

AFP assignment crosses technical, cultural barriers and builds contacts with East

Criminal activity increasingly crosses international boundaries and when two law enforcement agencies with vastly different backgrounds and languages become involved in a matter of mutual interest, rather than being seen as an obstacle, it is embraced by the AFP as an opportunity to expand its international horizons.

Such was the case in 1994 when a team of investigators, including Federal Agents Alan Hicks, Glen Proebstl, and Gary Robinson, based in Southern Region and working on 'Operation Bull' established contact with their counterparts in the Russian Federation.

The activities which took place broke 'fresh ground' and the experience will serve as a valuable background to future inter-agency dealings with Russia.

After the two principals were charged, the team needed to obtain evidence from one of their associates who was living in Khabarovsk, about 800 kilometres north of Vladivostok in Russia.

To do so, a 'prosecution' team as well as defence counsel for the two principals travelled to Russia to take the evidence from the witness in a form admissible in the Australian legal system.

The AFP's representative on the prosecution team, **Federal Agent Peter Phillips**, now Director Operations, Southern Region, recalls the following events and anecdotes.

During the AFP's Operation Bull investigation in 1994 it was established that Russian national, Nikolai Levitskiy possessed information crucial to a brief being mounted against two Melbourne based Russian expatriates, Israel Kraznov and Mark Shlakht. Both men had been charged with importation offences involving approximately five kilograms of heroin.

Mr Levitskiy was willing to provide evidence that would furnish details of a meeting which took place between himself and Kraznov in Kiev, where Kraznov had asked Levitskiy to arrange a delivery of 'goods' to Australia. Levitskiy said he would testify that he had arranged with Kraznov for the transport of a consignment of 'unkown goods' to Australia by a Russian merchant sailor who would take delivery of the consignment from Levitskiy. Levitskiy had constantly denied he was aware that the 'unkown goods' were in fact narcotics.

These arrangements were essentially what eventually took place and the merchant seaman was arrested after he arrived in Melbourne and the consignment, heroin, was seized by the AFP. A subsequent controlled delivery identified Kraznov and an associate, Shlakht, as the recipients of the heroin.



Federal Agent Peter Phillips

However, the prosecution team was confronted with a major problem when Levitskiy refused to come to Australia to provide evidence in an Australian courtroom of his meeting with Kraznov in Kiev.

An arrangement was made between the Melbourne office of the Australian Commonwealth Director of Public Prosecutions and the office of the Public Prosecutor of the Russian Federation on 9 September 1994, to enable a delegation of legal counsel to travel to Vladivostok to obtain evidence from Mr Levitskiy.

Permission for Mr Levitskiy's evidence to be taken resulted from a submission by the Commonwealth DPP to the Victorian Supreme Court. In the process which followed, the Victorian court issued a Letter of Request to the Supreme Court of the Russian Federation, which agreed to it, and arrangements were finalised between the Commonwealth DPP and the Russian Department of Justice.

Defence counsel for Messrs Kraznov and Shlakht agreed to travel to Russia so Mr Levitskiy's evidence could be tested when the necessary authority was granted by the Victorian Supreme Court. The travel costs for the two barristers representing each of the accused and their two instructing solicitors were met by the DPP. The prosecution consisted of Mr Peter Faris Q.C., instructed by Mr Scott Bruckard of the Commonwealth DPP's office in Melbourne, and myself representing the AFP and Operation Bull case officers.

Different systems

Following the arrival of the Australian prosecution team in Russia it became obvious that there were enormous differences between the legal/judicial systems of the two nations.

Our first point of contact in Russia was the Chief Prosecutor's Office for the Far East Russian Prosecution Service, which in turn forms part of the Department of Transport and Customs. The Chief Prosecutor and his officers are responsible for the investigation and prosecution of all offences that relate to contraband, smuggling, narcotics and similar



The Australian prosecution team travelled to Khabarovsk to gather evidence for 'Operation Bull'.

customs-related matters, with their duties and resources also covering the surveillance and monitoring of Russian waters in the far east.

