///**[Lo]mas de Zamora, September 25, 2008**

THE RECORD HAS BEEN READ AND CONSIDERED:

For a decision in the "**PROCEEDINGS ON A MOTION TO DISMISS ON THE GROUNDS OF THE LAPSING OF THE STATUTE OF LIMITATIONS**" brought in **Case No. 4521** entitled "ASCH, RICARDO HÉCTOR RE: EXTRADITION," from the records of Clerk's Office No. 2 of this Federal Trial Court No. 1 for Criminal and Correctional Matters of Lomas de Zamora, with respect to the defense motion, a copy of which is found on pages 1 to 25 of the records of these proceedings.

FINDINGS:

1. THE DEFENSE MOTION:

a. Objective:

These proceedings were brought through a motion filed by defense counsel for Ricardo Héctor Asch, a copy of which is found on pages 1 to 25, which moves for dismissal, through a "...motion for dismissal on the grounds of a lapsing of the statute of limitations, whose scope is that of an issue on which a special pre-trial ruling must be made..." The motion furthermore formulates reserves of rights.

As foundation for his motion, defense counsel cites §§336(3), 339(2), 343 and related sections of the National Code of Criminal Procedure, as well as §§62(2) and 67 of the Penal Code. With regard to the entirety of his motion, he calls for due deference to the ruling of Division II of the Federal Court of Appeals of La Plata, a copy of which is found on pages 236 to 293 of the principal file.

He cites passages from that ruling that, in his words, constitute "the categorical delineation of the scenario outlined by the court above to decide upon this motion," such as:

a. The Extradition Treaty with the United States, ratified through Law 25,126, is applicable to the case "in its procedural provisions" and "is not, on the other hand..., to the extent that it indirectly calls for the application of more serious criminal provisions, both with respect to the lapsing of the statute of limitations, and with respect to the turning over of Argentine nationals."

b. It proclaims "...the invalidity of a retroactive application of criminal laws that modify the statute of limitations against the accused..."

c. "...It admitted... that the statute of limitations is bound to the definition of the crime,... if, under the criminal law of the requested State, the statute of limitation has lapsed on the act that forms the grounds for the extradition request, extradition shall be prohibited..."

d. "... the trial-court judge shall prosecute the extraditee unless the lapsing of the statute of limitations has been proven under Argentine law, in which case a dismissal is in order..."

e. And "...if the trial-court judge finds that the remaining elements have been met regarding the lapsing of the statute of limitations on the respective actions under Argentine law, he shall pronounce the dismissal *in limine* [prior to trial] of the extraditee..."

b**. <u>The definition of the charges "that formerly provided the grounds for the now rejected extradition request" as crimes under Argentine law</u>:**

Invoking the principle of legality and the prohibition against the application of analogy in criminal law, he addressed this issue, moving for the dismissal of the case against his client, under §336(3) of the National Code of Criminal Procedure, with respect to the counts listed below and for the reasons given for each of them:

1. Nonexistence of the crime of **mail fraud:**

a) **20 counts of mail fraud:** in violation of 18 USC §§1341 and 2. Said acts were allegedly committed starting in 1992 and up to at least the month of August 1993, by Asch, in collusion with Balmaceda and Stone. These counts are included in the **<u>First Case</u>** (No. SA-CR 96-55(C)-GLT).

b) **20 counts of mail fraud:** In violation of the 18 USC §§1341 and 2. Asch and Balmaceda allegedly engaged in criminal acts, in their capacity as partners of the company named CRH, starting in or around 1991 and up to October 1994. These counts are included in the **<u>Second Case</u>** (No**.** SA CR 97-74-AHS).

c) **10 counts of mail fraud:** In violation of 18 USC §§1341 and 2. Attributed to Asch, starting on an unknown date and up to approximately August 1992, in Orange County, within the Central District of California. These counts are included in the **<u>Third Case</u>** (SA CR 97-95-GLT).

As for the criminal relevance under Argentine law of the charges filed —listed above— he states: "now that all conduct has been ruled out... that "*per se*," could be characterized as criminal merely on account of using the mail service —which, obviously, could be a means, as could so many others, within the scope of a preparatory act, overt act, attempt or consummation of a given unlawful intent— we are left with the factual details, which, at the time, were provided by the requesting State. Thus 18 USC §1341, bearing in mind the structural philosophy on which it is founded, has no specific correlation within our criminal law... {and}... given that it has been held beyond further appeal that analogy is ruled out to decide a criminal-law issue, it can only be concluded that the reproachable behaviors would not be punishable in our territory..."

Given that "...the ruling issued by the Court Above now calls for an analysis of the extent to which that same act can be equated to a crime under the laws of our country..." and insofar as it was not possible to equate the counts criminalized under 18 USC §§1341 and 2 to any criminal provision whatsoever, it is necessary to pronounce a dismissal under §336(3), of the National Code of Criminal Procedure."

2. Nonexistence of the crime of **the introduction of a new drug into interstate commerce:**

The motion maker indicates that **the Third Case (SA CR 97-75-GLT), includes 10 counts of introduction of a new drug into the interstate commerce**

in violation of 21 USC §§33l, 333 and 355, consisting of the introduction into interstate commerce by Asch, between 01/26/1993 and 02/06/1994, of the "HMG Massone" fertility drug that was being manufactured by Instituto Massone S.A. of Buenos Aires, which was not approved for use and distribution in [the United States] by the "United States Food and Drug Administration," which authorization is required under the "Federal Food, Drug and Cosmetic Act" of [the United States].

He states that "the classifications of crimes set in the foreign country have not been adopted by our legal system. There is no provision in the catalogue of crimes that orders such criminalization within the scope attributed to Asch's lead role in the incident." He adds, along another line of ideas, that "...no evidence whatsoever has been included that could at least apprise us that some concrete harm was occasioned upon the health of a given patient through prescribing of the questionable drug or that its unproven harmful nature was disguised or that the drug's recipients had expressed a feeling that they had been victims of deception and/or fraud in connection with acquiring and applying the drug..." He also moves for dismissal of these counts on the grounds that they do not constitute a crime, under §336(3) of the National Code of Criminal Procedure.

3. Nonexistence of a crime **for the conduct classified by the requesting State as "conspiracy."**

The extradition request includes **1 count of conspiracy,** in violation of 18 USC §371, included in the First Case (No. SA CR 96-55(C)-GLT). Asch, Balmaceda and Stone allegedly participated in a conspiracy to defraud the United States by impeding, impairing, obstructing and defeating the functions of the Internal Revenue Service (IRS) of the Treasury Department, which functions consist of ascertaining, calculating, assessing and collecting income tax revenues, between 1991 and 1994.

He argues that "conspiracy" under §318 of the United States Code does not meet the elements of the crime indicated in §210 of the Argentine Penal Code. Thus, it is not proper to equate one to the other. For instance, while under common law, an agreement of only two persons is sufficient, and they must agree to commit at least one crime, Argentine law demands an agreement among three or more persons, with the objective of committing an undetermined set of crimes "...with features of permanence, with future plans, with a constant disposition towards collaboration and an intent to act in common in criminal activity..." In support of his position, he submits what was written by Appellate Judge Schiffin in his opinion in the decision in question: "...in the detailed description of said count, found on pages 242 *et seq.*, of the background materials..., the actions classified as conspiracy allegedly consisted of failing to record sums perceived in cash in the accounting of the institutes...," as well as the jurisprudence of José M. Núñez "...it is of the essence in a conspiracy that it is susceptible to creating a fear of repetition of the crime, of its propagation. Thus, its objective cannot be a given plan

of action... because a conspiracy must pose the eventual danger of perpetration of undetermined criminal acts..." And he adds, citing citing [SIC] Patricia Ziffer in "*Lineamientos Básicos del Delito de Asociación Ilícita*" [Basic Guidelines on the Crime of Conspiracy]: "An association does not become a conspiracy by the mere fact of committing crimes occasionally; rather, that must be the essential objective or the habitual means for obtaining its goals..." He argues once more that a conspiracy is "...An evident intent to engage in ongoing, one might say professional, activity, as a habitual means of living..." as is described in "*Asociación ilícita. Algunas consideraciones"* ["Conspiracy. Some Considerations"] in Homage to Claus Roxin.

With respect to the number of members of the alleged conspiracy, the same defense counsel argues: "...as follows from the documentary evidence that we submitted to the extradition proceedings on an earlier occasion, Sergio C. Stone, at the time of the extradition request for which we are appearing, had already stood trial —on this same count of conspiracy, among others— and was found not guilty of its commission." For that reason, the alleged conspiracy would now be comprised by only two persons, Asch and Balmaceda, which in-and-of-itself prevents it from being equated to §210 of the Argentine Penal Code. He makes mention of the position of Justice Maqueda of the Supreme Court of Justice of the Nation, set forth in Finding 46 of Justice Maqueda's opinion in the case entitled "Arancibia Clavel, Enrique L." of 08/24/2004, regarding the dissimilarities in the classifications of the crimes of conspiracy under common law and conspiracy under Argentine criminal law, which concludes by categorically stating, with respect to conspiracy under common law that "...it does not equate to the definition of conspiracy contemplated in Roman law..."

He expands upon his view of the topic, stating that likewise absent are the indispensible features of habitual conduct and disruption of public tranquility, all of which leads to the condemnation of this specific misconduct. Therefore, he also moves for dismissal under §336(3) of the National Code of Criminal Procedure.

