

# LOST IN PARADISE: LOBBYING STRATEGIES FOR PUBLIC INTERNATIONAL LAW ISSUES

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## I. INTRODUCTION

Increasingly in an interconnected world, Americans and people throughout the world are encountering situations in which their human rights are abused abroad. People are traveling to exotic parts of the world that have not experienced the extent of foreign penetration. Simultaneously, the enormous gaps between wealthy and impoverished countries and peoples are exacerbated by the ever present media, so that the less fortunate people are reminded daily of the huge differences that exist.

The rise of transnational organized crime groups enables such groups to dominate and control the action of governments. Faced with this menace, well-meaning law enforcement agencies have persuaded legislatures and governments to compromise civil liberties and human rights. In other cases, law enforcement agencies sometimes take extralegal shortcuts to achieve their goals. The *ends justify the means* syndrome can have especially dangerous consequences in emerging countries. In many cases, lack of or insufficient legal infrastructure and legal traditions result in persons being detained arbitrarily and are unable to obtain due process

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or obtain redress.

In increasing cases where United States persons are improperly detained abroad and the host country's legal machinery is insufficient, defendants must resort to the assistance of the United States government or international human rights machinery. For reasons well known, the machinery is quite limited. Hence, counsel designing lobbying strategies to rescue such persons must be quite inventive.

To provide some concrete examples of lobbying strategies to resolve international criminal and human rights issues, I will use the case of Jim and Penny Fletcher of Huntington, West Virginia. This is a recent case on which I worked that received some media attention. The Fetters were detained in October 1996, charged with the murder of Jerome Joseph, a water taxi driver on the island of Bequia. Eventually, their case went to trial, and the court dismissed all charges and finally released them in August 1997. In this introduction, a chronology of essential events will be set forth.<sup>1</sup>

This paper alludes in the title to *Paradise Lost*, which became a theme at the end of the case. It took the theme from a quote in Senator John Kerry's recently written book on transnational crime.<sup>2</sup> The phrase "Paradise Lost" refers to how the beauty of the islands and the tourism potential are squandered by the penetration of St. Vincent by transnational organized crime.<sup>3</sup> The resulting corruption increasingly impacts tourists and foreign visitors.

Having taught at the University of the West Indies Faculty of Law and having participated as a consultant in several administration of justice projects in the region, I was acquainted with the legal system and legal professionals in St. Vincent. From the beginning, my trip to St. Vincent in January 1997 and my conversations with legal professionals showed me that the detention and prosecution of the Fetters was the result of an apparent personal vendetta engendered by altercations that Penny Fletcher had had with some prominent people in St. Vincent, exacerbated by efforts to approach them for a bribe. This approach was aborted as a result of the

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1. For an excellent chronology of events, see *The Fletcher Story Unfolds*, THE HERALD DISPATCH (Huntington, W.Va.), Aug. 9, 1997, at 8B, col. 1., on which this account relies heavily.

2. See, e.g., SENATOR JOHN KERRY, THE NEW WAR: THE WEB OF CRIME THAT THREATENS AMERICA'S SECURITY (1997). In the cover, Kerry quotes: "Let none admire. That riches go in Hell." JOHN MILTON, PARADISE LOST 690-91 (1667).

3. *Id.*

notoriety and media attention given to the Alan Heath case.<sup>4</sup>

After Heath's wife was brutally murdered as they were sleeping on their yacht in waters off the St. Vincent coast, Heath was detained for approximately three weeks and had his passport taken. The St. Vincent government received detailed information and intensive cooperation from the South African government on the close and loving relationship between the couple. Still, the St. Vincent government did not release Heath. Instead, according to Heath, one of Heath's attorneys in St. Vincent solicited a bribe for \$25,000 (U.S.), the amount of the life insurance policy on her — information transmitted by the South African government to the St. Vincent government. Eventually, after strenuous intervention by the South African government and on the very day Heath paid the requested money, Heath was released.<sup>5</sup>

His release triggered a massive press campaign by Heath with the cooperation of the South African government to expose the injustices he and his wife had experienced.<sup>6</sup>

We had witnesses and written reports, documenting exactly with whom and when the Fletchers' interrogations and initial detentions occurred, including a report from a former high-level police official who served as our investigator. Just as important, my personal conversations with St. Vincent law enforcement officials, politicians, civil servants, and the legal community convinced me that from the start the St. Vincent government had no information implicating the Fletchers in the murder, but that the highest level of the government wanted to prosecute them to serve other agendas.<sup>7</sup> As the case continued, my investigation showed that, notwithstanding the State Department's denials, their own documents confirmed their suspicions of my same thesis. Additional documentation would show many other cases of sham detentions, extortions and attempted

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4. Kathy Moloney, *Yachtsman Heath Warns Would-Be Travellers to St. Vincent*, THE MERCURY (S. Africa), Dec. 2, 1996, at 3; Kathy Moloney, *Heath Vows to "Kill" St. Vincent Tourist Trade*, THE MERCURY (S. Africa), Dec. 12, 1996, at 3.

5. Alan Heath's description of his order with documents showing payments (undated) (on file with author). The diplomatic notes also confirm and supplement his version (on file with author).

6. *Bribe?*, THE NEWS (Kingstown, St. Vincent), Dec. 20, 1996 at 1, col. 1; Kiva Clarke, *Wife Killed, Husband Bribes His Way Out of Jail*, SUNDAY MIRROR (S. Africa), Jan. 19, 1997; P.C. Hughes, *Corruption in High Places*, THE VINCENTIAN, Jan. 3, 1997, at 16; Editorial, *Heath Heats Up Tourism Ministry*, SEARCHLIGHT, Jan. 10, 1997; *Visitor Vows to "Kill" St. Vincent Tourist Trade*, THE NEWS (Kingstown, St. Vincent), Feb. 2, 1997; Editorial, *Scandals and Tourism*, THE NEWS, Jan. 10, 1997, at 6; *Ministry Denies Bribery Charge*, THE NEWS (Kingstown, St. Vincent), Jan. 31, 1997, at 1.

7. For more details on the involvement by high-level St. Vincent Government officials, see Jim Flannery, *Killers Or Victims*, SOUNDINGS (Essex, Ct.), Aug. 1997, at A14.

extortions, egregious violations of rights of defendants, and attempts to manipulate the media.

In addition, to my surprise, the evidence of significant penetration of St. Vincent government by organized crime became more abundant as the case and our investigations continued. On February 25, 1997, a preliminary inquiry (P.I.) for the Fletchers was held and was completed on approximately March 10, 1997. The magistrate found that, although only extremely limited circumstantial evidence existed, probable cause existed to bind the Fletchers over for trial.

On May 2, 1997, ABC News aired a Nightline program about the case. Two days later, Inside Edition, a national program, aired an exposé. Shortly thereafter, Extra, a daily tabloid program, regularly aired developments in the case, including information on the deteriorating medical conditions of the Fletchers.

The St. Vincent Prime Minister personally responded. In a radio interview aired in the United States on May 5, 1997, the Prime Minister castigated ABC News and characterized its program as unjust and trying to interfere with a fair trial. He defended his government's handling of the Heath case, denied any corruption, and said in reference to the Heath case "[t]his is a country where you can't come and murder your wife . . . ."<sup>8</sup>

On May 10, 1997, President Clinton, meeting Caribbean leaders in Barbados, discussed the case with the St. Vincent Prime Minister and urged him to assure that they be accorded full due process.

On May 11, 1997, a lawyer for Penny Fletcher said the St. Vincent officials had denied her medical treatment for what could be the onset of cervical cancer. St. Vincent authorities claimed they could not allow treatment because they feared she would escape.

