE.
- At the same time, Karni was also causing the illegal export from the U.S. of missile testing equipment to India.
- Simultaneous Investigations and Search Warrants in South Africa and the U.S.
- Karni was arrested on Jan. 1, 2004, in Denver, U.S., when he arrived for a ski vacation. He was detained pending trial.
- In Sept. 2004, Karni pled guilty and sentenced to prison in the U.S.





# Using the Misleading Label of “Extra-Territoriality” in the Karni Context

- I. The Label of an “Extra-Territorial” Criminal Prosecution – Creating a potential problem where none should exist
  - A Cautionary Note about the Use of the Term “Extra-Territorial” Prosecution in the Karni Context
    - 1. Misimpressions are Created of an Assertion of Sovereignty beyond a Nation’s borders
      - U.S. Goods – in Karni
      - U.S. Companies used and defrauded – in Karni
      - Willful Conduct – Knowledge that Unlawful
      - Karni prosecution – Not Extra-Territorial
    - 2. Prejudices our Efforts at Mutual Cooperation
      - Defendants use the term “Extra-Territorial” Prosecution to describe a prosecution such as the Karni case to defeat extradition or mutual cooperation by prejudicing other judicial or prosecutorial officials against such counterproliferation efforts.
      - See U.S. v. Kakavand – extradition effort in France



## II. The Glass is Half Full

- A. Extraditions in Counterproliferation Prosecutions -- Recent Examples of Successful Extradition Requests:
  - U.S. v. Sairafi -- Extradition from Germany for the Unlicensed Export of specialized vacuum pump equipment from the U.S.
  - U.S. v. Chan -- Extradition from Hong Kong for Unlicensed Export of Military Flight Simulators from the U.S.
  - U.S. v. Ardebelli -- Extradition from Georgia for the Unlicensed Export of Military Radar components from the U.S.
  - U.S. v. Lau -- Extradition from Canada for the Unlicensed Export of Thermal Imaging Cameras from the U.S.
  - U.S. v. Zan -- Extradition from Hungary for the Unlicensed Export of Radiation Hardened Microchips from the U.S.
  - U.S. v. Bout -- Extradition from Thailand for Conspiracy to Transship Armaments to the FARC and to Kill U.S. Citizens and for Unlicensed Attempt to Purchase U.S. Aircraft
  - U.S. v. Tajik -- Extradition Ordered from the United Kingdom for the Unlicensed Export of Military Fighter Jet parts from the U.S.
  - U.S. v. Tappin -- Extradition Ordered from the United Kingdom for the Unlicensed Export of Military Missile parts from the U.S.

## II. The Glass is Half Full

- A. Extraditions: Recent Examples of Successful Extradition Requests
  - For Extradition -- Important where appropriate:
    - (1) Not to use the misleading description of an “extraterritorial” prosecution ;and
    - (2) To Note the Fraudulent aspects of the Defendant’s Conduct
      - Fraud against the seller regarding intended end-user or end-use; and
      - False statements in shipping records

## II. The Glass is Half Full

- B. Swiss Bank Records
  - U.S. v. Gowadia – Swiss Bank Records obtained from Switzerland and introduced in evidence against U.S. citizen who was successfully prosecuted for willfully and without a license selling technical data to foreign nations concerning Cruise Missiles
- C. The Malaysian Strategic Trade Act
  - Active Enforcement underway
  - A Means to a Conversation and Cooperation between investigators and prosecutors across national boundaries

# III. To Maintain the Glass Half Full or To Fill it Further

- III. A Couple Observations from a Prosecutor to Keep the Glass Half Full
  - A. Informal Sharing Agreements – Customs Mutual Assistance Agreements
  - B. Next Model Law or Push from the Nonproliferation Community – Build upon Requirement of Transparency and Honesty in Shipping Records to impose: (1) a Duty of Due Diligence by Sellers and (2) End-User Verification Systems
  - C. Remember the Nature of Enforcement Agents and Investigators – The Dubai Book & Assistance to Our Front Line Investigators and Police
    - Generalists
    - Police not Professors
    - Time or the Lack of Time – The constant Pressure to Move Commerce

# QUESTIONS & IDEAS???

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- Once Again: Thank You.
- Whenever you plow up against some bureaucratic mess, REMEMBER the words of Dr. Albert Schweitzer:
  - “Fortunate is the person who seeks and finds work which is in service to others and the community.”
  - And an old prosecutor: Whoever spares the bad injures the good.