He nonetheless accepts that still pending is a specific analysis with respect to the counts of evasion, "although that could never be under §210 of our Penal Code..."

c. <u>The lapsing of the statute of limitations on the criminal action in relation to the remaining counts filed:</u>

Under this heading, he addresses the issue of the extinction of the criminal action due to the lapsing of the statute of limitations "on the remaining counts filed," based on Argentine law.

Taking as a given that Argentine law does not have a specific crime defined as mail fraud, defense counsel refers to the crimes defined under §§172 and 292, part two, of the Argentine Penal Code, in order to see whether the unlawful conduct charged as mail fraud —in the event that it was committed— is encompassed within the crime of attempted fraud, committed through use of illegally falsified private documents

(the allegedly altered invoices) which, under §54 of the Penal Code "…become simple means of commission, without a life of their own..." He thus argues that the twenty counts of mail fraud from the first case, No. SA CR 96-55 (C)-GLT, alleged to have occurred between August 20, 1991 and August 21, 1993; the same number of counts from the Second Case, No. SA CR 97-74-AHS, alleged to have occurred between April 1, 1991 and October 1, 1994 and the ten counts from the third case, No. SA CR 97-65-GLT, alleged to have occurred between May 27, 1991 and April 28, 1992, could fall within the definition of the crime of fraud. He notes, with respect to the consummation of the above-referenced crimes, that only in six of them were cashier's checks allegedly sent, allowing them to be considered consummated crimes. On the other hand, in the remaining ones, given that there is no evidence of receipt of the payments sought by the invoices issued, the presumed crime would have been limited to an attempt, and therefore a corresponding proportional reduction to the sentence would have applied. In summary, the statute of limitations would have lapsed on the consummated crimes in six years and, on the attempted crimes, in four years. Given the absence in Argentine law (§67 of the Penal Code), of acts that toll the statute of limitations, insofar as the initial summons has not be issued, he considers that counting as of the date of commission of each of the acts charged, the statute of limitations has lapsed.

With respect to the two counts of signing of false individual and joint income tax returns with the United States, he argues that there is no similar offense in Argentine law. Nonetheless, he accepts that, forcing his analysis, it could "approximate the simple crime contemplated in §1 of Law 23,771 to the extent that it governs the "Criminal Tax Regime" because it was the prevailing law at the time of the wrongful conduct." The statute of limitations has also allegedly lapsed on said counts, given the absence of an initial summons.

In a part devoted to "The inescapable merit of the motion to dismiss that was filed, under Argentine law, given its absolute subordination to the principle set forth in the appellate ruling" he makes general reflections to strengthen his motion, invoking Argentine case law and jurisprudence in his support, among them the one that reads as follows:

"…the Supreme Court of Justice of the Nation... has maintained the position that an existing relationship has been recognized between 'reasonable duration of a case' and 'lapsing of the statute of limitations on a criminal action;' it follows from there that the right of the accused to put an end to the situation of uncertainty —which is entailed in a criminal prosecution—, can find protection in the lapsing of the statute of limitations on the criminal action, without losing sight of the fact that the guarantee under §18 of the National Constitution may consist of the declaration of the existence of such grounds for dismissal (See Decisions 301:197; 306:1688; 316:1328; 312:2075, among many others)."

For all those reasons, he moves that "a dismissal be pronounced with prejudice in the case, in favor of {...his client...}: that the judicial authority of the United States of America and the INTERPOL office be so informed; and that note be taken of that he reserves the right

to file cassation proceedings and special remedy proceedings before the Supreme Court of the Nation."

II. THE POSITION OF THE PROSECUTION:

The Assistant Government Attorney, having taken the opportunity granted to him to view and comment upon the file, joins in his brief, found on pages 34 to 36 back, in the arguments that had been made by the head of Federal Prosecutors' Office No. 2 of Lomas de Zamora, Dr. Gentilli, for whom he is standing in. Said arguments were set forth in Dr. Gentilli's brief on pages 48 to 63 of the proceedings record for the motion to dismiss filed by Ricardo H. Asch's defense counsel, and are deemed to be reproduced, based on "a principle of unity of action emanating from §1 of the Organic Law of the Government Attorney's Office, with the understanding that the motion filed by its makers seeking dismissal should be denied."

He argues, in said regard, "...that 'it is not proper to argue an alleged nonexistence of the subjective and objective elements of the crime to which the conduct has been equated as foundation for the viability of said motion (to dismiss) ...nor to question the very existence of the prohibited material that is alleged to have been unlawfully taken. In fact, these circumstances are factual issues and evidence that should be produced in the litigation that is to take place and assessed by this court at the time of pronouncing the decision in question' (Oral Criminal Court No. 2 of La Plata, "Ávila, Argelina del Valle, RE: violation of Law 23,737" Decided 2/16/96). He further argues that a motion to dismiss based on the absence of a crime is only viable when the lack of an equivalent crime for the charged act is patently evident (National Criminal Cassation Court, Division III, "Peugeot Citroen Argentina S.A." Decided 11/16/2001) and that such a motion cannot have as its foundation the circumstance that the acts denounced do not constitute a crime based on the merits, unless it is patently evident that they cannot be equated to any of the crimes established in criminal law (National Division on Economic Crimes Division A "Blanco, Horacio O. *et al.*" Decided 5/9/2002). He further argues that as its own name indicates, a motion to dismiss (*excepción* [literally: "exception"] can in no way replace or displace the central nature of a trial, nor be proposed as an alternative or abbreviated trial within the legal design in effect in our legal system. Otherwise, not only would the directing of the proceedings (attributed to the courts) be left in the hands, in this case, of defense counsel, but the very essence of the proceedings would no longer be governed by law, but rather be left to the will and discretion of one of the parties, because it would suffice for said purpose to propose that issues on the merits be handled through a motion to dismiss, which would distort the very basis of our system, which is founded on law (Supreme Court, Decisions 178:355; 234:82). He states that such principles, applied to the case at hand —where in addition, the motion filed is not expressly contemplated, which means that even greater attention must be paid in the examining of its pertinence— allows said assertion to be easily demonstrated, given that the handling of issues or defenses on the merits under the guise of a motion to dismiss would alter the regime established by Law 25,126 and the National Code of Criminal Procedure (§2 of Law 24,767) because it would deny his Government Attorney's Office

the right to proffer evidence and request supplementary proceedings if pertinent (§§405 and 406 of the Code of Criminal Procedure); it would deny the extraditee the possibility of exercising his material defense during the hearing; it would do away with orality and immediacy in the production and receipt of evidence; it would keep the parties from submitting final arguments and deny the extraditee the right granted to him in §393 "*in fine*" of the Code of Criminal Procedure; the length of all of the terms in the proceedings would be altered —as occurs in what is now being sought, where this Government Attorney's Office would have to reduce its intervention in the proceedings to the term of three days contemplated in §340 of the Code of Criminal Procedure— and above all would essentially change the regime for remedies by enabling the intervention of intermediate courts in place of the ordinary remedy of appeal before the Supreme Court of Justice of the Nation (§33 of Law 24,767) which would result in a delay in the handling of the case."

He then argues that, "if such a path were taken, it would undermine the guarantee of defense at trial and that of due process."

After alluding to the ruling pronounced by this court, found on pages 118 to 128 of the "Proceedings Record on the Motion to Dismiss Filed by Defense Counsel for Ricardo H Asch," which also has a separate ancillary file, which was deemed reproduced, and after transcribing paragraphs of the subsequent ruling of the Federal Court of Appeals of La Plata, he formulated the reserve of the right to bring a federal case in the event of a decision contrary to the one he proposed.

III ANALYSIS OF THE ISSUES POSED

1. Admissibility of hearing the motion to dismiss as brought:

The undersigned cannot ignore the fact that in the ruling issued in the "PROCEEDINGS ON THE MOTION TO DISMISS FILED BY DEFENSE COUNSEL FOR RICARDO ASCH" which also has an ancillary file, separate from the principle court file, on pages 279 to 336, considered the court proceeding chosen to be improper for hearing the issues of equating of crimes and of lack of action due to the lapsing of the statute of limitations on the criminal action.

Nonetheless, between that time and the present, an act of the greatest significance took place, which was the categorical ruling of the Federal Court of Appeals of La Plata, a certified copy of which is found on pages 236 to 293 of the principal court file. There, the Court Above rejected the extradition request and ordered the undersigned to decide the matter, within the framework of the new scenario precisely delineated and limited by the Court Above, which set aside, by exhaustion of remedies, the sole proceeding legally regulated for an extradition, to which we shall solely refer given the usefulness of the documentary evidence of the charges that formerly supported the formal request for Asch's extradition.

Given that said ruling became final on account of the fact that it was not challenged by the Prosecutor assigned to that Division, who was notified on page 336 back, on June 19, 2008, all that is left for the undersigned to do is to comply with his duty of having

Argentine citizen Ricardo Héctor Asch stand trial for the acts charged as crimes by the courts of the United States, but from the standpoint of Argentine law, wherein the proceedings will take on the nature of "*notitia criminis* [crimes notified to the prosecutor]." And the undersigned shall do so, provided that the statute of limitations has not lapsed on the same under our legislation, in which case "it will be necessary to pronounce the dismissal, *in limine,* of the extraditee," as ordered by the above-referenced ruling: (Page 335 back, part g) of the principal file), with support from the principle of "*aut dedere aut judicare"* ["extradite or prosecute"].

