

For awhile, you could not tap digital cellular phones. There was this medium-sized criminal organization in Washington, DC that dealt drugs and they would communicate by pay phones. They would usually talk in code and their chief, who had read an article about these digital phones, required everyone in his organization to go out and get digital cell phones so they then could talk freely. The guy he put in charge of it—not unusual for criminals—did not quite have his act together. He went out and bought regular cell phones. These you could tap. These criminals started talking freely, no code, nothing. The case never went to trial because they basically incriminated themselves over their telephones and they all ended up pleading guilty. But that is just a point that not all criminals are real smart and dangerous, like we sometimes like to describe them.

I now get the opportunity to introduce someone that I know from Washington, have known for many years, and whom I actually met in Moscow. We discussed Criminal Procedure, crime and corruption in Russia and I know that Professor Shelley is committed to her profession. Louise Shelley is a professor at American University and she is probably one of the foremost experts on law enforcement in the former Soviet Union. She studied in Moscow, actually one of the first Americans to study at Moscow State University, and she has been working on this topic of crime in the Former Soviet Union most, if not all, of her professional career. Professor Shelley founded a center at American University that studies organized crime around the world. Her center operates study centers in Ukraine and centers in four cities in Russia: Moscow, Ekaterinburg, Irkutsk and Vladivostok. I understand that we are in the process of establishing another center in St. Petersburg, Russia. Louise Shelley is someone who has been involved in these topics and is very conversant with these topics. I am very pleased to turn the microphone over to Professor Shelley.

#### KEYNOTE ADDRESS BY PROFESSOR LOUISE SHELLEY

Thank you for such a nice introduction. When I first got this topic, I thought, this is a very difficult topic, because there is not much written on it. And especially what it presents for us in thinking about transnational crime. The last time that I addressed this issue of victims in the

---

of a bill allowing legal wiretaps of cellular phone conversations removes an important obstacle to effective law enforcement. *See id.* But privacy advocates said the bill represents an erosion of individual freedom. *Id.* "The FBI had been thwarted in important cases by sophisticated digital technologies already installed on some telephone networks," Freeh said in a statement after the Senate passed the bill. *Id.* According to Freeh, "[w]ithout this bill . . . we would have been completely prevented in a very short time from carrying out any court-approved wiretapping." *Id.*

criminal process was in testimony I gave before the Mexico City Legislature. I was asked by one of the heads of the victim's rights movement in Mexico to participate. So these questions that we are dealing with today in a Former Soviet Union context are very much alive with other countries as well that have serious organized crime problems. In this presentation, I am not going to talk just about the victim in the criminal process, but also about the Witness Protection Program, which we have not touched on much today.

During the late 1970's and early 1980's, I conducted research on the nature of the function of the Soviet justice system. Apart from the official sources, I conducted interviews with Soviet émigré lawyers. While many might consider them a biased source, many who I interviewed were not anti-Soviet, but left for greater economic opportunities for their children or out of experiences with anti-Semitism. While I expected them to be very negative about their past careers and the abuses of the Soviet justice system, instead I found a more balanced perspective. This may be explained in part by the desire to find value in what they had done and not to dismiss years of past work as worthless or complicit in a system that they did not approve of. The most striking revelation to me in all the interviews I conducted was the active role of the victim in the criminal process. While this may not be surprising to the Russians and Ukrainians in this room, I think most Americans here will be surprised, because they viewed the Soviet system as authoritarian and not responsive to the needs of the Soviet citizen. But my interviews with dozens of former Soviet lawyers revealed that the participation of the victim in the criminal process was not just a legal fiction or a Potemkin village placed there for show, but was for many a vital part of the legal process.