On May 27, 1997, on the only government-owned radio station, the St. Vincent Prime Minister read a letter, stating that "this couple has an unsavory reputation and their behavior . . . was bizarre and offensive." He went on to read the letter, stating "[t]here certainly appears to be very strong circumstantial evidence that they were involved in this tragedy, and many of us believe they are guilty."<sup>9</sup>

On June 6, 1997, Senator Rockefeller sent a letter to United States Secretary of State Madeleine Albright, expressing outrage at the Prime

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8. Transcript of Radio Interview with Prime Minister of St. Vincent, May 5, 1997, at 2 (on file with author). The unofficial transcript was prepared by THE NEWS (Kingstown, St. Vincent), from a video obtained from the St. Vincent Government Television.

9. Transcript of excerpts related to that of the Fletchers' from Prime Minister Mitchell's News Conference, Kingstown, St. Vincent & the Grenadines (May 27, 1997) (on file with author). The unofficial transcript was prepared by THE NEWS (Kingstown, St. Vincent), from a video obtained from the St. Vincent Government Television.

Minister's remarks and seeking strident action. On June 13, 1997, six members of Congress wrote a similar letter to the St. Vincent Ambassador. By now, the media had become increasingly interested in the diplomatic ramifications of the case.

In the Spring of 1997, medical reports confirmed that Penny Fletcher had a precancerous condition of the cervix. Penny first complained of her problems in November 1996. After many months of almost daily heroic efforts to obtain treatment for her by the Consul General's Office, United States Embassy in Barbados, she was eventually able to obtain a colposcopy. It confirmed the diagnosis, and she then underwent cryosurgery in an effort to freeze the cancerous cells. Against the doctor's order, Penny was not allowed to stay overnight in the hospital. After she passed out on her return to prison, the St. Vincent government allowed her to return to the hospital. In the meantime, the St. Vincent government, through its Prime Minister and its press agent, was reporting that both Fletchers were in excellent medical condition and received excellent treatment in prison. The media and even members of Congress zoomed into the fray, burrowing through the public reports, and depicted the tragedy in growing sympathetic tones.<sup>10</sup>

On July 9, 1997, as the trial started, an angry Judge Dubar Cenac delayed the trial until after a hearing on pre-trial publicity was conducted. Prosecutor Karl Hudson-Phillips, a Trinidadian attorney, attacked the Fletchers and their counsel, claiming they had initiated a smear campaign against the St. Vincent legal system.

On July 11, 1997, prosecutors asked Judge Cenac to delay the trial until October and to grant a request for a worldwide gag order on coverage of the trial and criticism of the St. Vincent legal system.

On July 14 and 16, 1997, the court held hearings on the request. On July 16, 1997, St. Vincent Police Commissioner Randolph Toussaint sued West Virginia reporter Mark Truby for writing about the allegation of the extortion attempt concerning the Fletchers' release.

On July 16, 1997, the St. Vincent Prime Minister appeared on the CNN Court Television Program, *Burden of Proof* to rebut allegations of corruption and unfairness in the *Fletcher*, *Heath*, and other cases.<sup>11</sup> His decision to appear and his performance were failures that gave rise to more pressure to allow the Fletchers to have a fair trial immediately.

On July 17, 1997, the United States Ambassador to St. Vincent

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10. See Mark Truby, *Mitchell's Comments Anger Rockefeller*, THE HERALD DISPATCH (Huntington, W. Va.), June 10, 1997.

11. *PM on Burden of Proof Today*, THE HERALD OF ST. VINCENT, July 16, 1997 (on file with author).

visited with the Fletcher family in Kingstown, and then the highest ranking official in St. Vincent, in a move symbolizing the growing interest of the United States government in the case.

On July 18, 1997, Judge Cenac ordered the Fletchers' trial to start July 28 and denied the motion for the gag order. St. Vincent Police Commissioner, Toussaint, resigned without explanation.

On July 28, 1997, the trial started. At the beginning of the trial, CNN's Burden of Proof did a program on the case. I appeared on the program. Although I refused to discuss the facts of the Fletchers' case, citing concern to provide new ammunition for the prosecution to delay the case, I did point out that our investigation indicated that at least fifteen persons had been subjected to extortion or attempted extortion in criminal cases in St. Vincent. When asked what travelers to foreign destinations should consider, I noted that, in the case of journalists traveling to St. Vincent, they had to be aware that the St. Vincent government does not hesitate to detain, deport, and otherwise harass such journalists. At the time, the St. Vincent government and its supporters were furious about these remarks.

Ironically, the Police Commissioner's filing of a libel case against Mark Truby (the lead foreign reporter on the case), the efforts to prevent him from leaving the country during the trial's recess, threats to bring a libel action against John McWethy, the refusal to allow the government owned radio to interview Dr. Gonsalves (the Vincentian defense counsel) about the Heath and Fletchers' cases, and the Prime Minister's public warnings to the Vincentian people about talking to foreign media concerning the case, all underscored the importance of the media during the Fletchers' case and similar cases. It is painfully transparent when governments try to cover up their actions and prevent coverage by the media.

On July 31, 1997, a juror complained of receiving threatening phone calls at work by a male with a foreign accent who warned that he better return a verdict of not guilty. Word of the threat was not announced in opened court. Trial was recessed early, and Cenac promised to explain to the jury what had occurred. The prosecutor used the incidents to move for a mistrial and request a postponement of the trial. Again, Judge Cenac denied the request.

On August 1, 1997, Cenac ordered the trial to continue, despite a threat to a juror revealed on July 31 and another that surfaced the following day.

On August 8, 1997, at the end of the prosecutor's case, Judge Cenac directed the jury to acquit the defendants without need for the

defense to put on its case.<sup>12</sup>

## II. EXECUTIVE BRANCH

Initially, the United States government, through the State Department's Consular Affairs Office and the United States Embassy in Bridgetown, Barbados, assured the family, inquiring members of Congress, and counsel that the case was handled by the St. Vincent and United States governments in a normal fashion and with no imperfections. Unfortunately, the United States government also from the start followed the standard it follows in other cases of Americans detained abroad: as long as the Fletchers were treated the same as Vincentian detainees, then the United States government could not press the St. Vincent government.

From a policy perspective, the evidence of penetration of the St. Vincent government by transnational organized crime was one element that enabled the defense team to argue vociferously for more proactive measures to help the Fletchers. Evidence existed in official<sup>13</sup> and unofficial United States government reports, anecdotal media reports,<sup>14</sup> and cable traffic. The reports in United States Embassy and State Department cables that the victim's murder was drug-related also gave rise to the importance of the involvement of transnational organized crime throughout the case. According to United States official reports, the Grenadines have been a "pipeline for drugs transiting to the United States and the French Islands. Substantial local trafficking organizations engaged in large scale

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12. For comprehensive background on the verdict, the trial, and the entire ordeal, see a series of articles in the Aug. 9, 1997 issue of THE HERALD-DISPATCH (Huntington, W.Va.) at 1A, by Mark Truby, *Finally, Freedom: Fletchers Head for Home After Judge Directs Not Guilty Verdict*.

13. *E.g.*, Cable Secretary of State, United States Dept. of State, *DAS Hrinka's Meeting with Vincentian Opposition Figure Gonsalves*, (May 1993) (discusses how the St. Vincent Government's obstinacy in cooperation with the United States in the investigation of a cocaine shipment on the *Lucky Star*, a Vincentian-flagged vessel, came from the fear of possible drug traffickers' reaction) (on file with author).