Therefore, what is involved here is to undertake the preliminary steps in the pre-trial stage of an ordinary criminal procedure, as mandated by the Argentine Code of Criminal Procedure and, of course, under our rules of criminal law.

With respect to the timeliness and form of the defense motion in the form of a motion to dismiss, prevailing jurisprudence and case law, which is respectful of the importance of a defense at trial in a criminal case and of the principle of substantive legality, accepted this tool, of course, despite the silence of procedural law in effect at the time. This was upheld in an enormous number of precedents when the inexistence of the crime was patently evident and arose "*ab initio*" (see, for example Civil and Commercial Division, "Mercado Case," Decided 11/24/1940, "Vicenzo Case," Decided 12/27/1940, among others, See Decisions, Civil and Commercial Division, Volume IV).

The same Division later added a large number of rulings in which it stated: "It is proper to grant the motion to dismiss, declaring the nullification of the entire proceedings, dismissing the civilian's criminal complaint, if the inexistence of the crime clearly follows..." and "...a motion to dismiss based on the absence of crime is only viable when *ab initio* it clearly follows that no corresponding crime can be equated to the act charged" (among others in "TIMERMANN, Jacobo," Division IV, Case 39,384 Decided 05/16/98; "FONTEVECCHIA, J." Decided 10/10/85 and "LA VALLE, L." Case 33,106, Decided 09/08/87; Division II, Case: "MONTENEGRO, C." No. 29,430, Decided 12/04/84).

For its part, the National Criminal Cassation Division indicated *in re* "De Tezanos Pinto, Manuel M." - Division IV, 03/06/2000, citing the ruling in "BRESSI, Roberto Eduardo *et al.,* Cassation" from Division II, Case No. 1780, Decided 10/06/98, that "These precedents interpret that it is correct to invoke the nonexistence of the criminality of the act through a motion to dismiss during the time that the preceding Code was in effect. Thus, with all the more reason, the matter should be analyzed from the perspective of §339(2) of the National Code of Criminal Procedure, which introduced a much more flexible system of motions to dismiss than the one legislated in the repealed code." On the same occasion, supplementing that concept, he expressed that, though in principle a motion to dismiss can only address issues of form and is inappropriate for raising arguments on the merits involving the inexistence of the crime on factual or legal grounds, said principle is overridden when it clearly follows from the description of the facts, that it does not equate to a crime, since in such a situation, the prosecution of the case would involve an obvious, unnecessary waste of the court's time, to the inevitable detriment of the good service of

justice and would also involve an improper subjugation of the parties to trial. In order to prevent that, the case would be dismissed by application of the above-mentioned grounds for dismissal.

In similar terms, jurisprudence recommends that at any stage of a case, it is possible to question the accuser's intentions using means that do not go to the merits or substantive issues, when there are obstacles involving the requirements for its admissibility, such as a lapsing of the statute of limitations on the criminal action and the inexistence of a crime clearly resulting from the mere description included in the charging document (D'Albora in his "*Código Procesal Penal de la Nación – Anotado – Comentado – Concordado"* ["National Code of Criminal Procedure... Annotated – Commented - Compared"] Editorial Abeledo Perrot, 4th Edition, year 1999, pages 582 *et seq.*), referring back to his article "*La inexistencia de delito como excepción no legislada*" ["The inexistence of a crime as non-legislated grounds for dismissal,"] where he states that the operability of such a motion to dismiss as an appropriate instrument to contest the existence of crime constitutes the sole appropriate avenue to promptly conclude the case and lessen the risks unleashed by an impetuous order opening the pre-trial stage, thus allowing for its neutralization when the act does not constitute a crime."

This position is also upheld by Jorge Vázquez Rossi in his article *"Las Excepciones en el Proceso Penal"* ["Grounds for Dismissal in Criminal Proceedings"] published in *Jurisprudencia Argentina* ["Argentine Case Law"] Year 1986, Volume IV, where, after indicating that "the complaint is an essential, fundamental condition for the practicable activity of the criminal courts," lists, among "the grounds for dismissal of a complaint," that of "No Cause of Action," noting that Núñez defines that as a "lack of authority to criminally prosecute the crime." Among the various scenarios he mentions, the first and most evident, at the level of a "direct derivation of the constitutional principle of legality and its complement, that of a reserve of rights (§§18 and 19 of the National Constitution): there is no criminal action unless, in the words of Leone we are, 'faced with a given act corresponding to a criminal hypothesis,' that is, a conduct that, *prima facie,* falls within one of the descriptions of substantive criminal law (a type of guarantee of rights). It is obvious that one cannot proceed with a criminal prosecution if the charge does not refer to an act that, prior to its commission, is defined as crime in the law in effect" and "...if an act is attributed that is not defined as a crime, the complaint of the prosecutor or the civilian or the initial summons must be dismissed..."

Grounds for dismissal by nature constitute impediments to the exercise of court powers and actions in a concrete case and are associated with the absence of or deficiency in fulfilling an established procedural prerequisite as a condition to be able to examine and decide upon the merits of the case; in other words, they operate when conditions of admissibility are missing, the inobservance of which produces absolute nullity. Among the errors that authorize its imposition, one that should be accepted, as stated above, is the non-legislated grounds of inexistence of a crime, and the legislated grounds consisting of a lapsing of the statute of limitations of the criminal action.

When that occurs, "the proceedings, which have a practical, current, legal aim: to determine

whether a person merits a penalty on account of having committed an act previously classified as a crime—, should be cut short..."

As for the instructions of the Court Above —set forth in the above-mentioned ruling— regarding the prosecution of Dr. Asch in Argentina, whose right to be tried here was recognized on the court's own initiative, it is now appropriate, in due keeping with the duty to abide by the orders of Division II of the Federal Court of Appeals of La Plata, to note the principal guidelines that the Court Above outlined, to wit:

a) The prosecution in the country of the Argentine national whose extradition is requested, is a logical consequence of the principle of *"aut dedere aut iudicare"* ["extradite or prosecute"]*;* the State that denies the extradition agrees to prosecute the extraditee for the crime that forms the grounds for the extradition, without that depending upon the will of the extraditee, or of the requested State, or of the requesting State. In the two first hypotheses, this is because that is prohibited in our country by §18 of the National Constitution, which states that no one shall be prosecuted without a prior existing law that equates the act charged to a crime. Said provision is referred to by §4(2) of the former Extradition Treaty with the United States ratified by Law No. 19,764. In the latter hypotheses, this is because that would provoke uncertainty of the Argentine process in the form of *"sine die"* [no setting of a future date], in evident violation of the guarantee that the Supreme Court of the Nation established in the "Mattei" precedent.

b) The same §4(2), final part, establishes an exception to prosecution in the country: "that the same (the act) is not punishable under its own legislation or the requested party does not have appropriate jurisdiction." What is involved, as stated in the opinion of Judge Schiffrin, are "impediments that arise from the interference of conditions of admissibility intrinsic to the law of the country (lack of a denunciation by the victim in crimes that so require, or immunities on account of serving in public office, etc.) or that the statute of limitations has lapsed on the action. In other words when the action, which is the prerequisite for the jurisdiction, has been extinguished or cannot be brought, even if it is because of issues of time, there will be no prosecution in the *forum patriae,* whether definitive or merely temporary"

2. Equating of the acts charged against the accused under Argentine criminal law; survival or termination of the action:

Insofar as it is considered inseverable, prior to addressing whether the criminal actions shall subsist, the undersigned shall jointly rule upon whether the conduct charged as unlawful by the foreign State against Ricardo Asch, can be equated to the crimes described by our Penal Code, bearing in mind that this is a condition for the admissibility of his prosecution based on what has been stated above and on §4(2) of the bilateral treaty formerly in effect, ratified by Law No. 19,764, whose applicability in the case was determined by the Court Above.

This shall be done, emphasizing that the task entrusted to me is different from the process of verifying that the act is a crime in both countries, which is specific to extradition proceedings, in which it does constitute a substantive matter to be elucidated during the proceedings.

And, when describing the charged conduct, nothing is better than to note what was stated by the Court Above in its ruling, a copy of which is found on pages 236 to 293 of the principal court file, to wit:

"In order to examine the charges that the requesting court formulates against Asch, it should be borne in mind that, according to the documentation attached by the U.S. Attorney's Office, Dr. Ricardo Asch, allegedly, since March of 1990, practiced medicine together with José A. Balmaceda and Sergio C. Stone, and these three physicians controlled the activity of two reproductive health centers in the State of California. One of those centers, located in Orange (CRH-UCI), was associated with the University of California, and the second was associated with Saddleback Memorial, located in Laguna Hills (CRH-SB). Both clinics were private entities under the control of the three above-mentioned physicians, who divided the income, with Asch and Stone mainly working at CRH-UCI and Balmaceda at CRH-SB.