There was one case in particular which I remember, even though the interviews took place almost nineteen years ago. I interviewed a Georgian lawyer in Israel, whose clientele consisted of many Georgians who were a vital part of the illicit shadow economy in the Soviet period. This was a highly lucrative law practice, one which involved much corruption of Russian legal officials by Georgian clients apprehended in provincial Russian towns. But the most compelling case he recounted to me was one in which he had served as a defense attorney for a victim. This case dates back from the early 1970's. His client, a Georgian widow, lost her husband, a small-time Georgian businessman, under strange circumstances outside Moscow. The provincial police were not able to solve the murder case, even though there was physical evidence, which under capable hands, could have led to the murderers. The lawyer served as both investigator and defender of her interests. But the

defense attorney helped unravel the case by tracing the physical evidence, through a brilliant piece of detective work, to two down and out Russians who had drunk together and then bet that they could murder someone and get away with it. Her Georgian husband, known to few people in the community, was the resultant victim of this Dostoevskian story. But the role of the defense attorney here was not as a detective to secure adequate "criminalistic" expertise, about which we heard earlier, but to represent the widow's interest in the whole criminal process. He helped ensure that justice was done. Her participation in the trial and her ability to follow through to the sentencing of the offenders gave her a certain closure to this awful chapter in her life. I remember this story, not just because of the very human terms in which it was presented, but because it revealed the enormous contrast between the Russian and the American justice systems. At the time that the "unjust" Soviet justice system was providing the possibility for some victims to participate in the criminal process, the United States at this time was just beginning to initiate a victims' rights movement. So we, who often looked at the Soviet justice system as so bad, had many lessons to learn from these studies. The situation is very much the reverse today. With the impoverishment of much of the Russian and Ukrainian population, there are few citizens who can afford the services of a defense counsel when they are victimized by crime. I was talking this morning to one of the Russian prosecutors in the audience. We talked about the vast number of victims of the pyramid schemes. It is these victims that need defense counsel, but with their loss of all their assets, there are no victims. Unlike the United States, Russia has no victim assistance programs and therefore a class action suit would not be a possibility, because they do not exist at the moment in Russia.

The rapidly increasing crime rate in the former Soviet Union has lowered the percentage of cases that are solved and brought to trial. With the collapsing social safety net, there are no resources to provide for medical care and day care, let alone victims' services. In contrast, in these two decades since this research was done, the United States has a diverse and encompassing victims' rights movement, which has put pressure on both state and federal governments to provide more services for victims and to expand their participation in the criminal process. What we are looking at, then, is a contrast between the Soviet system in which victims' rights were institutionalized and protected and the American system, in which you are having a movement, a mass movement from below, which is putting pressure on both our local, state and federal justice systems.

The focus on the victim is a recent development in the American criminal justice system. While the United States prides itself on the fairness and procedural norms of its criminal justice system, these protections are primarily intended to ensure that innocent individuals are not convicted by our criminal courts, and that procedural norms are not violated to ensure convictions. Far too little attention has been paid in our court system to the rights of the victim. Therefore, the last 25 years has seen the rise of a powerful victims' rights movement in the United States. The pressure for change has come from individual citizens, often through non-governmental organizations, to increase the rights and role of the victim in the criminal process. The NGO's have been broadly based to found a victims' movement that is focused on victimization, particularly in certain areas, such as rape, domestic violence, parents of murdered children, and victims of drunken driving. Those are particular groups that are pressuring our justice system.

In 1975, the first major national victims' rights organization was established, the National Organization for Victim Assistance. Since its establishment almost 25 years ago, it has sought to expand victims' services and it has survived as a major force in the victims' rights movement on both the national and the international levels.

Let us look a little bit at what else has happened. This growth in the victims' rights movement in the United States has not been a clear line going forward. It has been a path that has been quite troubled. For example, the Office on Domestic Violence was established in the U.S. Department of Health and Human Services, but it closed two years later. The Federal Law Enforcement Assistance Administration (LEAA), a potent federal agency for promoting change at the state and local levels, made its first grants in 1974 to victim/witness programs to create model programs of assistance for victims, encourage victim cooperation and improve prosecution. But in 1979, Congress failed to continue funding for LEAA, its parent agency, and federal funding for victims' programs was phased out. I happened to work in this agency in 1978, the year before it was terminated, and it was one of the most frustrating experiences in my life. I have never worked in a federal bureaucracy since then. Many local organizations that worked on victims' rights, did not survive the collapse of LEAA, and the movement subsequently has not been so dependent on the viability of an individual federal agency. The movement for greater participation of victims in the criminal process has been incremental. In the last few years of his presidency, President Clinton in June, 1996, proposed a Constitutional Amendment for Victims' Rights. This is now supported by a broad coalition of non-government organizations, but also at the same time, law enforcement bodies.