14. The media reported the underground economy in St. Vincent, protection by the St. Vincent Government of criminals caught in law enforcement investigations, and corruption in government supported projects had apparent participation by criminal elements. *See, e.g.*, P.C. Hughes, *E.C.G.C. Fiasco, Etc.*, THE VINCENTIAN, May 23, 1997, at 15 (discusses the failure on ill-advised construction projects in the Grenadines due in part to corruption and irregularities); *Government Continues Talks on Failed Marina Project*, THE ST. VINCENT HERALD, June 16, 1997 (discusses the failed Otley Hall project due partly to the bankruptcy of its Italian investors); P.C. Hughes, *This Most Hideous N.D.P. Tyrant*, THE VINCENTIAN, May 9, 1997, at 15 (concerns the \$30 million Campden Park Container Terminal Project and its approval without advice of the cabinet).

acquisition, storage, and transshipment of cocaine, often in ton lots.”<sup>15</sup> The problem of cocaine transiting through the Grenadines<sup>16</sup> and allegations of corrupt payments and loans to public officials have increased.<sup>17</sup>

The facts of the case should have been reason to invoke 22 United States Code section 1732. It provides:

Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war and not otherwise prohibited by law, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.<sup>18</sup>

Defense counsel argued that the irregular circumstances of the Fletchers' arrest and detention, in conjunction with the abusive treatment and the absence of any evidence to corroborate the charges, together with the police's admissions of lack of evidence and apologies when they arrested the Fletchers, required President Clinton to initiate action under the provisions of section 1732.

Defense counsel called on the United States government to consider further action, including the imposition of sanctions, in the event the government of St. Vincent did not release the Fletchers or did not provide sufficient reasons for their detention.<sup>19</sup> The Fletchers' counsel

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15. U.S. DEPT. OF STATE, INT'L NARCOTICS CONTROL STRATEGY REPORT 197 (Mar. 1995).

16. U.S. DEPT. OF STATE, INT'L NARCOTICS CONTROL STRATEGY REPORT 220 (Mar. 1997).

17. U.S. DEPT. OF STATE, INT'L NARCOTICS CONTROL STRATEGY REPORT 548 (Mar. 1996).

18. 22 U.S.C. § 1732 (1997).

19. The measures the President can take, once he finds wrongful detention, are all that will bring pressure on the offending foreign nation short of war. For instance, the House bill encourages the President to “suspend in part, or wholly, commercial relations with the said Government” since the statute allows “such means not amounting to acts of war and not



sought action under section 1732 in vain since mid-December 1996. We argued that today the scope of the statute's protection is just as broad as courts have recognized its applicability to varied situations, including the unjust detention and incarceration of an American citizen by the criminal justice system of a foreign government.<sup>20</sup> The State Department took the position that this 1868 statute is rarely invoked and gives it wide discretion. Therefore, in practice, the State Department ignores the provision. We pressed the judicial precedents that the President and the State Department must make inquiry upon the type of information made public in the *Fletchers'* case. We noted that in the *Flynn* case, involving an American citizen sentenced to a six-year term of imprisonment in Mexico, the court stated: "[T]he language and legislative history of the Hostage Act convince us that Congress placed a judicially enforceable duty on the Executive to inquire into the circumstances of an American citizen's extended detention abroad."<sup>21</sup>

United States consular officials must use their "best efforts in protecting the citizen's legal and human rights."<sup>22</sup> They are required to use their "own creative approach" in achieving these goals.<sup>23</sup>

Defense counsel requested the United States government to review the *Fletchers* case in light of the documents that the South African government, on its own initiative, shared with respect to corruption in St. Vincent in the context of the *Heath* case. The South African government initiated the exchange because of its concern about the abuse of rights of the *Fletchers*. The actions of the South African government were quite extraordinary.

Sandra Ingram, a foreign service officer and attorney in the United States Embassy in Barbados, attended the preliminary investigation (P.I.) and wrote a report.<sup>24</sup> Although the *Fletchers'* counsel and family knew the report was favorable to their contentions of procedural irregularities, and although the *Fletchers* had executed a privacy waiver, suddenly the State Department officials claimed that the report was protected. On the last day

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otherwise prohibited by law." Or if economic sanctions fail, "to order the arrest and to detain in custody any subject or citizen of such foreign Government, who may be found within the jurisdiction of the United States." *American International Group, Inc. v. Islamic Republic of Iran*, 657 F.2d 430, 452 (D.C. Cir. 1981), citing 46 CONG.GLOBE 4205.

20. *See, e.g.*, *Flynn v. Schulz*, 748 F.2d 1186, 1195 (7th Cir. 1986).

21. *Id.*; *see also* *Smith v. Reagan*, 844 F.2d 195, 199 (4th Cir. 1988) (citing *Flynn* with approval).

22. U.S. DEPT. OF STATE, 7 FOREIGN AFFAIRS MANUAL 400, 401 (on file with author).

23. *Id.*

24. Memorandum from Sandra Ingram, United States Consul General, United States Embassy to Barbados, *Fletcher Preliminary Inquiry* (March 12, 1997).

for the State Department to furnish the Fletchers' counsel's report prior to filing a lawsuit under the Freedom of Information Act, it allowed Congressional staffers to view the report. The next day, *The Herald-Dispatch* in Huntington, W.V. leaked some sensational parts of the report. As a result, the State Department decided to release the report in its entirety rather than with redactions.

The report would turn out to be a critical document. The conduct of the State Department after the preliminary hearing had been alarming. Until April 24, 1997, the State Department refused to accede to requests to furnish the Ingram report. Until then, it had regularly furnished documents requested by the defense counsel, although it only summarized its diplomatic notes. In the meantime, in March 1997, the State Department sent a cable to interested members of Congress, characterizing the P.I. as containing no abnormal procedures. The information and overall characterization by the cable was in sharp contrast to the Ingram report and even to the diplomatic note sent by the United States government dated April 16, 1997. In fact the cable even stated that "the Prime Minister assured her (the United States Ambassador) that the case will proceed in accordance with Vincentian law and pledged that the Fletchers would receive medical attention whenever they needed it."<sup>25</sup> The United States Embassy cable made these statements even though they knew that the Ingram report expressed deep concerns about the fairness and outside influence on the judicial process, especially since the defense counsel had constantly informed them since December 1996 of the outside influence by the Prime Minister.

As a result of the United States government's action from March 12 until April 24, 1997, interested members of Congress and other policymakers had been under the wrong impression that the United States government believed the procedure was normal and fair.

The Ingram report noted that "anyone who owned a .22 handgun and .22 ammunition and was on Bequia the night Joseph was murdered could be the murderer. At least one witness testified he owned more than three .22 guns and ammunition and was on Bequia the night of October 6."<sup>26</sup>

The statements that "[t]he Magistrate's decision flies in the face of all reason" and "[t]here is not one scintilla of physical evidence connecting the Fletchers to Jerome Joseph's murder" were important. Usually much physical evidence is present in circumstantial cases.

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25. THE INGRAM REPORT, Mar. 12, 1992, at 3 (unpublished government report obtained by a request under the FREEDOM OF INFORMATION ACT) (on file with author).

26. *Id.*

The report depicted that “[f]ear, intimidation and interference from ‘higher authorities’” were factors in this case.<sup>27</sup> According to the Ingram report, “decisions regarding the Fletchers were being made by ‘higher authorities.’”<sup>28</sup>

The Ingram Report characterized the prosecution as a “witch hunt”<sup>29</sup> and cautioned that it was highly unlikely for the Fletchers to receive a fair trial in St. Vincent.

At the preliminary hearing, the arresting officer, Sgt. Ernest James, admitted that at the time of charging the Fletchers he did not have evidence of their guilt: no witness; no weapon; no fingerprints; no blood; no ballistics; and no motive.