In relation to the activity of the above-named persons, the U.S. Attorney's Office brought the following criminal cases against the three above-mentioned physicians:

- United States v. Ricardo H. Asch *et al*. Case No. SA CR 96-55(C)-GTL
- United States v. Ricardo H. Asch *et al.* Case No. SA CR 97-74-AHS, and
- United States v. Ricardo H. Asch Case No. SA CR 97-75-GLT

In those cases, the U.S. Attorney's Office stated that it had proof of acts that it deemed unlawful under the federal legislation of the United States of America. Said acts, according to the documentation attached to the demand for extradition, can be grouped as follows:

a) Income tax returns —in two cases— with omissions, in the years 1991 and 1992 (Page 246 of the background materials attached as a copy and translation certified by the Embassy of the United States).

b) Mailing —on twenty occasions—, to medical insurance companies, of invoices for the charging of medical services that, in fact, were allegedly not provided by Asch or his associates, but by medical personnel —interns or residents— not authorized to claim fees. It was not clarified if such billing was ultimately aimed at favoring the above mentioned professionals. These episodes allegedly occurred between August 1992 and August 1993 (page 235 of the same background materials).

c) Use of the mail on twenty occasions to bill for services that were not covered by the respective insurance companies. These acts allegedly took place between 1991 and 1994 (pages 251 *et seq.* of the above-referenced background materials).

d) Given that in the assisted reproduction activity in which they engaged, Asch and his associates were left with a certain quantity of unused ovules from several different patients, they allegedly used those ovules to treat other patients, even though they had assured the ovules' producers —using the mail in ten cases—, that this would not occur without their consent, of which, they nonetheless allegedly did without. The alleged scheme

explained in a confusing manner by the U.S. Attorney's Office, allegedly occurred between May 1991 and April 1992. (See page 263 of the attached background materials).

e) On ten occasions they allegedly introduced into the interstate commerce of the U.S.A. a medication produced in Argentina (HMG Massone) not yet authorized by the U.S. authorities. This is said to have occurred between January 1993 and February 1994 (pages 270 *et seq.* of the above-referenced background materials).

f) An alleged conspiracy of **two** or more persons **to commit at least one crime,** in which Asch was allegedly a member (point 25 of the background materials, page 7). It should be added that in the detailed description of that count, found on pages 242 *et seq.*, of the above-mentioned background materials; the actions classified as conspiracy allegedly consisted of failing to record sums perceived in cash in the accounting of the institutes, which is said to have repeatedly occurred between 1991 and 1994. The conduct listed in paragraph b) also falls into the description of this crime."

Following those guidelines, the charges are now addressed, grouping them by mode, as follows:

A) **Mail fraud:** in violation of 18 USC §§1341 and 2.

The following charges have been filed against the accused for this crime:

-20 counts in the "First CASE" "UNITED STATES v. RICARDO H. ASCH *ET AL.*" Case No. SA CR 96-55 C-GLT, where a Federal Indictment has been issued in the Central District of California, filed with the United States District Court in the Central District of California on June 18, 1997 (see Page 233 of Exhibit II of the ancillary file, separate from the principal file). There, it is stated that, between August 1992 and up until at least August 1993, Asch, Balmaceda and Stone, together with others, engaged in fraud on the occasions listed below, taking the dates included in the chart from pages 5 to 9 and matching them with those specified in each case, once again from Exhibit II, found in the ancillary file:

Count 1 CRH-UCI issued a false invoice to Aetma [SIC] Life Insurance Company for payment of the services of an assistant surgeon supposedly provided by Balmaceda on 08/01/1991 to patient S.W.; CRH-UCI sent it by mail on 08/20/91; and Aetna "paid" with a check, the back of which reflects the deposit in the bank account of CRH (See Pages 10 to 12, item 19 a. e. f. of Exhibit II).

Count 2: CRH-SB issued a false invoice to The Dentists Company Insurance Services for payment of the services of an assistant surgeon supposedly provided by Asch on 09/18/91 to patient D.K.; CRH-SB sent it by mail on 10/07/91 and Dentists Company Insurance Services "notified that it would pay" (See Pages 11, item 20 d. e. of Exhibit II).

Count 3: CRH-SB issued a false invoice to Hartford Insurance Group for payment of the services of an assistant surgeon supposedly provided by Stone on 12/03/91 to patient B.K.; CRH-SB sent it by mail on 12/20/91 and Hartford Insurance Group

"paid" through "a cancelled check," given that "the back of the check reflects the deposit into the bank account of CRH (See Pages 13, item 21 d. e. f. of Exhibit II).

Count 4: CRH-SB issued a false invoice to The "Trevelrs [SIC] Insurance Company for payment of the services of an assistant surgeon supposedly provided by Frederick on 12/21/91 to patient S.R.; CRH-SB sent it by mail on 01/10/92 and The Trevelrs [SIC] Insurance Company "paid through a "cancelled check" payable to Stone (See Pages, 13 to 14, item 22, c. d. e. of Exhibit II).

Count 5: CRH-UCI issued a false invoice to Metropolitan Life Insurance Company for payment of the services of an assistant surgeon supposedly provided by Asch on 03/03/92 to patient A.K.; CRH-UCI sent it by mail on 03/20/92 and Metropolitan Life Insurance Company "denied the benefits" "citing the lack of medical need" (See Pages 14 to 15, item 23 d. e. of Exhibit II).

Count 6: CRH-UCI issued a false invoice to Metropolitan Life Insurance Company for payment of the services of an assistant surgeon supposedly provided by Asch on 03/17/92 to patient M.L.; CRH-UCI sent it by mail on 09/04/92 and Metropolitan Life Insurance Company "refused to pay the services of an assistant surgeon, citing the lack of medical need (See Pages 15 to 16 item 24, d. e. of Exhibit II).

Count 7; CRH-SB issued a false invoice to Glendale Claims Center for payment of the services of an assistant surgeon supposedly provided by Stone on 07/01/92 to patient B.K.; CRH-SB sent it by mail on 07/24/92 and Glendale Claims Center "denied" the claim "because the services of an assistant surgeon are not a benefit covered for outpatient surgery" (See Pages 16 to 17, item 25, d. e. of Exhibit II).

Count 8: CRH-UCI issued a false invoice to AETNA Health Plan, for payment of the services of an assistant surgeon supposedly provided by Asch on 07/017/92 to patient J.L.; CRH-UCI sent it by mail on 08/17/92 and AETNA Health Plan "paid" by "cancelled check" signed by Asch and deposited in the bank account of CRH (See pages 17 to 18 item. 26 c. d. e. f. of Exhibit II).

Count 9: CRH-UCI UCI issued a false invoice to Prudential Insurance Company for payment of the services of an assistant surgeon supposedly provided by Asch on 05/12/92 to patient E.W.; CRH-UCI sent it by mail on 08/25/92 and Prudential Insurance Company "paid" for the services of an assistant surgeon (See Pages 18 to 19 item 27, c. d. e.).

Count 10: CRH-UCI issued a false invoice to United Food and Commercial Workers Union and Food Employees Benefit Fund for payment of the services of an assistant surgeon supposedly provided by Asch on 07/29/92 to patient D.H.; CRH-UCI sent it by mail on 08/27/92 and United Food and Commercial Workers Union and Food Employees Benefit Fund "paid... Asch for the services of an assistant surgeon" (See Pages 19 to 20, item 28, c. e. of Exhibit II).

Count 11: CRH-SB issued a false invoice to Blue Cross of California for payment of the services of an assistant surgeon supposedly provided by Stone

on 08/10/92 to patient E.N.; CRH-SB sent it by mail on 09/02/92 and Blue Cross of California denied the claims because it was for "excluded conditions" (See Pages 20, item 29, c. d. e. of Exhibit II).

Count 12: CRH-UCI issued a false invoice to PacifiCare, San Antonio Medical Group for payment of the services of an assistant surgeon supposedly provided by Balmaceda on 09/04/92 to patient W.G.; CRH-UCI sent it by mail on 09/21/92 and PacifiCare, San Antonio Medical Group "denied the claim for services... citing inappropriate use..." (See Pages 21, item 30, d. e. of Exhibit II).

Count 13: CRH-SB issued a false invoice to Dart Helth [SIC] Care for payment of the services of an assistant surgeon supposedly provided by Balmaceda on 10/01/92 to patient W.L.; CRH-SB sent it by mail on 10/01/92 and Dart Helth [SIC] Care "paid for the Services of an assistant surgeon" (See Pages 22, item. 31, c. d. e. of Exhibit II).

Count 14: CRH-UCI issued a false invoice to Metropolitan Life Insurance Company for payment of the services of an assistant surgeon supposedly provided by Asch on 09/18/92 to patient S.H.; CRH-UCI sent it by mail on 10/18/92 and Metropolitan Life Insurance Company "denied the claim for services" (See Pages 23, item. 32, c. d. e. of Exhibit II).

Count 15: CRH-UCI issued a false invoice to Massachusetts Mutual Life Insurance Company for payment of the services of an assistant surgeon supposedly provided by Asch on 10/09/92; CRH-UCI sent it by mail on 10/20/92 and Massachusetts Mutual Life Insurance Company "paid" with a check that reflects the deposit into the bank account of CRH (See Pages 24 to [2]5, item 33, d. f. g. of Exhibit II).

Count 16: CRH-UCI issued a false invoice to Prudencial [SIC] Insurance Company for payment of the services of an assistant surgeon supposedly provided by Asch on 10/09/92 to patient S.B.; CRH-UCI sent it by mail on 10/21/92 and Prudencial [SIC] Insurance Company "denied the claims, citing lack of medical need" (See Pages 25 to 26, item 34, c. d. e. of Exhibit II).