Just a few weeks ago, at the end of September 1999, the Senate Judiciary Committee voted by a significant majority to recommend enactment of the Senate Joint Resolution, which would create a Victims' Rights Amendment to the Constitution. But the enactment of such a provision is several years off, and its enactment is far from certain.

I will go over the main point of why I think we have the impetus for such a victims' rights movement starting in the 1970's. There are multiple factors that I think explain this. First, we had an activist Supreme Court in the 1960's, which made many decisions that enhanced the rights of the criminal defendant. Many of the important innovations of criminal procedure occurred under the Warren court. While these protections were needed for defendants, they left victims without many of the protections they had previously known. Prior to the Warren decisions, many trial judges could informally accommodate the needs of victims. But they were less able to do this following these landmark Supreme Court decisions when a defendant's procedural rights were institutionalized and firmly protected. So this way, after these decisions, the balance in our criminal justice system had changed and in 1982 the President's Task Force on Victims of Crime concluded that the criminal justice system has lost its essential balance. But there are two other things that I think need to be understood in the context of American life. First of all, following World War II, we had an enormous rise in crime in the United States. As early as 1960, we had 1,887 offenses per 100,000 citizens and shortly after that, by 1975, we had 5,200 offenses per 100,000 citizens, which is almost a three-fold increase in a period of fifteen years. This means that there were many more people who were victims of crime. So, this issue of victimization became much more important to them. Furthermore, the growth rate for the major offenses such as homicide, rape, and robbery and burglary, areas in which citizens personally feel this, remain very high through the 1960's and 1970's. They were particularly anomalous when compared with that of other industrialized countries. There was an actual fact of victimization. The growing level of citizen victimization, revealed not only by official crime reports but also by citizen victimization rates, revealed that the fear in crime was not journalistically inspired but was a reflection of a daily reality in citizen's lives. But for me, as a woman, this period was also very significant because during this period, the 1970's, 1980's, the women's movement developed strongly and part of the women's rights movement included protection from domestic violence, rape, and physical mistreatment which occurred at all levels of the social scale. The stigma of reporting such crimes to law enforcement diminished, and the first victim assistance programs were established for rape victims in the

early 1970's. When I was studying criminology in the early 1970's, my colleagues were beginning to work at these rape crisis centers and all of a sudden we had enormous increases in the rape rates, not because there was more rape being committed, but because with social services and protection for the victim, you had many more people ready to report this crime. So, greater attention to children and to women, often treated callously by the criminal justice system, also became an important part of the victims' rights movement. There are a whole group of forces that combined to increase this interest in victims' rights. With such a convergence of interests, the rise of a nationwide victims' movement took hold across the United States. Broad based and supported financially by individual citizens, it has had an enormous impact on the treatment of the victim in both civil and criminal cases. It is a genuine revolution from below.

I will go through a few points of what I call the milestones of victims' rights in the criminal process. But I want to get through that so we can get to some of the things that I think are particularly relevant to our cross national and our transnational crime interests. But there are some of these points that I think are also relevant and could be applied in dealing with transnational crime.

In 1982, President Reagan established a Task Force on Victims of Crime. The Federal Victim and Witness Protection Act,<sup>67</sup> passed in 1982, required fair treatment of victims and witnesses in the federal criminal justice system. If Americans ever come forth and tell you how advanced they are, give them that line, "it wasn't until 1982 that these rights were institutionalized." Important support for the victims' rights movement came from the International Association of Chiefs of Police that established a victims' rights committee to pay more attention to the needs of victims. The financial interests and needs of victims were addressed through important legislation passed in 1984. This is where I think we can learn something that may be useful in our transnational context. The Victims of Crime Act made up of federal criminal fines, penalties and bond forfeiture, was established to support state victim compensation and local victim service programs.<sup>68</sup> Within one year, the deposits reached \$68 million.<sup>69</sup> By 1998, the deposits in the Federal Crime Victims Fund totaled almost \$324 million. The Justice Assist-

---

67. Victim and Witness Protection Act of 1982, Pub. L. No 97-291, 9 Stat 1248 (1982) (codified in various sections of 18 U.S.C.).