Apparently, because of tensions between the St. Vincent government and the United States government, due to drastically reduced United States foreign aid, the action by the United States in the WTO to end preferential access for bananas, St. Vincent’s main export, to the European Union (EU) (60% of its foreign exchange), pressure to eradicate marijuana (the second best potential earning potential for the same growers), and the perceived snub by President Clinton of Prime Minister Mitchell when a meeting with CARICOM Prime Ministers was scheduled after more than two years of waiting, the United States government did not have the courage to carry out its legal responsibilities.<sup>30</sup>

One stroke of fortune involving the Executive Branch was that President William J. Clinton, in May 1997, was making his first and only official visit to the Caribbean during his presidency. Because of the eventual involvement of key politicians, including the 1996 West Virginia Democratic gubernatorial candidate Charlotte Pritt, Senator Jay Rockefeller (D.-W.V.), the media, and others, President Clinton publicly raised the predicament of the Fletchers and whether their legal and medical rights were being safeguarded at the Caribbean Summit when he met privately with St. Vincent Prime Minister James F. Mitchell.

### III. LEGISLATIVE BRANCH

A key factor in the eventual resolution of the case was involvement and pressure from the United States Congress. Initially, some members sent expressions of interest in the case to the United States Ambassador to St. Vincent.

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27. *Id.*

28. *Id.*

29. *Id.*

30. For background see the series of articles by Mark Truby, *Voyage to a Nightmare*, THE HERALD-DISPATCH (Huntington, W. Va.), April 13, 14, 1997.

Due to the Fletcher family's desire to heed the advice of their Vincentian counsel, the United States Embassy's desire to allow the Vincentian criminal procedure to operate without fear of any outside pressure, and the assurances from the Executive Branch that the case was proceeding normally and in accordance with the law, we initially had difficulty interesting members of Congress or their staff to follow, let alone agitate for more action by the Executive Branch.

Normally, and even under the most urgent circumstances, persuading the legislative branch to become actively involved in a foreign case is difficult. Members of Congress are inclined merely to send a letter to the United States ambassador about a case. However, they can do a lot more. They can inquire of and urge the executive branch to become more active. They can ultimately hold hearings in the nature of oversight or even enact new legislation. They hold the power of the purse, an increasingly important discretionary authority, especially when the Republican party controls Congress. They can also approve ambassadors and/or foreign service officers nominated for another post, and they can also lobby for disciplinary action to be taken against United States officials who have misbehaved. They can communicate with foreign leaders and even visit the detained Americans in the foreign country.

In the *Fletchers'* case, some members of Congress phoned a few of the international human rights organizations and urged them to consider involving themselves in the case.

Members of Congress can visit and/or write letters to the executive branch and/or foreign officials and make such letters available to the media. Members can make public statements, criticizing United States and/or foreign officials and urging compliance with the international and/or domestic laws.

A few events in the *Fletchers'* case enabled us eventually to involve more members and have some of them become active. Most importantly, we had to find a champion in each chamber of Congress. Through Ed Stoner, Esq., a partner with the Pittsburgh office of Reed, Shaw, McLay, and Smith and Jim Fletcher's classmate from undergraduate days, we were able to interest a senior staff person in Congressman Lee Hamilton's (D-Ind.) office. Congressman Hamilton is the lead minority person on the House Committee on International Relations. The fact that Stoner and Fletcher attended DePaul College in Indiana and had other Indiana ties also helped.

Just as important, constant pressure on West Virginia members of Congress, a visit from Charlotte Pritt, visits from Sally and Rod Duncan (Jim Fletcher's sister and nephew respectively), phone calls from J. Robert and Kathlyn Fletcher (Jim Fletcher's parents), and jawboning in the media

resulted in both Sen. Rockefeller (D-W.V.) and Congr. Nick Rahall's (D-W.V.) active involvement in the case. Because Senator Rockefeller is one of the leading members of the Democratic Party in the Senate, works with the Clinton Administration on many issues, and personally socializes with the Clintons and Gores, he was a formidable ally. In addition, Bob Fletcher, Jim's father, had served on the board of the university in West Virginia during Senator Rockefeller's tenure as that university's president.

Members of Congress started critically questioning the handling of the case by the State Department and even eventually started a dialogue with President Clinton. Subsequently, joint letters were sent to the St. Vincent government and on one occasion by Sen. Rockefeller to Secretary of State Madeleine Albright.

During the trial, when The Herald-Dispatch reporter Mark Truby's ability to depart St. Vincent was in jeopardy, Senator Rockefeller personally phoned United States Ambassador Jeanette Hyde, thereby thwarting the use of a libel suit to prevent Truby from leaving St. Vincent and to force him to jail. Intimidation of the media was a frequent tactic during the case, thereby underscoring the importance of the media.

At critical junctures either Sally or Rod Duncan, or both, made visits to Washington to galvanize the legislative branch. Thereafter, the extended Fletcher family (including Penny Fletcher's two sisters in Kentucky and Ohio) constantly contacted members of Congress. At another critical juncture, Arturo Diaz and I visited staff persons in Congress and briefed them on the development in the case. Personal contact is critical to ensure involvement of many key members of Congress, that staff persons focus on the human element and actually review the documents and facts of the case.

#### IV. ROLE OF THE MEDIA

The media played a critical role in galvanizing support and preventing the St. Vincent government from denying the Fletchers a trial. In particular, the *Prisoners in Paradise* package of articles published by The Herald-Dispatch in Huntington, West Virginia, ran on both the Gannett News Service and the Associated Press wires. The media has reported that Truby's courage and thorough reporting kept the Fletchers alive, moved federal officials in the United States to action on the Fletchers' behalf, and, finally, lead to their acquittal in a free and fair trial.<sup>31</sup> Indeed, the media, especially Mark Truby and John McWethy,

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31. For fuller discussion, see Robert C. Gabordi, Editorial, *Freedom of the Press Key to Fletchers' Release, Pursuit of Justice*, THE HERALD-DISPATCH (Huntington, W.VA.), Aug. 12, 1997.

ABC-News, had enormous and invaluable importance in the case. While McWethy's role was a catalyst at one important time, Truby's role was constant, tireless, penetrating, and courageous (especially due to the still pending libel suit brought by the now former Police Commissioner of St. Vincent).

### A. *Mainstream Media*

The first major break was when Nightline decided to cover the P.I. Here the contact was Ed Stoner. John McWethy, Chief, National Security Correspondent, ABC-News, knew Stoner from DePaul College where they simultaneously served as editors of the school newspaper and head of radio, respectively. Subsequently, the Freedom of Information Act (FOIA) documents revealed that Nightline's involvement and some critical inquiries helped motivate the Executive Branch to take the case more seriously and justify the absence of more forceful action to protect the rights of the Fletchers.

The decision by Nightline to cover the case enabled us to interest other media outlets. The live media that covered the case, included: Inside Edition, which did two major pieces; Extra, which did over fifteen stories; CNN, whose Burden of Proof covered the case twice, and whose World News and Headline News ultimately covered the case; CBS Morning News (both television and radio); NBC World News; and then various local affiliates of the major networks, especially in West Virginia, Kentucky, Ohio, and Illinois, where some members of the Fletcher family resided.

An important development was that in May 1997, Julia Fletcher, the fourteen-year-old-daughter of Jim Fletcher, along with her step-sisters Wendy Franzen and Kathy Fletcher, called a news conference, shown on network news reports, criticizing the St. Vincent government and warning *The Whole World Is Watching*, which subsequently came to be an often repeated theme of the defense.

In the print media an early break was the intensive, thorough, and balanced coverage by The Herald-Dispatch and a reporter named Mark Truby. Although coming from the Fletchers' hometown, the coverage by Truby was not just one-sided, but exposed some of the criticisms of the Fletchers, especially of their drunkenness and rowdy behavior in the period leading up to the murder accusations. The Herald-Dispatch was part of the Gannett chain, a major United States media organization whose products include USA Today.