Count 17: CRH-UCI issued a false invoice to Blue Shield of California for payment of the service of an assistant surgeon supposedly provided by Asch on 10/27/92 to patient E.S.; CRH-UCI sent it by mail on 11/14/92 and Blue Shield of California "paid... for the services" claimed (See Pages 26, item 35, c. d. f. of Exhibit II).

Count 18: CRH-UCI issued a false invoice to OC Hotel Employees for payment of the service of an assistant surgeon supposedly provided by Frederick on 10/27/92 to patient A.M.; CRH-UCI sent it by mail on 06/22/93 and OC Hotel Employees "paid" for the services with a check payable to CRH (See Pages 27, item 36, c. d. e. of Exhibit II).

Count 19: CRH-SB issued a false invoice to National Insurance Services for payment of the services of an assistant surgeon supposedly provided by

Frederick on 03/12/91 to patient V.A.; CRH-SB sent it by mail on 11/14/92 and National Insurance services "paid for the services" (See Pages 27 to 28, item 37, e. d. of Exhibit II).

Count 20 CRH-UCI issued a false invoice to Alta Helth [SIC] Strategies Inc. for payment of the services of an assistant surgeon supposedly provided by Frederick on 08/21/93 to patient C.B.; CRH-UCI sent it by mail on 08/21/93 and Alta Helth [SIC] Strategies, Inc. paid for the services of the assistant surgeon with a check, "a copy of which is attached" (See Pages 28 to 29, item. 38, d. e. of Exhibit II, found in the ancillary file).

-20 counts in the "Second CASE": "UNITED STATES v. RICARDO H. ASCH *ET AL.*" Case No. SA CR 97-74 AHS, where a Federal Indictment has been issued in the Central District of California, filed with the United States District Court for the Central District of California on September 24, 1997 (See Pages 255 to 259 of Exhibit II of the ancillary file, separate from the principal file). There, it is stated that Asch, Balmaceda and Stone designed a ruse and contrivance to defraud and obtain money from insurance companies through false and fraudulent statements and promises in the cases that, as follows from pages 37 to 40 and from the pages listed in each case, can be referenced as follows:

Count 1: The clinics of partners Asch, Balmaceda and Stone for the service provided on 01/19/91, consisting of "extraction of oocytes," which corresponded to code 58970 (follicle puncture for their extraction), issued an invoice under code 76393 (transvaginal extraction of cysts) and received by mail from the health insurance company, on 04/01/91, in relation to patient S.G., an "explanation of benefits and check."

Count 2: The clinics of partners Asch, Balmaceda and Stone, for the service provided from 05/01/91 to 05/20/91, consisting of "extraction of oocytes" which corresponded to code 58970 (follicle puncture for their extraction) issued invoices under code 76393 (transvaginal extraction of cysts) and received by mail from the health insurance company, on 07/02/91, in relation to patient PC, a "check... in response to the invoice... for services rendered."

Count 3: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 11/11/91, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under codes 58800 (for ovarian cyst drainage) and 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 12/23/91, an "explanation of benefits form."

Count 4: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 08/03/92, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 09/01/92, an "explanation of benefits form."

Count 5: The clinics of partners Asch, Balmaceda and Stone, for the service provided from 07/21/92 to 07/28/92, consisting of "extraction of oocytes," which

corresponded to code 58970 (follicle puncture for their extraction), issued an invoice under code 58800 (ovarian cyst drainage) and received by mail from the health insurance company, on 09/03/92, an "explanation of benefits form."

Count 6: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 08/31/92, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 10/16/92, an "explanation of benefits form and a check" in response to the invoice issued for services rendered to patient DM.

Count 7: The clinics of partners Asch, Balmaceda and Stone, for the service provided from 08/09/92 to 08/14/92, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 11/11/92, in relation to patient V.T., an "explanation of benefits form and a check" in response to an invoice for the services provided to her.

Count 8: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 05/10/92, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 10/06/92, an "explanation of benefits form."

Count 9: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 10/01/92, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 11/16/92, in relation to patient J.M., an "explanation of benefits form and a check" in response to an invoice for the services provided to her.

Count 10: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 09/21/92, consisting of a ZIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 12/07/92, an "explanation of benefits form."

Count 11: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 12/15/92, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 12/07/92 [SIC], an "explanation of benefits form."

Count 12: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 03/10/92, consisting of "extraction of oocytes," which corresponded to code 58970 (follicle puncture for their extraction), issued an invoice under code

58800 (ovarian cyst drainage) and received by mail from the health insurance company, on 01/05/93, an "explanation of benefits form."

Count 13: The clinics of partners Asch, Balmaceda and Stone, for the service provided from 08/03/92 to 08/10/92 consisting of an "extraction of oocytes," which corresponded to code 58970 (follicle puncture for their extraction) issued an invoice under code 58800 (ovarian cyst drainage) and received by mail from the health insurance company, on 01/26/93, an "explanation of benefits form."

Count 14: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 10/12/92, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 02/16/93 an "explanation of benefits form."

Count 15: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 11/18/92, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 03/02/93, an "explanation of benefits form."

Count 16: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 12/04/92, issued invoice that disguised, with a different code, a service not covered by the health insurance companies and received by mail from the same on 03/16/93, an "explanation of benefits form."

Count 17: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 03/09/93, consisting of a GIFT, which corresponded to code 58976; (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 04/19/93, an "explanation of benefits form."

Count 18: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 08/31/92, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 04/23/93 an "explanation of benefits form."

Count 19: The clinics of partners Asch, Balmaceda and Stone, for the service provided on 03/31/93, consisting of a GIFT, which corresponded to code 58976 (gamete or zygote intrafallopian transfer), issued an invoice under code 58980 (surgical laparoscopy) and received by mail from the health insurance company, on 06/23/93 an "explanation of benefits form."

Count 20: The clinics of partners Asch, Balmaceda and Stone, for the services provided from 04/20/94 to 05/30/94, consisting of the extraction of oocytes, which corresponded to code 58970 (follicle puncture), issued an invoice under code

58800 (ovarian cyst drainage) and received by mail from the health insurance company, on 10/10/93, an "explanation of benefits form."

10 counts in the "Third CASE" UNITED STATES v. RICARDO H. ASCH" Case No. SA CR 97-65- GLT, where a Federal Indictment has been issued in the Central District of California, filed with the United States District Court for the Central District of California on October 1, 1997 against Asch. There, it is stated that, starting on an unknown date and continuing until in or about August 1992, in Orange County, within the Central District of California and elsewhere, the accused Asch, knowingly and intentionally designed and attempted to design a ruse and contrivance to defraud patients and to obtain property and money through false and fraudulent pretenses, statements and promises. His plan was to obtain human ovules from patients capable of producing them and to utilize them, without their knowledge or consent, in an attempt to fertilize other patients, presenting those ovules as donated by volunteers. According to what was stated in point 9 from pages 267 to 268 of Exhibit II, as part of the ruse or contrivance he allegedly had his patients from the CRH allow the ovules to be aspirated from them with the false and fraudulent statement that the Center would only handle the ovules in accordance with their explicit directions, including not giving them to other patients without their express authorization.

With that aim, he placed pieces of mail in an authorized mail depository, which were sent and delivered to their recipients, such as price lists, medical insurance claim forms, surgical reports and physician assistant statements, which disguised the real purpose, in the cases and on the dates listed as follows:

Count 1: 05/27/91: sending of a price list to a presumed patient for an Assisted Reproduction Technology (ART) procedure at the CRH. Based on the description of the procedure that forms the grounds for count 1, set forth in Item 17 (pages 399 to 401), on June 3, 1991 thirteen ovules were extracted from a TVA [Transvaginal Aspiration] patient "during the TVA procedure," two of which were received by a "POF [Premature Ovarian Failure] patient." This was done in keeping with a form signed by the TVA patient, which indicated that all unfertilized ovules should be destroyed and all viable embryos should be frozen for future use by her. It is reported that there are statements from the TVA patient indicating that "in no way did she want to donate her ovules" and from the POF patient to the effect that she "would never have accepted the donated ovules if she had known that they had not been offered voluntarily."

Count 2: 07/11/91, sending of medical insurance claim forms and statements from the physician assistant for services rendered on 05/29/91 and 06/05/91. Based on the description of the procedure that forms the grounds for count 2, set forth in Item 18 (pages 401 to 403), on June 3, 1991 nineteen ovules were extracted from a TVA patient "during the TVA procedure," two of which were received by a "POF patient." This was done in keeping with a form signed by the TVA patient that authorized

the Cryopreservation of her ovules and denied authorization for destruction, donation and fertility research. For her part, a statement reportedly exists from the TVA patient to the effect that she "never authorized the donation of her ovules and that she would not have undergone treatment at CRH if she had known that the possibility existed, even if remote, that an involuntary transfer could occur."

Count 3: 10/03/91, sending of forms for medical insurance claims and statements of the physician assistant for services rendered from 09/02/91 to 09/27/91. Based on the description of the procedure that forms the grounds for count 3, set forth in item 19 (pages 403 to 406), on September 27, 1991 fourteen ovules were extracted from a TVA patient "during the TVA procedure," three of which were received by a '"POF patient." This was done in keeping with a form signed by the TVA patient which which [SIC] authorized the Cryopreservation of her ovules and denied authorization for destruction, donation and fertility research. For her part, a statement reportedly exists from the TVA patient to the effect that "she wanted all her ovules to be used by herself and that any ovule left over should be frozen for future use by her."