68. Victim of Crime Act of 1984, Pub. L. 98-473, Title II, ch. XIV, 98 Stat. 2170 (1995 & Supp. 1999) (codified at 42 U.S.C. § 10601, and various sections).

69. OFFICE FOR VICTIMS OF CRIME, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, OVC FACT SHEET 1 (1999).

ance Act established financial assistance for state and local governments to fund 200 new victim assistance programs.<sup>70</sup> When we think about when this victim assistance was established, which was about 15 years ago, we were thinking about individual crime and group crime, which is locally based crime, where you have bank robbery. Now we are dealing with crime that is international in its dimensions.

In the class that I teach on organized crime, I have my students collect articles on organized crime, and they were complaining to me that unfortunately everything that they are collecting is international. That is what all the news reporting is on. Americans buying stolen Italian antiquities, the Bank of New York, the Cali Cartel about to be extradited to the United States. In response to the international nature of crime, we need to think about these victim assistance programs much more transnationally. One of the Russian prosecutors was talking to me and saying the funds from oil and gas transactions lie in American banks. We need to be thinking about taking some of these funds and assets and use them for victim assistance programs, not just for victims in the United States, but for victims in a transnational context. Since the United States is one of the world's financial centers and a recipient of so much illicit funds, we need to be thinking more broadly about the way we structure victim assistance on an international level. This is not just a program or a problem on the federal level. Throughout the 1990's, individual states passed constitutional amendments for victims' rights. So, in many ways in this area, we have the states ahead of the federal government. As our Russian and Ukrainian colleagues come and talk to us, they make us think about these issues, and raise our awareness of them. This is very important as we "reconceptualize" these problems. By making us aware of our responsibilities, our physical responsibilities to you, this becomes part of the dialogue that is shaping our victim assistance programs in the United States. Now, we need to be shaping them with this kind of input internationally.

Let me get into another issue that is very important in prosecuting organized crime, but in some ways conflicts with the victims' rights movement. That is the issue of witness protection. I understand that yesterday a lot of our Russian and Ukrainian visitors were asking questions about this, so I am going to focus on this a little bit more. The victims' rights movement has been broad based and has pressed for greater openness in the criminal process. In contrast, many of the developments to increase witness protection require less openness in the criminal process. Therefore, they have and will continue to be in conflict

---

70. *Id.*

with the increasingly broad based victims' rights movement and the governmental move to provide for witness protection to ensure convictions in serious cases. This conflict will continue because many of the individuals who enter witness protection programs have serious criminal records. In some cases, major new crimes have been committed by individuals in witness protection programs because their identities are not known to community members or local law enforcement officials. In the text that I teach on organized crime that we now have translated into Russian, and I hope will soon be available to you, we have a whole page of terrible crimes that were committed by individuals in the witness protection program against citizens.

The Witness Security Program, known popularly as the Witness Protection Program, was introduced in 1970 as part of a larger crime package known as the Organized Crime Control Act of 1970.<sup>71</sup> It is considered by the federal government to be one of the most successful programs developed against organized crime activity. I understand yesterday you had trouble finding statistics. Let me tell you, some of these statistics are hard to find because they do not exist. Part of these statistics were drawn from the last Congressional hearing that mentioned the need for more statistical analysis. There is not enough accountability to our Congressional bodies that oversee the witness protection program. But according to the U.S. Marshall's Service, the testimony of protected witnesses results in an 89% conviction rate in cases since the program was initiated in 1991. While this is close to the average conviction rate in most criminal trials, it is very different from the conviction rate which existed in major organized crime trials prior to the initiation of the program. If you look at the analysis I had to do to present this paper, there really is a marked change in our ability to prosecute organized crime successfully.