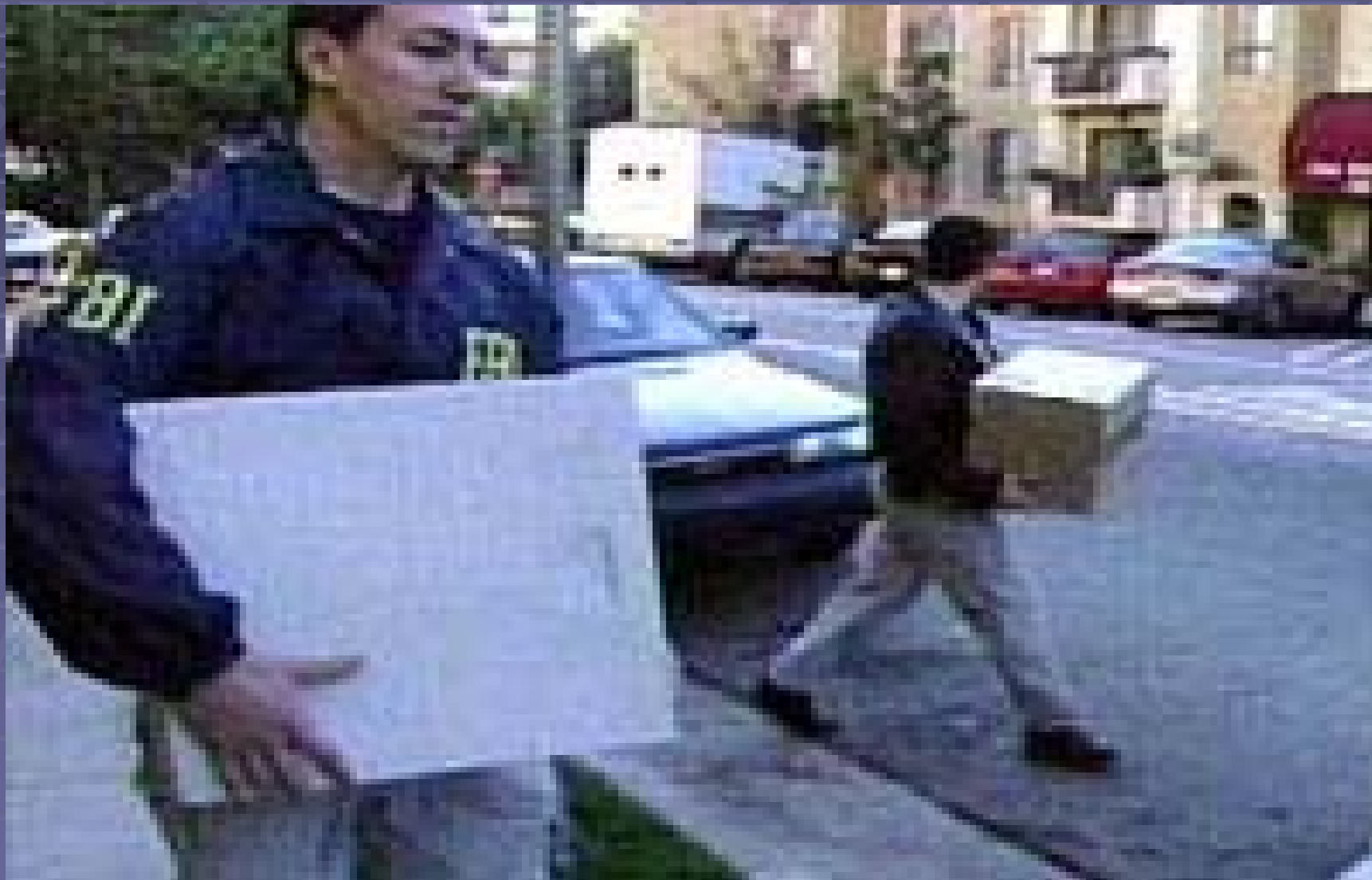
“Your dog had both motive and opportunity, ma’am: He hated the cat and he’s had training in operating heavy machinery. ... Your husband, we feel, was just in the wrong place at the wrong time.”