Count 4: 10/07/91, sending of forms for medical insurance claims and statements of the physician for services rendered from 08/23/91 to 09/22/91. Based on the description of the procedure that forms the grounds for count 4, set forth in item 20 (pages 406 to 408), on September 20, 1991 forty-six ovules were extracted from a TVA patient "during the TVA procedure," ten of which were received by a "POF patient." A statement reportedly exists from the TVA patient to the effect that "she wanted all her ovules to be cryopreserved and was not willing to donate any of her ovules."

Count 5: 10/20/91, sending of surgical report with respect to transvaginal aspiration/GIFT minilaparotomy performed on 09/27/91. Based on the description of the procedure that forms the grounds for count 5, set forth in item 21 (pages 408 to 411), on September 27, 1991 fourteen ovules were extracted from a TVA patient "during the TVA procedure," three of which were received by a "POF patient." This was done in keeping with a form signed by the TVA patient dated November 7, 1991 that authorized IVF-Cryopreservation and denied authorization for destruction, donation and fertility research. For her part, a statement reportedly exists from the TVA patient to the effect that "she wanted all her ovules to be used by herself and that any ovule left over should be frozen for future use by her."

Count 6: 10/23/91, sending of statements from the physician assistant for services rendered on 09/21/91 and 09/22/91. Based on the description of the procedure that forms the grounds for count 6, set forth in item 22 (pages 411 to 413), on September 20, 1991 twenty-six ovules were extracted from a TVA patient "during the TVA procedure," four of which were received by a "POF patient." This was done in keeping with a form dated September 8, 1991, signed by the TVA patient, which authorized IVF-Cryopreservation of her ovules and denied authorization for destruction, donation and fertility research.

Count 7: 04/30/91, sending of surgical report with respect to the transvaginal aspiration performed on 09/20/91. Based on the [description] of the procedure that forms the grounds for count 7, set forth in item 23 (pages 413 to 416), on September 20, 1991, twenty-six ovules were extracted from a patient listed as "TVA" "during the TVA procedure," four of of [SIC] which were received by a "POF patient." This was done in keeping with a form signed by the TVA patient that authorized the Cryopresentation [SIC] of her ovules and denied authorization for destruction, donation and fertility research. For her part, a statement reportedly exists from the TVA patient to the effect that she "never would have donated her ovules" and "she would not have paid any money to Asch [had] she known that Asch would take her ovules without her consent."

Count 8: 08/28/92, sending of statement of the physician assistant for services rendered from 08/18/92, to 08/27/92. Based on the description of the procedure that forms the grounds for count 8, set forth in item 24 (pages 414 to 416), on August 24, 1992 twenty-two ovules were extracted from a TVA patient [during] "the TVA procedure," twelve of which were received by a "POF patient." This was done in keeping with a form dated August 22, 1992, signed by the TVA patient that authorized Cyopresetantion [SIC] and donation, denying authorization for destruction and for fertility research. For her part, a statement reportedly exists from the TVA patient to the effect that "all her leftover ovules should be destroyed and should not be donated or used for research or frozen."

With an identical aim, he had the articles described below placed in an authorized mail depository and sent and delivered by the United States Postal Service, on the dates indicated:

Count 9: 08/23/91, sending of an explanation of benefits and check in response to an invoice for services rendered between 05/29/91 and 06/05/91. Based on the description of the procedure that forms the grounds for count 9, set forth in item 25 (pages 417 to 418), on June 3, 1991 nineteen ovules were extracted from a patient listed as "TVA" "through a TVA procedure." Two of those ovules "were given to ... a POF patient." Four of those ovules were transferred back to the TVA patient through a GIFT procedure. This was done in keeping with a form signed by the TVA patient that authorized the Cryopreservation of her fertilized ovules and denied authorization for destruction, donation or fertility research. For her part, a statement reportedly exists provided by the POF patient in which she "reported that she would never have accepted the donated ovules if she had known that they had not been offered voluntarily."

Count 10: 04/28/92, sending of an explanation of benefits form and check in response to invoice for services rendered on 09/22/91. Based on the description of the procedure that forms the grounds for count 10, set forth in item 26 (pages 418 to 420), on September 20, 1991 twenty-six ovules were extracted from a TVA patient "during the TVA procedure," four of which were received by a "POF patient." This was done in keeping with a form signed by the TVA patient that authorized the

Cryopreservation of her ovules and denied authorization for destruction, donation and fertility research. For her part, a statement reportedly exists from the TVA patient to the effect that she "never would have donated her ovules" and "she would not have paid any money to Asch if she had known that Asch would take her ovules without her consent."

The conduct that these fifty counts cover finds its equivalent in Book II, Title VI – Crimes against Property – Chapter IV – Swindling and Other Fraud – aimed at protecting the essential permanence of the property of an individual or legal entity in their state of integrity against those who act in a manner that leads to a severance from their owner against the owner's will. Specifically, the conduct charged is the one described in §172 of the Argentine Penal Code; "…Any person who defrauds another using an assumed name, feigned capacity, false title, false claim of influence, abuse of confidence, or misrepresentation of assets, credit, or representative authority, false claim of existence of a company or enterprise, or using any other ruse or deceit." As follows from page 221 of Exhibit II found in the ancillary file, in the first twenty counts of the first case, "the fraudulent ruse involved issuing invoices to insurance companies for services of an assistant surgeon, where Asch and his partners did not provide any assistant surgeon service or where the assistant surgeon services were provided by a person for whose services Asch and his partners were not entitled to bill, such as a foreign fellow conducting studies or a resident student employed by another entity, who did not have the proper license..." Part of the ruse were the Operating Room Files that they had the nurses comprise, reflecting the date of the procedure, as well as the activities of a surgeon and an assistant; the Surgery Reports dictated and signed by one of the partners, which indicate the name of the surgeon and that of the assistant, who in fact allegedly did not intervene in said capacity; the Medical Insurance Claims Forms for the supposed intervention of the assistant; the Statements of the physicians in charge, giving instructions to the billing department to charge the fees corresponding to the surgeon at one hundred percent and to the physician assistant at fifty percent, adding the modifier "80" for the physician assistant; issuance of the invoices that included false information regarding the medical services, for which they claimed payment from insurance companies for health services, and their placement in the mail to be sent to the insurance companies.

In the first 20 counts of the second case, the alleged deceitful conduct consisted of using codes that represented medical services eligible for coverage by the health insurance companies, to disguise the actual services that, given their direct relation to assisted fertility procedures, were not covered by the insurance company of the patient in question.

In the first 10 counts of the third case, the ruse allegedly consisted of concealing from the ovule-producing patients that part of those extracted from them would be used in other women that did not have the capacity to produce them; Another deceitful act consisted of the

use of those ovules in these latter women, hiding from them that this was being done, at a minimum, without the express consent of the ovule producers and, on occasion, against their stated will.

It is unquestionable that, even though in the United States the mere mailing of false invoices is sufficient to constitute a crime, in our country it is granted a different legal relevance, where it could constitute the crime of use of a falsified private document under §292, first paragraph, final hypothesis of the Penal Code, —because only with that can harm result— or, depending upon the aim and manner in which such "use" is made, representing just one of the steps of the *iter criminis* [path towards carrying out the crime] that fails to accomplish the misappropriation of an asset from its owner, it will remain in a stage of attempt.

Therefore:

- in the first twenty counts of the First Case and in the first twenty counts of the Second Case, when there is no proof of payment by the insurance companies for the deceitfully requested services, it shall be considered that such conduct has remained at a stage of an attempted crime and the date listed as that of mailing of the invoices shall be used to compute the lapsing of the statute of limitations of the criminal action with respect to the attempted fraud against private parties. In the remaining cases, in which it is claimed that a harmful and undue wresting of wealth took place [from] the health insurance companies, one would have to find the date of said act and, in the absence thereof, the date of filing of the case by the Grand Jury would be used; that is June 18, 1997 (See filing stamp on page 233) in the First Case and September 24, 1997 (See filing stamp on page 251) in the Second Case.

- in the ten counts of the third case, the date to be used would be the one in which the fraud was perfected, which is the date on which the ovules extracted from the TVA patient were implanted in the POF patient, against the will of the TVA patient and without the knowledge of the POF patient.

Now then, six years of imprisonment is the maximum sentence contemplated by §172 of the Penal Code for fraud, which is the statute of limitations on the criminal action, under §62(2) of the Penal Code, and the statute of limitations should start to run as of the date of the crime's alleged commission, and it cannot be considered that, since then, an act occurred tolling the statute of limitations, pursuant to §67 of the Penal Code. Such is the case because to date no initial summons of Asch has been ordered, nor does the report of the National Registry of Recidivism, found on page 29, list any criminal history for him. With this understanding, there is evidence that discriminating between the crimes that allegedly were consummated and those left in stage of attempt, becomes irrelevant here, insofar as the maximum statute of limitations has been exceeded. Nonetheless, in order to provide the greatest accuracy in this regard, such as is permitted by the records received, we would state that those acts that appear as consummated are counts 1, 3, 4, 8, 9, 10, 13, 15, 17, 18, 19 and 20 of the First Case, counts 1, 2, 6, 7 and 9 of the Second Case and the first 10 counts of the Third Case.

