

LE CHEF DU DEPARTEMENT
POLITIQUE FEDERAL

Berne, December 23, 1975

s.B.14.21.Am.3.1. - MX/mm

Sir,

I have the honour to acknowledge receipt of your letter of December 23, 1975, which reads as follows :

"I have the honor to refer to the Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, signed at Bern, May 25, 1973, and the Swiss Federal Law of October 3, 1975, Relating to the Treaty with the United States of America on Mutual Assistance in Criminal Matters.

In view of the provisions of Paragraph 2 of Article 26 of the above mentioned Swiss Federal Law, the Government of the United States is concerned that evidentiary materials obtained by the appropriate Swiss authorities pursuant to the application of Paragraph 1 of Article 12 of the Treaty may not be admitted into evidence in the courts in the United States of America. This concern is based upon the understanding that certain cantons do not have provisions for taking testimony under either oath or affirmation. Where those circumstances exist, it is the understanding of my Government that a witness nonetheless will be urged to agree to give his testimony pursuant to formal oath or affirmation.

I have been requested to ascertain the procedures which would be invoked upon receipt of an application from the central authority of the United States pursuant to the provisions of Paragraph 1 of Article 12 of the Treaty, should an oath or affirmation be refused in the relevant canton. It is the under-

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standing of my Government that the penal sanctions provided by Article 307 of the Swiss Criminal Code are applicable in all cantons of the Swiss Confederation for willfully giving false testimony, even where an oath or affirmation is not provided for in the procedural law of the particular canton. Based on this understanding it is agreed that, in the event a witness declines to give testimony under a formal oath or affirmation and there is no specific procedural provision for an oath or affirmation in the applicable procedural law, the witness will be admonished to tell the truth prior to giving testimony and will be advised of the consequences, under the Swiss Criminal Code, of his failure to tell the truth and of the fact that the transcript will reflect such instructions.

In addition to the procedure outlined above, after the testimony has been taken, it would be desirable that the witness sign the transcript affirming that his testimony is true, and it is the understanding of my Government that the witness will be urged to sign such a statement.

If the foregoing understanding is likewise the understanding of the Swiss Federal Council, I would appreciate a confirmation from Your Excellency to that effect."

I have the honour to confirm that the understanding set forth in your letter accords with that of the Swiss Federal Council.

Accept, Sir, the renewed assurances of my highest consideration.

Copie est envoyée à :

- Division de police du DFJP
- Ambassade de Suisse, Washington.

Graber