Sometime after the Nightline story, other major newsprint became

interested. They included The Los Angeles Times, The Miami Herald,<sup>32</sup> the San Francisco Chronicle,<sup>33</sup> and Cox newspaper chain. Eventually, the Associated Press and other syndicated print media were covering the case. The story started appearing throughout the country. In particular, the case even started appearing in the tourism and yachting periodicals and in the Caribbean regional media — print media very friendly to St. Vincent. Nevertheless, no matter how friendly they might have been in their coverage, the exposure of the St. Vincent government's denials of allegations of improper arrests, failure to administer basic medical treatment to prisoners, human rights abuses, corruption, and muzzling the media, were all adverse to the St. Vincent government and created pressure on the government to accord the Fletchers better treatment.

### *B. Tourism/Sailing-Related Media*

In the *Fletchers'* case, the travel media and the tourism and travel industry were important. With the slow demise of banana production, tourism was quickly becoming the number one industry and foreign exchange earner in St. Vincent. Politically, travel and tourism, especially the sailing industry, were important to St. Vincent. The St. Vincent Prime Minister was from Bequia in the Northern Grenadines and had based his economic and political strategy on attracting sailing, developing marinas, small hotels, and sailing-based tourism (i.e., adventure and ecotourism).

Because the predicaments of both the Heaths and the Fletchers derived from sailing in St. Vincent and the Grenadines, news of their cases and the patterns of abuses and corruption could have devastated the St. Vincent travel and tourism industry. Our investigations indicated that many other tourists and sailors encountered violence, extortion from the police, and human rights abuses. Almost weekly we documented each of these incidents with citations, sending them to the State Department and Congress in support of our continuing requests for action under 22 United States Code section 1732. Apparently they sometimes found their way to selected media outlets.

Incredibly, despite the many incidents of crime and corruption encountered by tourists to St. Vincent, the United States Department of State's consular bulletin on St. Vincent, including the one prepared in January 1997, only mentioned as potential crime problems that on occasion

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32. Juan O. Tamayo, *A Murder, A Rich Couple- And a Scandalized Nation*, THE MIAMI HERALD, July 24, 1997, James Anderson, *Scientific Evidence in Murder Trial*, THE MIAMI HERALD, Aug. 7, 1997.

33. Chronicle News Service, *A Bullet, a Dead Man and Two American Party Animals*, SAN FRANCISCO CHRONICLE, Aug. 2, 1997, at C1.

tourists have had things taken on the beach and/or from boats (e.g., petty thefts).

When the United States executive branch refused to issue an updated travel bulletin that more accurately reflected the circumstances, the defense team prepared and issued its own, entitled *Between the Devil and the Deep Blue Sea: Improper Detention, Extortions, and Other Nefarious Activities in St. Vincent and the Grenadines*. Albeit only one page, it provided websites, chat group sites, and ways to gain more information. It also was a plea for persons to contact the defense team and/or persons in the St. Vincent government; it helped galvanize persons whose only connection with the case was watching it on television.

Just as importantly, the defense team started to contact the sailing and ecotourism media. Here, Ed Stoner was important because he is a sailor and has a boat similar to the *Carefree*, the Fletchers' boat. Again, persuading the sailing media that the Fletchers had suffered injustices at the hands of the St. Vincent government was difficult.<sup>34</sup> The sailing and ecotourism magazines are designed to promote sailing and ecotourism as a fun, safe, and enjoyable activity.<sup>35</sup> Such magazines will not curry favor with Caribbean and Vincentian officials or their advertisers by underscoring the negative attributes and corruption encountered by sailors there. Eventually, the accumulation of attention and publicity by the mass media, interest by President Clinton, the legislative branch, and the international human rights groups, and continued transmission of information by the defense team made them interested in investigating the accusations.<sup>36</sup>

## V. INVESTIGATION

In cases in which Americans are detained and charged with crimes abroad and in which lobbying and the media are to play roles, information is essential. Many ways exist to assemble information, including: official

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34. For some of the early stories in the sailing media, see *Murder and Extortion in Paradise*, 236 *LATITUDE* 38, 94, (Feb. 1997) (on file with author).

35. For a typical reaction of the sailing and tourism media, see Bill Barich, *Death by Tourism*, *OUTSIDE* 75-83 (Nov. 1997)

Jim Fletcher's family had an attorney massaging the State Department in Washington and working the international media, and so many charges of corruption and mistreatment had been tossed out helter-skelter that it was impossible to decipher the truth. The people who live in St. Vincent and the Grenadines — or SVG, as it's known — were frankly in shock.

*Id.*

36. See, e.g., Jim Flannery, *Killers Or Victims*, *SOUNDINGS* (Essex, Ct.), Aug. 1997, at A14.



reports by the United States government on human rights<sup>37</sup> or on the criminal justice system of a country, information received through responses to Freedom of Information Act requests, research from various United States data banks, including the Foreign Information Broadcast Service reports (summaries of television and radio media from the country and/or region concerned), the hiring of investigative firms in the United States and/or in the country concerned, criminal justice documents, and international human rights reports.

With respect to international human rights reports, there was a local Human Rights Group in St. Vincent. Although this author personally visited St. Vincent and then phoned the head of the Vincent human rights organization, the head of the organization was not willing to exchange information or even confirm that his organization had a newsletter. Further research indicated that the Harvard Law Library did have the newsletters. We visited the Harvard Law Library and reviewed the reports, which proved quite useful in confirming, documenting, and elaborating to the State Department and executive branches the pattern of human rights abuses and irregularities in the operation of the Vincentian criminal justice system.<sup>38</sup>

The media can provide an excellent source of information when undertaking investigation. In many cases, if the media investigate and report over time on a case and perceive abuses and injustices, they can become allies and will provide the defense counsel with various leads.

In the case of St. Vincent, the abuses and human rights

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37. See, e.g., U.S. DEPARTMENT OF STATE, ST. VINCENT AND THE GRENADINES HUMAN RIGHTS PRACTICES 1992 (1993) (it discusses the calls for investigations into fatalities resulting from police shootings in 1992 although no investigations occurred); U.S. DEPARTMENT OF STATE, ST. VINCENT AND THE GRENADINES HUMAN RIGHTS PRACTICES 1995 (1996); U.S. DEPARTMENT OF STATE, ST. VINCENT AND THE GRENADINES HUMAN RIGHTS PRACTICES 1994, 1 (Mar. 1995) (on file with author) (it discusses the high number, estimated at ninety percent by the regional human rights group, Caribbean Rights, of convictions by confessions and the use of unwarranted police practices, including the use of physical force during detention, illegal search and seizure, and not properly informing those arrested of their rights; it also discusses the absence of any instances of the SVGs successful conviction and punishment of police officers involved in such abuses).

38. See, e.g., its discussion of a United Nations report criticizing prison conditions as violating the U.N. Standard Minimum Rules. VINCY RIGHTS: BULLETIN OF THE ST. VINCENT AND THE GRENADINES HUMAN RIGHTS ASSOCIATION (St. Vincent and Grenadines Human Rights Association, S. Africa), Sept. 1989, at 5 (on file with author); *SVG-HRA Reviews The Administration of Justice in St. Vincent and the Grenadines*, VINCY RIGHTS: BULLETIN OF THE ST. VINCENT AND THE GRENADINES HUMAN RIGHTS ASSOCIATION (St. Vincent and Grenadines Human Rights Association, S. Africa), July 1990, at 1-2 (on file with author). (criticizing the police conduct in criminal cases and calling for an independent review board or Citizen's Committee to inquire into complaints made by citizens of abuse and criminal behavior committed by the police).

deprivations had occurred over a long period of time. As a result, this author persisted in developing a dialogue with a variety of people, such as former high-level Vincentian politicians, media reporters and commentators in St. Vincent,<sup>39</sup> Vincentian politicians and law enforcement officials, United States government officials who deal with St. Vincent, diplomatic officials from other countries who deal with St. Vincent, and concerned Vincentian business persons. They provided sympathy, verified and supplemented much information, and gave us many new leads. For instance, a Vincentian lawyer and op-ed author characterized the *Fletchers'* and *Heath* cases as important because they brought attention to atrocities suffered by poor and virtually defenseless Vincentians at the hands of the police. In fact, he said the violations were so frequent that he coined the phrase *illegal normality* to describe them.<sup>40</sup>