The Chief Prosecutor's Department performs almost the equivalent in Russia of the combined roles of the AFP, the Australian Customs Service and the DPP as they relate to offences in the Australian Customs Act, with the major variation being its significantly more extensive powers. Notable among them was the capacity for the Chief Prosecutor's officers to detain a witness for interrogation for up to six months without warrant or formal arrest, and it is only when a witness is taken to court and charged that he or she is entitled to a defence counsel. Also, during any court hearing, defence counsel cannot cross examine a witness on any matter of alleged impropriety by investigating officers. Counsel is permitted to raise the allegation with the judge who will question the witness to determine the veracity of the allegation.

In connection with the AFP's investigation, Mr Levitskiy was apprehended by the Chief Prosecutor's officers three days before we arrived in Khabarovsk to ensure his presence in court. After Mr Levitskiy's evidence was taken by the Australian team he was released from detention because, as the Chief Prosecutor explained, there was insufficient evidence to charge him.

Should the Russian officials elect to pursue the issue, they could send an officer to Australia to interview the merchant seaman, who was at that stage serving a four-and-a-half year jail term in Melbourne. The Chief Prosecutor would need only to obtain a statement from the seaman for presentation to the Russian courts and his account of the statement would be accepted as admissible evidence against Levitskiy.

Among other variations between the systems was the lack of recording facilities to tape proceedings, particularly in the area of Russia where the court proceedings took place. Instead, the court employs a 'note taker' to record relevant issues arising during proceedings.

As we had not included recording equipment in our luggage, we tried to obtain some and found that the only locally available equipment that would suit our requirements was a karaoke machine.

The subsequent evidence-in-chief and cross examination of Levitskiy was recorded on this somewhat makeshift, but nevertheless, workable equipment. Back up was provided by my 'micro' tape recorder and we noted that it would be imperative for tape recording facilities to be part of any future preparation for mutual assistance matters involving evidence, certainly in the far east sector of Russia where the matter was heard.

The Supreme Court of the Russian

Federation packaged and sealed the material and assured its integrity. It was presented to the Victorian Supreme Court on 12 October 1994 in compliance with the Letter of Request. Satisfied with adherence to its request the court released the tapes to the AFP for processing as a police exhibit.

They were transcribed and formed part of the Brief of Evidence against Messrs Kraznov and Shlakht. It was agreed also while the team was in Russia that evidence-in-chief and cross examination would proceed without interruption and that any objections by either side could be made at the trial in Australia.

Reflection

Despite initial problems with recording the proceedings, the procedure adopted for taking Mr Levitskiy's evidence proved effective under the difficult conditions, including the language barrier and the different legal processes and limited resources which had tested the process to the limit.

On our return to Australia, we were confident we had established a good working relationship with the Russian Prosecutor's Office in the Far East (Khabarovsk) and also with the Australian Embassy staff in Vladivostok. Indeed, we were extremely impressed with the hospitality and assistance of our Russian hosts and in particular, with that of

the Chief Prosecutor of the Far East Russian Prosecution Service.

Our experience with the Russian people was quite unique. They were generous in the extreme, given their difficult living conditions and sparse resources, particularly in the far-east region of the country.

Mr Bruckard's preparatory work in the planning and logistical arrangements for the assignment contributed substantially to our success. He put in place much of the groundwork to ensure we reached Russia and while there that finances were in place for all travel, accommodation, interpreters and associated expenses.

In a country where nothing can be taken for granted in accommodation and travel arrangements, it was to Mr Bruckard's credit that no problems

arose during our stay.

In the post script to the assignment, the two offenders pleaded guilty to the importation offences with Kraznov being sentenced to 16 years' jail, and Shlakht to seven.

According to the prosecution team, the guilty pleas were largely due to the combination of the volume of material in the brief of evidence compiled by the original team of investigators, which was further reinforced by the weight of the additional evidence gathered in Russia.

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Khabarovsk railway station where the team was met by officers from the Russian Prosecutors Office after journeying from Vladivostok .