At first, the program was just used against traditional organized crime figures, but more recently, as the conception of organized crime has expanded, the program has encompassed members of many major narcotics organizations, prison gangs and violent street gangs. While many early entrants were involved in Italian organized crime, the scope is now much broader. Furthermore, there are foreign witnesses who are now living in the United States under the witness protection program. For example, members of the Cosa Nostra and the Cali Cartel who were needed to provide essential testimony are now living in the United States under new identities. Monday in my organized crime class, I showed a

---

71. Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 (1988 & Supp. I 1989).



video of one of the only Americans who was the counselor to the Cali Cartel and he was talking on television in what my students said was the most incredible disguise that they had ever seen, because he was now in the witness protection program with a totally new identity.

Who goes into witness protection programs? The Attorney General of the United States is authorized to rent, purchase, modify or remodel protected housing facilities and otherwise offer to provide for the health, safety, and welfare of witnesses and persons intended to be Government witnesses and families of witnesses and persons intended to be called as Government witnesses in legal proceedings instituted against any person alleged to or have participated in organized crime activity whenever, in his judgment, testimony from, or a willingness to testify by, such a witness would place his life or person, or the life or person of a member of his family or household in jeopardy. Prior to the introduction of this program, many prosecutions failed because the government was unable to produce witnesses who were knowledgeable about the crime or who would testify. With a mechanism to ensure that witnesses could testify without jeopardizing their lives and those of their family members, few people were reluctant to become a witness for the state. After this law, people were willing to become a witness for the state. There has been a very significant number of people who have entered the program, many more than was originally anticipated. By the end of 1996, there had been 6,500 witnesses who had entered the program and over 9,000 dependents.

Determination of who enters the program is made by the Attorney General upon recommendations made by the U.S. Attorneys assigned to major federal cases. In a case at the state level, the request is made through the State Attorney General through the appropriate office of the U.S. Attorney. This program was handed over to the Marshall's Service to administer, a function that initially they were untrained to perform. As a consequence of their lack of preparation to administer this program, many mistakes were made that endangered the lives of the participants and also ordinary citizens. If you go and implement it somewhere else, there are lessons to be learned and they should be studied before one goes off and does this. While the recidivism rate of relocated witnesses, according to Marshall data, is half that of the national average, that is still a high rate of recidivism. Our recidivism rates are not good. The presence of such a degree of recidivism means that individuals are capitalizing on their veil of secrecy to commit new crimes. This is according to the 1996 hearings that were held in Congress on this Witness Security Program. And this is not a unique program problem in the United

States. Revelations in the last two years in Italy have revealed the same thing in relation to their Witness Protection Program.

As a consequence, significant modifications were made to the program including the number of admittees. These new admission criteria include a law enforcement assessment of the risk the witness might pose to a new community and whether the value of the testimony outweighs the risk, psychological evaluations of all individuals entering the program, a memorandum of understanding between the Department and the witness outlining expectations for the individual while he is in the program. This change in admission procedures has led to a dramatic drop in the number of witnesses. In the mid-1970's, the number of witnesses entering the program averaged 450 per year while in 1996, only 129 were admitted. Of those admitted into the program since 1993, over half are convicted individuals who were placed in protective custody in prison while serving their sentence. They are not witnesses being relocated in other parts of the country. We are only talking really about 60 witnesses a year that are being relocated and moved. The maintenance of the program is costly. In 1978, the program cost an estimated \$14 million while the costs in 1995 alone was \$53 million. The reason that the program is so costly is that witnesses are provided with new identities with authentic documents for the witness and the family, housing, medical care, job training and employment. Subsistence funding to cover basic living expenses is provided to the witness to cover living expenses until the program becomes self-sufficient. This \$53 million figure does not include the extra administrative expenses by the Department of Justice or the special isolation that needs to be provided in the Bureau of Prisons. There is no full accounting of the total costs of this program, at least in any open Congressional testimony or documents.