Our investigation was aided by a book written by a former editor of a sailing magazine, whose book *Sitting Ducks* chronicles the intrigues that started when she and her husband (her boyfriend at the time) were startled one night when their yacht was boarded by a naked local native armed with a machete. The intruder stabbed her husband, but was then maced and caused no further harm. The book discusses the difficulties her husband had in obtaining medical treatment (e.g., his father removed him from the local hospital to a private doctor's clinic after he became infected in the hospital). Most importantly, her book discusses police ineptitude and corruption.<sup>41</sup> It mentions how the Mitchells' (James F., only a member of Parliament at the time, and his wife, at the time, Pat) acknowledged the police problems and then introduced the author to Nolly Simmons, who served as the local criminal investigator. Sure enough, Simmons located the culprit and had him arrested. Local law enforcement and the judicial community, however, protected the assailant and mislead her repeatedly about the proceedings, so that even after she initiated many phone calls,

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39. E.g., Frank E. Da Silva, *Hans Matadial, Our Millstone*, THE VINCENTIAN, May 30, 1997 at 15, col. 1 (it discusses the role of the alleged bag-man for high-level officials in the St. Vincent Government in arranging illegal pay-offs. He is the person to whom Alan Heath allegedly paid \$25,000).

40. Cecil Blazer Williams, *Television, Police and Justice*, THE NEWS (Kingstown, St. Vincent), May 17, 1997; Cecil Blazer Williams, *Police Excesses*, THE NEWS (Kingstown, St. Vincent), April 19, 1997; and Cecil Blazer Williams, *Dat Bad-Dat Good*, THE NEWS (Kingstown, St. Vincent) March 1, 1996.

41. BETSY HITZ-HOLMAN, SITTING DUCKS 133-34 (1984) (it provides details of proactive means that the St. Vincent Criminal Investigation Division canvassed yachts and homes of foreigners on the pretext of checking passports, visas and cruising permits, while planting drugs on unsuspecting travellers. Upon *discovering* the drugs, the agents would typically demand on-the-spot payoffs or sexual cooperation from women, threatening their victims with exposure and stiff fines if convicted).

the case was dismissed.<sup>42</sup> One of the greatest problems for the Fletchers was that the main protagonist and witness against them was Nolly Simmons. More importantly, Penny Fletcher's altercations with Pat Mitchell (the Prime Minister's former wife), Nolly Simmons, and other friends of the Prime Minister apparently had solidified the desire of the St. Vincent government to turn the screws on them.

Sitting Ducks also discusses the murder of Carl Schuster, an American yachtsman who was killed aboard his boat *Zig Zig* in or around 1978 by a machete in the same harbor where the Heaths' yacht was attacked in October 1996. The attacker was never prosecuted. The book notes how the Vincentians were mainly concerned about the potential adverse impact his death would have on tourism.<sup>43</sup>

## VI. INTERNATIONAL HUMAN RIGHTS FORA

In cases where United States citizens are illegally detained abroad and subject to violations of international human rights treaties, counsel should consider what, if any, recourse there may be to international human rights fora. In the *Fletchers'* case, documenting abuses of their international human rights was pivotal. I immediately determined that the St. Vincent government had ratified the Civil and Political Covenant and even the optional protocol, thereby authorizing individual victims to bring petitions. I finally documented and briefed each incident in which an abuse occurred, noting the provisions of the Civil and Political Covenant that were breached.

In particular, counsel for such persons may be able to bring an action before either the Inter-American Court of Human Rights or the United Nations Human Rights Committee. Neither of these avenues will produce a quick judgment or order for the host government to release the individuals. Nevertheless, they can be powerful mechanisms to focus the attention of the public, international organizations, nongovernmental organizations, and policymakers in the host and other interested governments. The filing of an action in an international human rights fora will make policymakers, both in the host government and in the United States government, focus on the particularities of the alleged abuses, making the host government answer the allegations.

Just as important, the preparation and filing of a petition can help mobilize the media and other interested persons. The filing and acceptance by an international human rights fora of a complaint will itself indicate that

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42. *Id.* at 117-18.

43. *Id.*

the claims of the alleged victim(s) may have substance.

Unfortunately, although this author did prepare a petition for filing in an international human rights fora, he was not actually able to file the petition. Politics intervened. Dr. Ralph Gonsalves, the lead counsel in St. Vincent for the Fletchers was also the leader of the opposition party. If he helped and was associated with the filing of a petition alleging that his executive and judicial branches were participants in depriving persons of their fundamental human rights, he apparently perceived his political standing would be compromised. Because a petition in an international human rights fora (i.e., United Nations Human Rights Committee) requires a certification from local counsel that local remedies have been exhausted, his cooperation and approval was required. Theoretically, we could have obtained a certification from other counsel, but the use of a third local counsel would have been impolitic, although this avenue was explored. His unwillingness to sign the certification blocked use of this potential mechanism.

Still another avenue was to enlist an international human rights nongovernmental organization (NGO) in the case. This author sought out several international human rights organizations. The difficulty of obtaining help from an international human rights NGO is that they have few resources for the number of their projects and commitments. Furthermore, the Commonwealth Caribbean is traditionally viewed as having a comparatively strong human rights position and therefore not in need of interventions from international human rights NGOs.

International human rights NGOs that work in the Western Hemisphere focus primarily on Central America, the Andes, and countries in which thousands of persons are suffering endemic and systemic violations. In the Caribbean, they tend to focus on countries such as Haiti or Cuba. The comparative absence of traditional reporting on human rights problems in St. Vincent, except the national newsletter which has an extremely limited circulation, made most organizations hesitate to believe such abuses could exist. Such NGOs also prefer to help indigent and defenseless people. Persuading NGOs to help wealthy, white Americans posed an additional obstacle, since they understandably prefer to concentrate their limited resources on the oppressed, underprivileged, and poor.

Eventually, the Lawyers Committee on Human Rights (LCHR) did become involved and issued a Lawyer-to-Lawyer letter. Immediately before the P.I., one of their lawyers almost attended the P.I. as an observer. Through constant dialogue with the LCHR, the latter was able to follow the mounting international human rights violations suffered by the Fletchers. Just as important, defense counsel gained knowledge about

the types of international human rights the LCHR prioritized. Eventually, overreaching by the St. Vincent government triggered the LCHR's involvement.

The few human rights books on the Caribbean proved an important source of information because they covered the suppression and manipulation by the existing St. Vincent government of the media and its coverage of criminal cases and related public policy issues.<sup>44</sup>

Through other investigation, we uncovered and exposed the detention and expulsion on August 26, 1986 of Cert Declercq, a Belgian reporter working with Trends Financial magazine, who was investigating alleged financial frauds perpetrated by offshore banks in St. Vincent.<sup>45</sup> Our exposure of this and similar incidents proved a precursor of the aggressive action by the St. Vincent government to influence the media coverage of the case.

On the publicly owned media, the St. Vincent Prime Minister made public statements, referring to the Fletchers as "classic ugly Americans" and stating that most Vincentians believed the Fletchers were guilty. These statements followed his promise to President Clinton of fair process and that the judiciary was independent. The Prime Minister, in a visit to the United States, criticized the United States media's reporting on the *Fletchers'* case and on charges of corruption in the *Heath* case, and said he still thought Alan Heath was guilty for his wife's brutal murder. He invited the media to interrogate the lawyers who represented Heath. When the government media arranged an interview with Dr. Ralph Gonsalves, counsel for both Heath and the Fletchers, the media abruptly cancelled the interview at the last minute, angrily citing orders from the St. Vincent government as reasons for the cancellation.