In all events, for those who may be of the opinion that the use of the invoices in which false statements were made, thereby undermining their authenticity, involved the use, in this case, of a falsified private instrument as defined in §292, first paragraph, last hypothesis, of the Penal Code, we would note as follows: Given that the maximum sentence for such conduct is 2 years of imprisonment, it should also be considered that the statute of limitations has lapsed on criminal action with respect to those crimes, taking as a reference the date of mailing listed in each count, because that act produced the required possibility of harm.

B) <u>Conspiracy:</u>

Count 21 of the "First CASE": In violation of 18 USC §371.

Asch, Balmaceda and Stone are charged in this count with having knowingly and intentionally participated, together with others known and unknown to the Grand Jury, in a conspiracy, conspiring to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the Internal Revenue Service of the Treasury Department, which functions consist of ascertaining, calculating, assessing and collecting income tax revenues (See pages 242 to 245 of "Exhibit II" of the ancillary file, separate from the principal file). That commenced in January 1991 and continued until the date of the indictment, June 18, 1997 (See filing stamp on page 233).

They did this by hiding from the Internal Revenue Service payments in cash or by travelers' checks, received from the CRH patients for the services rendered or materials provided. For said purpose, they indicated to the administrative personnel that they should record the professional fees so perceived, as an "adjustment" to the patient's account in their accounting ledgers, recording them as a cash payment in an internal record, and placing said sums in an envelope, from which they were removed each day by the partners, who divided them up on a monthly basis. Then, they had copies delivered to the "tax accountant" of ledgers so falsified, which did not list the cash revenues, inducing the accountant to erroneously calculate the tax. Finally, they signed the company and individual or collective tax returns, in which they failed to declare that income.

Thus, from the documentation included in the above-referenced Exhibit: on pages 244 to 245, the "Overt Acts" in the commission of this crime are listed as:

"a. In or about January 1991, the accused Balmaceda instructed the administrative personnel to design a manner of keeping the cash payments from being reflected as income in the company's ledgers.

b. In or about January of 1991, the accused Asch instructed the administrative personnel to record the cash payments as "adjustments" in the company's ledgers.

c. Throughout 1991, 1992 and 1993, the accused Asch, Balmaceda and Stone, at the end of each business day, each gathered the cash that had not been recorded in the company's ledgers and, when doing so, signed a record that typically characterized the payments as "adjustments." The accused Stone, for example, gathered such payments and signed such documents on approximately 226 occasions.

d. Throughout 1991, 1992 and 1993, the accused Asch, Balmaceda and Stone had the administrative personnel submit copies [to] the tax accountant of the company's falsified ledgers for purposes of calculating the company's income for the federal income tax returns, and in order to hide the internal records that reflected the revenues that had not been recorded in the company's ledgers.

e. In or about April 1992, the accused Asch, Balmaceda and Stone each signed an Individual and Joint Income Tax Return for the United States, Form 1040, for calendar year 1991, which failed to declare the revenues that had not been recorded in the company's ledgers for the year in question.

f. On or about April 15, 1993, the accused Stone signed an Individual and Joint Income Tax Return for the United States, Form 1040, for calendar year 1992, which failed to declare the revenues that had not been recorded in the company's ledgers for the year in question.

g. On or about August 2, 1993, the accused Stone met with the tax accountant after a CRH employee informed the accountant that CRH was not recording the cash payments in the company's ledgers. During that meeting the accused Stone admitted that the incomplete showing of the revenues posed significant problems for the physicians, indicated that he would confer with the accused Asch and Balmaceda to come up with alternative ideas and stated that he would follow up on the matter with the tax accountant.

h. On or about September 15, 1993, the accused Balmaceda signed an Individual and Joint Income Tax Return for the United States, Form 1040, for calendar year 1992, which failed to declare the revenues that had not been recorded in the company's ledgers for the year in question.

i. On or about May 14, 1994, the accused Asch signed an Individual and Joint Income Tax Return for the United States, Form 1040, for calendar year 1992, which failed to declare the revenues that had not been recorded in the company's ledgers for the year in question."

It is clear that, in the abstract, "conspiracy" under the United States Code, which consists of an agreement between a minimum of two persons to commit at least one crime is different from the crime of conspiracy as defined in §210 of our Penal Code. Nonetheless, as has been stated, since what is involved is a legal examination of behaviors and of whether they constitute crimes, it must be accepted that the conduct described and transcribed above can be perfectly equated to the conspiracy that §210 of our Penal Code defines as a crime.

This is because said acts were presumably committed by the three partners of the company in question, in the capacity of chiefs and organizers. It is asserted that there were three of them, because the indictment so states and no evidence has been submitted using the pertinent diplomatic channels, of Stone's acquittal, invoked by the defense. All there is are his assertions in said regard. Furthermore, what was involved was an agreement to engage in criminality for an undetermined period and on an undetermined number of occasions where, successively or alternatively, Asch, Balmaceda and Stone aided in attaining the unlawful aims, by imparting instructions to the administrative personnel to make records, communications and claims that hid the true revenues to the detriment of the tax collections of the foreign State, as well as by inducing the accountant into error who was in charge of making the calculations and signing the tax returns that distorted the facts. They did this as many times as necessary to attain the pre-agreed objective of reducing their income tax contributions in direct relation to the receipt of fees in cash.

It should be noted here that the plurality of crimes demanded by the provision must not be confused with the absolute indeterminate nature of the crimes whose commission the conspiracy would have to pursue as a required element of the crime, for a certain sector of jurisprudence scholars. In fact, this does not mean that the members of the conspiracy are unaware, at the start, of which crimes they are going to commit "but rather that they have in mind a plurality of criminal plans that are not exhausted with a given criminal conduct, with the consummation of one or more acts;… (since)... what is undetermined will not be the crimes, but the plurality of crimes to be committed..." and "... There is a factual overlap between the crime of the conspiracy and the crimes committed in fulfillment of the conspiracy's objective..." See Carlos Creus "*Derecho Penal*" ["Criminal Law"] Special Part, Volume 2, 6th updated, expanded edition, Editorial Astrea 1999. pages [SIC].

Note, also, that the intentional conspiring of the three partners to act with a certain degree of organization and with relative permanence also applied to the fraud against private parties, with conduct such as the mailing of invoices to medical insurance companies in order to charge for services that, in fact, had allegedly not been provided by Asch or his associates, as the Honorable Judge Schiffrin noted in his above-referenced opinion, Part 2), item f, in reference to "sub b)."

"Therefore, the possibility is recognized that a preexisting lawful association could become an unlawful conspiracy when in addition to its lawful aims, one adds the aim characterized by such a disposition —to commit crimes—" (*Ob. Cit.* Page 110).

Along the same lines, Judge Riggi in his opinion *in re* "Solíz Medrano Pedro C. *et al.,* Cassation Proceedings" Reg. 142, of the Criminal Cassation Division held: "The undetermined nature of crimes whose indetermination is entailed in a conspiracy does not mean that its members do not know what crimes they are going to commit, but that they have in mind a plurality of criminal plans that are not exhausted with a given conduct, with the consummation of one or more acts."

It is clear that, by application of §56 of the Penal Code, the maximum sentence that could be faced for the conduct analyzed here is ten years of imprisonment; the corresponding ten-year statute of limitations on the criminal action in said regard should be computed as of the time of the filing of the count before the Grand Jury, which, as was stated, took place on June 18, 1997, as follows from the stamp placed in the upper right-hand corner on page 233 of the Exhibit, since it is the date certain that follows from the existing records.

Therefore, it must be accepted that the statute of limitations on the criminal action has also lapsed with respect to the accused crime of conspiracy.

C) <u>Signing of false tax returns under oath:</u>

Counts 22 and 23 of the "First CASE:"

In the event that the position taken in item "B" is debatable, the significance should be addressed of above-listed counts 22 and 23, which charge Asch with having defrauded the United States by knowingly and intentionally signing two false individual and joint income tax returns for calendar years 1991 and 1992, which were ratified by written affidavits under penalty of perjury, knowing that they were not true and correct with respect to each material matter, reporting sums of taxable income significantly lower than the real ones, of which they were aware, in violation of 26 USC §7206(1). This occurred in Orange County, within the Central District of California, on 04/15/92, corresponding to calendar year 1991 and on 05/14/94 for calendar year 1992.

Without great effort, it could be said that such conduct is addressed and classified as a tax crime under §1 of our law 23,771, which was in effect at the time said crime was committed. And that is the exact crime with which it is equated, because the Grand Jury's count does not state whether an actual tax evasion was accomplished. Therefore, with due respect for the principle of *favor rei* [choosing what is most favorable to the accused], here, the punishable act should be limited to the making of untrue affidavits, because the amounts set forth therein hid, modified, and disguised the true economic dimension of the taxable income, with the object of hindering or impeding the computing or collection of taxes, in a way capable of occasioning economic harm upon the treasury.

Since the maximum sentence that can be faced for such conduct is 3 years of imprisonment, it should be found that the statute of limitations on the criminal action for the crimes charged in counts 22 and 23 of the First Case, which should start to run as of the dates written down as those on which the false affidavits were made, has lapsed, authorizing the corresponding dismissal.