The success of the Witness Protection Program depends on the significant financial resources put into the program, while at the same time it is also important to understand that the structure of American society facilitates the functioning of such a program. While it is hard to successfully resettle a cooperating witness from the Cosa Nostra within Italian society or a member of the Cali Cartel within Colombia, the size, diversity and impersonality of American society allow individuals to disappear. They can exist for years without discovery—holding jobs, carrying on romances, marrying and establishing families. Therefore, the Witness Protection Program is an especially effective tool within the United States because the resources, the infrastructure, and the country itself is conducive to such a program. I am seeing you are shaking your head about Germany. I think it would be harder to do it there too. The transnational nature of organized crime means that law enforcement will

be able to proceed against crimes often in both the host and the recipient countries. Therefore, law enforcement people have to be able to make decisions. The decision where to prosecute the crime may depend on the ability to ensure the witnesses needed for conviction. In many countries with significant organized crime problems, organized crime thrives because of the incapacity or the corruption of the justice system. Furthermore, in countries with very serious organized crime problems, the country is often deprived of the national revenues it needs to run an effective campaign against organized crime. Under these conditions, we can anticipate that much transnational organized crime will be prosecuted in the United States which has the human and financial resources to allocate to these prosecutions. The recent capture of leading Colombian organized crime figures and their planned extradition to the United States is reflective of this reality—that Colombia cannot guarantee effective criminal prosecutions of many of its most serious crimes. But trials such as these will require witnesses who are not afraid to come forth and testify, a situation the United States can help facilitate through the participation of witnesses or previous victims of the crime group.

While many countries seek to implement witness security programs to fight organized crime, it is not only financial constraints that limit the effectiveness of programs outside of the United States. Much depends on the integrity of law enforcement to guarantee a safe future for cooperating witnesses. While the area of state promises to cooperating witnesses is not problem free in the United States, we have testimony on that, it is less problematic than in many societies where law enforcement may be heavily infiltrated by organized crime. Certainly, it is very much a problem in Latin America. The lessons and successes of the American Witness Protection Program are not easily transportable to other countries. While countries such as Canada and Australia, which has much discussion on this, may have the preconditions to create viable programs, there are many constraints elsewhere on exporting this strategy. The most recent problems in Italy reveal the limits even in a country where the state is ready to invest significant financial and human resources in the control of crime.

In conclusion, the role of the witness and the victim have changed dramatically in the past three decades in the United States. The growth of a victims' rights movement and the growth of a government methodology to deal with the organized crime problem have resulted in fundamental changes in the legal process. Victims have more protections and increasing pressure is being placed by citizen groups to institutionalize those rights in the federal constitution. The need to deal with the most serious crime has resulted in greater protections for witnesses who

would testify against major crime groups. These protections provided by the state at considerable expense to the citizenry, both in financial costs and potential risk, have proved invaluable in producing convictions. Yet, they have produced victimization problems not foreseen by the Organized Crime Act of 1970.<sup>72</sup> The increasing transnational nature of organized crime means that in the future, the conviction of serious organized criminals will depend on the resources of the most affluent countries with the most effective and honest law enforcement. The Witness Protection Program of the United States will remain an important tool, not only to secure convictions against domestic organized crime groups, but also against international groups which operate within our border. When I say operate within our border, it is not just those who are physically present, but those who send wire transfers through our banks. Because this and virtual reality are now much more part of our organized crime. Thank you.

COMMENTARY BY PROFESSOR JAMES DIEHM

I have the honor and privilege of commenting on Professor Shelley's address, and not surprisingly to me, having long been an admirer of her and her work, I find myself in agreement with the comments that she made.

As she mentioned, our history here in the United States, has been less than admirable. Having been involved in prosecutions since the early 1970's, I recall situations where the court system, and specifically the prosecutors, did not let the victim know what was taking place, did not discuss the pending disposition with the victim, and tragically in many cases, did not even advise the victim of the disposition. Calls came in from victims asking what happened to the case, and they were told that that, perhaps several weeks before, the matter had been disposed of without consulting them. Horrible situations developed, particularly with regard to crimes against women. I recall one situation involving an appalling crime. A number of individuals entered a house occupied by women, took control of the house for the entire evening, and committed a number of rapes and other despicable crimes. The individuals were apprehended, and when questioned they confessed, to the best of my recollection, to six such incidents. The other five had not been reported, largely, I believe, because of the concerns of the women who had been assaulted that they would be twice victimized.