On the eve of trial two incidents spurred the involvement of the LCHR. On July 4, 1997, Ralph Gonsalves, the lead defense counsel in St. Vincent, was served with a summons for criminal contempt. The charges were based on his comments immediately after the P.I., on March 10, 1997, in which he characterized the magistrate's decision a "travesty of

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44. E.g., Rickey Singh, *Freedom of Expression in the Caribbean*, INTERNATIONAL HUMAN RIGHTS LAW IN THE COMMONWEALTH CARIBBEAN 179-81 (1991) (the former Attorney General of St. Vincent threatened legal action against the writer of a contentious article in the newspaper THE VINCENTIAN and extracted an apology and promise not to ridicule the integrity of a Vincentian judge in exchange for non-prosecution of the journalist).

45. See, *Immigration Officials Expel Belgian Journalist*, FOREIGN BROADCASTING INFORMATION SERVICE, Aug. 2, 1986, at S3 (citing the Caribbean Area News Association, Aug. 26, 1986).

justice.”<sup>46</sup> Similar comments by him were reported by the St. Vincent press and on an ABC-Nightline segment devoted to the case. The fact that the St. Vincent government waited four months later — specifically on the eve of the trial — to charge Gonsalves, and then set his trial for the very same day as the Fletchers’ trial, signalled the politicization of the criminal justice system.

On July 7, 1997, as he entered St. Vincent, Arturo Diaz, Esq., a lawyer with the firm Cancio Nadal Rivera & Diaz based in Puerto Rico, and who was in charge of the overall coordination of the defense team, was detained at the airport by St. Vincent Authorities. They interrogated him about a letter he had sent to the United States Consul general, at the consul’s request. The letter alleged conversations between Diaz and an individual purporting to negotiate on behalf of the St. Vincent government for the Fletchers’ release in exchange for a cash payment. On advice of counsel, Diaz refused to answer questions about the letter, and was released that day. Previously, an attorney and bagman for the St. Vincent Prime Minister and Police Commissioner had threatened to charge Diaz with criminal libel for comments he made about the apparent extortion solicitation relating to the case.

Already, at this time the St. Vincent Police Commissioner, who was the target of corruption accusations in this case and in the *Heath* case, had sued Mark Truby of The Herald-Dispatch for civil libel. Truby was clearly the leading journalist on the case in terms of the quantity and quality of pieces.

The LCHR issued and broadly disseminated its Lawyer-to-Lawyer letter, condemning the actions of the St. Vincent government. The LCHR cited Principle 16 of the United Nation’s Basic Principles on the Role of Lawyers. It states that “governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (b) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”

It recommended sending letters, urging authorities in St. Vincent and the United States that all measures be taken to guarantee a fair trial without additional hindrance against the legitimate activities of defense counsel.

The Lawyer-to-Lawyer network, combined with the many media pieces and Congressional interest and criticism, exerted pressure on the St.

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46. John McWethy & Ted Koppel, *Nightmare in Paradise* (ABC Nightline television broadcast, May 2, 1997) Transcript No. 97050201-jo7, at 7.

Vincent government, and most likely added credibility to many of the charges of the defense team and the media, even though the government denied that such pressure had any influence at the time.

## VII. POTENTIAL ROLES OF OTHER GOVERNMENTS

Other governments can play an important role in international criminal and human rights cases. Normally, governments cooperate with each other in the investigation and prosecution of a transnational criminal case. In an era where transnational criminal groups are playing important and growing roles, the number of law enforcement groups involved in the investigation and prosecution of cases has multiplied exponentially. As a result, the numbers, types, and levels of experience, sophistication, and honesty among law enforcement officials vary widely.

An important element in the Fletchers' detention was the inordinate influence in St. Vincent economics and politics of transnational organized crime. The defense team focused on this problem and its national security implications as reasons for action in support of the Fletchers. The concern about the penetration of St. Vincent by transnational organized crime seemed to be the reason for Joseph's murder. FOIA documents and reports from other government sources indicated that Joseph's murder was drug related. Prior reports by the United States government and the media of the increasing use of the Grenadines and St. Vincent for cocaine transshipment and money laundering seemed to be a reason that the St. Vincent government had to divert attention from this line of investigation, especially since it would have produced more pressure for the Vincentian government to take remedial action and would have damaged the political standing of an already fragile government.

When a United States person is arrested and prosecuted abroad, the United States government sometimes is the initiator and driving force behind the investigation. On other occasions the United States government is an important participant. In cases in which the United States government is an important participant in conducting investigations and prosecutions, its willingness to help may be more constrained than when it is not a participant. Nevertheless under 22 United States Code section 1732 and Sec. 400 of the Foreign Affairs Manual, the State Department has an obligation to protect the legal and medical rights of an American detained and to do everything possible, even using its creativity, to protect the rights of detained Americans. The same United States Embassy overseas that houses attaches from the Federal Bureau of Investigation, the United States Customs Service, the Drug Enforcement Administration, the Internal Revenue Service, the Immigration and Naturalization Service, and

other law enforcement agencies. The United States Embassy and these agencies cooperate with the United States agencies and host government on the very criminal investigations and prosecutions that result in the arrest of Americans. When the United States Embassy and its Consul General provide services to protect the legal and medical rights of American persons detained abroad, they may not be inclined to be as sympathetic, creative, and energetic as they would be in cases in which the United States government is not a participant in the investigation and prosecution.

In cases in which the United States government is not a participant in the investigation and prosecution, the ability and willingness of the United States government to take major steps toward pressuring the host government to protect the legal and medical rights of Americans may be colored by other foreign policy matters. As mentioned above, in the case of the *Fletchers*, the United States relationship with St. Vincent was already strained by many factors.

One problem was the litigation brought by the United States in the World Trade Organization to end illegal preferences extended to bananas from the Eastern Caribbean, including St. Vincent. The sale of bananas recently represented one-half of St. Vincent's foreign exchange. Because the St. Vincent Prime Minister comes from the Grenadine islands, an area ignored to such an extent before his election that Union Island had an armed rebellion, the current St. Vincent government is perceived as unduly favoring the Grenadines and not helping mainland St. Vincent, where the banana growing occurs. The next potential cash crop is marijuana. However, under heavy pressure and occasional criticism from the United States, the St. Vincent government has agreed to and facilitated eradication of the marijuana crop. The United States used to be a heavy provider of foreign assistance to St. Vincent, but has phased out almost all of its aid. The only aid that continues is related to narcotics, which is politically detrimental to the St. Vincent government. In addition, in the context of the issuance of the International Narcotics Control Strategy Report, the United States has commented on the corruption surrounding the efforts by St. Vincent to act on counternarcotics enforcement.

In other cases, such as the example presented by the United States citizens who accidentally crossed from Kuwait into Iraq after the Gulf War and were arrested and convicted of crimes, the realities of United States - Iraqi relations made it difficult for the United States to exert pressure on Iraq to release the two Americans.

Other governments can play important roles. In the case of the *Fletchers*, the South African government was key. It furnished important information that it could have kept confidential and provided enormous moral support. Its officials spent much time talking to defense counsel and



to the media.<sup>47</sup> The Heath family constantly sent communications in support of the Fletchers.<sup>48</sup> The defense team was able to show how identical much of the illegal behavior of the St. Vincent government officials was in both the *Heath* and the *Fletcher* cases. The outrage of South African government officials helped the Fletcher family and supporters, defense counsel, and ultimately the legislative branch understand the patterns of illegality. Interestingly enough, the United States executive branch maintained that the cases were different. The active support of the South African government undermined the credibility of the denials by the St. Vincent government officials.