All the situations indicated above allow one to state that the passage of time has resulted in extinguishing the criminal action with respect to each of the crimes described, putting an end to their prosecution by operation of law. This

bears in mind that the principle operating here is based on the understanding that the negative social impact of the perpetration of the wrongful conduct has ceased or significantly decreased, which renders its prosecution useless.

D) <u>Fraudulent introduction into interstate commerce of a new unauthorized drug:</u>

Counts 11 to 20 of the "Third CASE":

Ricardo Héctor Asch is charged with having introduced into interstate commerce the medication HMG "Massone," or caused it to be so introduced, which is manufactured by Instituto Massone S.A. of Buenos Aires (Argentina), for the induction of ovulation, which he sold or administered to his patients, in the quantity of units and on the dates indicated below (See pages 223 to 224 and 267 to 271), in violation of 21 USC §§331(d) and 333(a)(2); to wit:

Count 11: 01/26/93 8 bottles
Count 12: 01/26/93 32 bottles
Count 13: 01/28/93 8 bottles
Count 14: 04/21/93 7 bottles
Count 15: 06/17/93 12 bottles
Count 16: 06/18/93 21 bottles
Count 17: 06/28/93 8 bottles
Count 18: 06/30/93 8 bottles
Count 19: 07/03/93 4 bottles
Count 20: 02/06/94 18 bottles

As explained in item 14, on page 270 of the documentation incorporated into Exhibit II, "The United States Food and Drug Administration (FDA) is the federal agency in charge of and responsible for protecting the health and safety of the people of the United States, making sure that medications are safe and effective for the use for which they are designed, prior to their manufacture and offer for sale. Item 15 states that the Food, Drug and Cosmetic Act prohibits distribution in interstate commerce, of "new drugs" not approved by the FDA, and considers a medication to be a "new drug" under 21 USC §321(p)(1) if it is not recognized among experts qualified to evaluate the safety and effectiveness thereof.

In our country, such conduct is not defined as a crime in Book Two – Title VII – Chapter IV of our Penal Code, in the rest of its provisions, or in the special laws. It could be considered to constitute some form of administrative violation, but without criminal relevance. It has been so maintained by the Federal Court of Appeals of La Plata, *in re* "Ali Emilio-Ontivero, Gustavo regarding violation of §194," File 3155, decided on 05/30/06, Reg. Volume 81 Pages 217 to 230: that conduct of such a nature is subject to the powers vested in the State —within certain limits— to indirectly protect certain rights "through

provisions concerning health, safety, and the orderly conducting of activities in the public realm, reinforced with sanctions exempt from criminal penalties."

Given the inexistence of a crime, the motion to dismiss filed with respect to the conduct that formed the grounds for counts 11 to 20 of the "Third CASE" should be granted, and the dismissal sought in favor of Ricardo Héctor Asch is authorized under §336(3) of the National Code of Criminal Procedure).

For all of the reasons set forth above, and given that it is incumbent upon me to do so,

I RULE:

I. TO GRANT THE MOTION FOR DISMISSAL ON THE GROUNDS OF A LAPSING OF THE STATUTE OF LIMITATIONS ON THE CRIMINAL ACTION, filed in favor of **RICARDO HÉCTOR ASCH**, whose other personal identifying data is set forth in the preamble, in relation to the crimes of Fraud against private parties with which he is charged in counts 1 to 20 of the First Case (SA CR 96-55(C)-GLT), in counts 1 to 20 of the Second Case (SA CR 97-74-AHS and in counts 1 to 10 of the Third Case (SA CR 97-75-GLT); of Conspiracy charged in count 21 of the First Case; and of Tax Fraud charged in counts 22 and 23 of the First Case, —all in keeping with Argentine law—, as charged by the competent authorities of the United States on the occasion of making the formal extradition request. The denial of said extradition allows this decision to proceed, in application of the principle of *aut dedere aut judicare* [extradite or prosecute], in keeping with the criterion set by the Court Above; and, as a consequence, the case **IS DISMISSED with respect thereto.** (See §4(2) of the bilateral treaty ratified by law 19,764; §§2, 54, 59(3), 62(2), 67, 172, 210 and 292 of the Penal Code; §1 of Law 23,771 and §§336(1), 339(2), 343 and related sections of the National Code of Criminal Procedure).

II. TO GRANT THE MOTION FOR DISMISSAL ON THE GROUNDS OF INEXISTENCE OF A CRIME, filed in favor of **RICARDO HÉCTOR ASCH**, whose other personal identifying data is set forth in the preamble, in relation to counts 11 to 20 of the Third Case (SA CR 97-75-GLT), with which he was charged by the competent authorities of the United States on the occasion of making the formal extradition request. The denial of said extradition allows this decision to proceed, in application of the principio of *aut dedere aut judicare* [extradite or prosecute], in keeping with the criterion set by the Court Above and, as a consequence, the case **IS DISMISSED with respect thereto** (See §4(2) of the bilateral treaty ratified by law 19,764, §2 of the Penal Code; and §§1, 2, 3, 336(3) and final paragraph, 337, 339(2), 343 and related sections of the National Code of Criminal Procedure). It is expressly clarified that this proceeding does not affect such good reputation and honor as the person named herein may have enjoyed.

[seal with emblem:]
Federal Criminal and Correctional Court No. 1
Province of Buenos Aires
[illegible]

COPY

It is ordered to take note of, register, and serve this order, and, since it is a final judgment, an official letter shall be sent to the General Directorate of Legal Matters of the Ministry of Foreign Relations, International Trade and Culture, attaching a copy hereof, for the purposes established by §35 of Law 24,767. And it is ordered to carry out the standard communications hereof.

BEFORE ME

[signature]
NILDA B. ARGÜELLO
FEDERAL CLERK

[signature]
ALBERTO P. SANTA MARINA
FEDERAL JUDGE

ON THE SAME DATE, NOTICE HEREOF WAS ISSUED. IT IS SO RECORDED.

[signature]
NILDA B. ARGÜELLO
FEDERAL CLERK

ON *9/26/08* OF SEPTEMBER 2008 I SERVED PROCESS ON THE ACTING FEDERAL PROSECUTOR. IT IS SO RECORDED.

[signature]
[illegible] KARINA LÓPEZ
ACTING FEDERAL PROSECUTOR

[signature]
NILDA B. ARGÜELLO
FEDERAL CLERK

I CERTIFY: By order of Your Honor and since it is proper under law, that the foregoing, on a total of 33 pages, marked with the rectangular seal stating "copy," are true photocopies of the proceedings records found on pages 39 to 53 back of the record of proceedings for the "Motion to Dismiss on the Grounds of the Lapsing of the Statute of Limitations" found in the ancillary file for this Case No. 4521 entitled "ASCH, RICARDO HÉCTOR, RE*:* EXTRADITION," of the records of Clerk No. 2 of this Federal Trial Court for Criminal and Correctional Matters No. 1 of Lomas de Zamora, and those found on pages 368, 370 to 376, 380 to 382, 385 to 386, 392 to 396 of the principal file, which I have before me. IT IS SO RECORDED----

LOMAS DE ZAMORA, APRIL 14, 2009----

[signature]
NILDA B. ARGÜELLO
FEDERAL CLERK

OFFICIAL USE

I CERTIFY: THAT THE FOREGOING SIGNATURE BELONGS TO DR. NILDA NÉLIDA BERTERO DE ARGÜELLO, FEDERAL CLERK OF THIS FEDERAL TRIAL COURT FOR CRIMINAL AND CORRECTIONAL MATTERS No. 1 OF LOMAS DE ZAMORA, OVER WHICH I AM IN CHARGE.

[seal with emblem:]
FEDERAL APPELLATE COURT
CLERK [illegible]
LA PLATA

I CERTIFY: that the foregoing signature [illegible] in the respective registry that [illegible] Federal Judge [illegible] *Alberto P. Santa Marina* [illegible] *No. 1 of Lomas de Zamora* [illegible]. *April 16, 2009*.

[signature]
ANTONIO PACILIO
Presiding Judge
Federal Appellate Court

Series A 2316379

REPUBLIC ARGENTINA
MINISTRY *of*
FOREIGN RELATIONS
INTERNATIONAL TRADE AND CULTURE

[emblem:]

[seal with emblem:] Ministry of Foreign Relations, International Trade and Culture [illegible] [signature]

[seal with emblem:] Ministry of Foreign Relations, International Trade and Culture [illegible] [signature]

APOSTILLE
(Convention de la Haye du 5 octobre 1961)
[Hague Convention of October 5, 1961]

1. Country _____ ARGENTINA _____
   This public document
2. Has been signed by ANTONIO PACILIO
3. Who is acting in his capacity as AUTHORIZING OFFICER
4. It bears the seal/stamp of FEDERAL OF APPELLATE DIVISION
5. In BUENOS AIRES 6. On 04/17/2009
7. By __AUTHENTICATIONS COORDINATION UNIT
   MINISTRY OF FOREIGN RELATIONS, INTERNATIONAL TRADE AND CULTURE_____
8. Under Number: 72920/2009
9. Seal/Stamp: 39

[signature]
MARÍA C. MONTES DE OCA
Authentications Coordination Unit
Ministry of Foreign Relations,
International Trade and Culture
10. Signature

Type of Document: JUDICIAL CERTIFICATION
Document Bearer: RICARDO HÉCTOR ASCH

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