---

72. Organized Crime Control Act of 1970, Title IX, Pub. L. No. 91-452, 84 Stat. 922 (codified as amended at 18 USC §§ 1961-68 (1988 & Supp. I 1989)).

· Fortunately for us, as Professor Shelley mentioned, we have come a long way in dealing with these issues. There continue to be problems, but hopefully we are addressing them with some of the programs and approaches that Professor Shelley has discussed. I think we all welcome those changes. I found her comments with regard to the approach in Russia and Ukraine coming from the top down, as opposed to our approach going from the bottom up, to be particularly interesting. Change is coming here in the United States. When I served as a United States Attorney in the 1980's, we had a staff member who was designated to address these matters, and it certainly improved the situation.

Russia and Ukraine, following European tradition, appear to have provided greater protection for the victim, including the possibility of representation at court hearings. This speaks well of the system. There are some concerns that should be considered, including the fact that representatives are not lawyers, not educated as to court procedures, and may be prone to outbursts during the proceedings. I found that I am in agreement also with Professor Shelley's comments on the witness protection program. It is a fascinating area. I worked in an organized crime section of a prosecutor's office for a number of years, and we had situations arise where this possibility was open to us. As Professor Shelley mentioned, the program is very expensive, and the cost is certainly something that must be considered. Also, problems do arise. As she mentioned, many of these people have a criminal history. While their recidivism rate is lower, these individuals sometimes do return to their old ways. There are situations where a witness with a criminal record, perhaps from the East Coast, is relocated to a small town, perhaps in Iowa, and is responsible for a crime wave in his or her new hometown. These are issues that must be addressed.

Professor Shelley's comments concerning the assumption of jurisdiction here in the United States were very interesting. There must, of course, be a sensitivity to the interests, expectations, and desires of the other countries involved. When I was with the Justice Department, some of these situations did give rise to problems. However, the possibility of assuming jurisdiction here in the United States should be considered in appropriate cases.

I think I speak for all of us in thanking Professor Shelley for her fine address.

## V. PANEL ON JURY TRIALS AND SYMPOSIUM WRAP-UP

## PARTICIPANTS:

**Professor Janis L. McDonald:** Professor of Law, Syracuse University College of Law

**Professor Stephen C. Thaman:** Professor of Law, St. Louis University College of Law

**Professor James W. Diehm:** Professor of Law, Widener University College of Law

**Professor Gordon B. Smith:** Professor, Government and International Studies, Associate Dean of Liberal Arts, University of South Carolina

**Mr. Igor Kozlov:** Procurator in Moscow and Deputy Head of the Division for Economic Crimes

**Judge Yelena Snegirova:** Judge in Moscow and Former Head of the Law Division of the Ministry of Industry

## INTRODUCTION BY PROFESSOR McDONALD FOR PROFESSOR THAMAN

Hi. I am Janis McDonald, a professor of criminal law here at the Syracuse University College of Law. The panel this afternoon focuses on the jury trial. The topic of "juries" is a very important discussion for all of us.

As a criminal defense attorney in the past, and as a professor of criminal law, juries are very dear to my heart. I believe in them. I think they are critical to our system of law. I hope they are critical to your system of law. I look forward to hearing our distinguished panel's thoughts about their role.

I hope we can involve the audience, too, in a real discussion of this issue. We are going to try to stream-line our timing for our speakers in order to encourage more discussion. After we hear from our invited panel speakers, we will hear some of the thoughts of Judge Snegirova and Mr. Kozlov from Russia about the role of juries and then we will open it up to questions.

First, let me make a few comments about Professor Thaman's contribution to an understanding of the role of juries. You have all heard this morning about Professor Thaman and his impressive curriculum vitae, but I wanted to highlight some of the studies he has made about the importance of the role of juries. One merely has to examine his resume to get an education about the role of juries.

He has made a major contribution to the study of juries. He has made presentations in Nicaragua on criminal justice reform and given training seminars for Russian judges on trial by jury. He has lectured on the American and Russian jury system in Russia, Germany, Switzerland,