In the *Fletchers'* case, the South African government's care and attention to detail and follow up in the diplomatic notes was much greater than that of the United States government. It enabled defense counsel to suggest that the United States government be equally as efficient in both the preparation of notes and insistence on replies and/or other action. The media underscored the similarity between the two cases and the contrasting conduct between the South African and United States governments in protecting their nationals.

Interestingly, in October 1997, the Durban South African police were able to conduct investigations in St. Vincent. As a result, one person confessed that he and another person had murdered Lorraine Heath. It happened precisely as Alan Heath claimed to the St. Vincent police and the media.<sup>49</sup>

In some cases, foreign governments, other than the United States and the host government, will be interested in the case. An example is the *Fletchers'* case, discussions of human rights abuses, corruption, and dangers to tourists in St. Vincent had an adverse impact on tourism, especially sailing tourism, in the Eastern Caribbean. Some people confuse Grenada with the Grenadines. Even if they understand the difference,

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47. Keith Ross, *Yachtie's Death Furore*, DAILY NEWS (Durban, S. Africa) May 16, 1997 (on file with author) (about the connection between the *Heath* and *Fletchers* cases and the cooperation between the two families).

48. See, e.g., Marvin Meintjies, *Caribbean Cruise Ordeal*, DAILY NEWS (Durban, S. Africa), May 29, 1997 (on file with author) (report of a meeting between Nigel Heath, brother of Alan Heath, and Rod Duncan, nephew of Jim Fletcher, comparing notes and showing photos of them).

49. Keith Ross, *St. Vincent Killers Identified*, DAILY NEWS (Durban, South Africa), Oct. 6, 1997 (on file with author); Keith Ross, *Don't Hang Them, Says Husband*, DAILY NEWS (Durban, South Africa) The articles state that Durban Supt. Todd Suomaroo and Supt. Allan Alford identified the murderers as wanted criminal Dalton Kiel and a man known only as *Muslim*. *Id.* Kiel is wanted by the police in Trinidad on five counts of armed robbery and other offenses. Mr. Kiel had confessed to an informant on the island that he and *Muslim* had committed the murder and robbery. *Id.*

many sailors who would visit the Grenadines, continue on to Carricou (an island which is part of Grenada and the first island south of the Grenadines chain) and Grenada. In addition, in the *Fletchers'* case, the St. Vincent Prime Minister, who is the longest sitting Prime Minister in the Caribbean Common Market and Community, characterized the case as an attack on the entire Caribbean and on the legal system of the region. This mischaracterization was a political move to develop active support from his political allies. Hence, defense counsel naturally had to explain to the diplomats from surrounding islands that our efforts were merely directed at saving the lives of two innocent Americans, attempting to obtain a speedy and fair trial for them in one country, and protecting their international human rights. We noted that a certain high level official of the St. Vincent government was trying, at every opportunity, to regionalize the case when it was in the best interests of the region to isolate it as St. Vincent's problem.

Governments can decide to become involved at various times in different cases. In a high visibility case, such as the efforts to prosecute the former Shah of Iran and Manuel Noriega, the efforts of foreign governments and even international organizations (e.g., the Organization of American States in the case of Noriega) are activated. The handling of the atrocities during the conflicts in the former Yugoslavia and Rwanda, and the efforts to bring to justice the persons allegedly responsible for the *Lockerbie* case, illustrate the involvement of the United Nations and other international organizations. The cases involving the former Yugoslavia and Rwanda even indicate the ability to create a new international organization: for the sole purpose of bringing justice to the investigations and prosecutions of those responsible for the atrocities.

#### VIII. LESSONS

An important lesson is to file early, and often, Freedom of Information Act requests for documents related to the case. In the *Fletchers'* case the requests produced a weekly flow of documents on both the handling of the *Fletchers'* case and the handling of other cases in St. Vincent. Even if the State Department does not respond timely, the administrative appeals and/or litigation normally will produce useful documents. The requests and appeals also create pressure on the executive branch whose obligations are to assist in protecting the legal rights of Americans detained abroad.

Personal contacts and family networks can be crucial. One cannot underestimate the enormous importance of fourteen-year-old Julia Fletcher in galvanizing the media to support her efforts in securing justice for her

father; the constant efforts of the extended Fletcher family's contacts and networks; and many individuals who responded to articles and participated in the lobbying efforts, even though they had no connection with the Fletchers or the family.

The ability to have someone design strategy with respect to the governments, media, and nongovernmental organizations, and then design and prepare communications, and help implement the strategy are essential. Because of the diversity of people involved, it can become complicated to manage the paper flow and to connect the various people.

A proper assessment of the interaction between domestic and international law, comparative law, and foreign policy is required. Just as important, someone must constantly monitor the strategy and its implementation, since it will need constant adjustment in accordance with events. Hence, a strategy reassessment is required every so often.

These cases often take time. Hence, deep pockets and patience are helpful. When a loved one is incarcerated overseas in difficult circumstances, tension and stress exist among family and friends. They all make sacrifices and cannot continue to make the sacrifices indefinitely. Sometimes, they require candid assessment for the predicament of their loved ones, so that they are able to deal with the predicament for the duration of the ordeal. For instance, most observers would not have expected the situation with the United States hostages in Iran after the takeover of the United States Embassy to have lasted for almost the bulk of the Carter Administration.

The family's budget is often a limiting factor. Hard decisions must be made based on the financial situation. In some cases, help from the executive and legislative branches and from non-governmental organizations can help leverage professional services when budgets are limited.

The reactions of the host government are important. On the one hand, the St. Vincent government underestimated the impact of the media and sympathy and interest in the case. On the other hand, when it became active, criticizing the media and then insisting on rebuttal time both personally and through a public relations firm,<sup>50</sup> it only focused more attention on the allegations. More recently, the reports of a confession by the alleged murderer of Lorraine Heath and the dismissal by the judge of the case, commenting there was no direct or indirect evidence against the Fletchers, undermined the government's efforts. Nevertheless, the St. Vincent government is still trying to restore its reputation by castigating

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50. *Government Hires P.R. Firm in Fletcher Case*, THE HERALD (Bequia, St. Vincent) June 12, 1997.

the media.<sup>51</sup>

In the *Fletchers'* case the facts were helpful because there was no evidence against the Fletchers with respect to the murder in question. A difficult element of the Fletchers' case was that the murder charge did not permit bail in St. Vincent. If the defendant from the United States or another country is a member of or knowingly working with a transnational organized crime group (not the case in either the *Fletchers'* or *Heath* cases), especially in the active commission of transnational crimes, then the lobbying work becomes more difficult. Even more difficult would be lobbying on behalf of a person charged with genocide or war crimes conducted over a long period of time.

Another important element in the *Fletchers'* case was that, after the P.I., the defense team retained Dr. Richard L. Johnny Cheltenham to represent Penny Fletcher. He was diligent in preparing technical legal motions, a brilliant orator, and tireless in his preparation. Politically, he had no ax to grind. He was a Barbadian, a member of Parliament, and a very distinguished and experienced lawyer who had defended many murder cases. His cooperation with Dr. Ralph Gonsalves, who was also an experienced criminal trial lawyer and brilliant orator, and the rest of the team proved a formidable combination.

Lobbying in public international law issues concerning serious transnational crimes is an art, not a science. It is not for the weak at hand. It requires investigative skills, an assessment of the many variables at play in the existing legal and diplomatic elements, and pursuit of a multi-faceted strategy that must be periodically reassessed and adjusted. When a loved one is lost in paradise in circumstances such as the Fletchers', international lawyers, governments, and others who believe in the rule of law must be involved.

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51. Associated Press, *St. Vincent Leader Attacks Media*, CHARLESTON DAILY MAIL, Aug. 15, 1997, at 7A; Dugie Joseph, *St. Vincent Leader Criticizes Media*, CHARLESTON GAZETTE, Aug. 15, 1997, at C1.