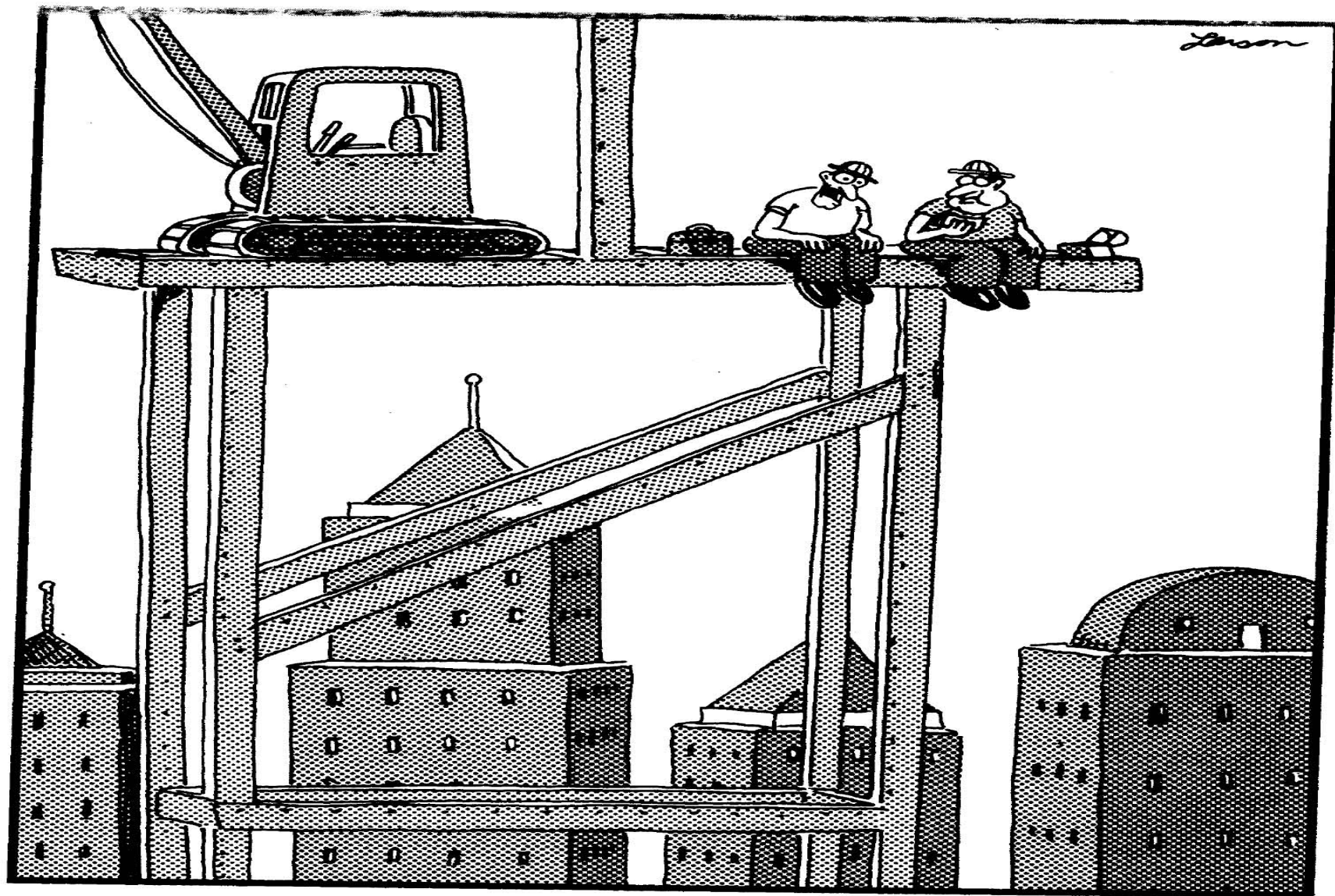


# Extraterritorial?

- United States v. Inco Bank & Trust Corp. 845 F.2d 919, 920 n.4 (11<sup>th</sup> Cir. 1988) (per curiam) (noting “that a conspiracy occurring partly within the United States is prosecutable without resort to any theory of extraterritorial jurisdiction”)

# Raid Jackets – Folks Listening





“You ever get that urge, Frank? It begins with looking down from 50 stories up, thinking about the meaninglessness of life, listening to dark voices deep inside you, and you think, ‘Should I? ... Should I? ... Should I push someone off?’”

