



REFUGEE STATUS DECISION

Date of Decision:
Decision Outcome:

23 **January 2008**
Declined

Name:
Client Number:
Claim Number:

Mr Harmon Lynn WILFRED
26473577
7440099

Date of Lodgement:
Date of Interview:
Status in New Zealand:

11 May 2007
17 & 18 July 2007
No current permit

Representative:

Mr Guneet Chaudhary
Jurisconsultus,
Chandigarh, India

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INTRODUCTION

This determination is made in accordance with Article 1A(2) of the 1951 Convention relating to the Status of Refugees ("the Convention"), as amended by the 1967 Protocol, which defines a refugee as any person who:

[...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

SUMMARY OF CLAIM

The following chronology is a summary of information provided by Mr Wilfred in written submissions and at interview combined with information contained in documents available on his website www.luminadiem.com and in his Immigration New Zealand ("INZ") files.

For ease of reference, the source of the information is noted in brackets following the relevant section. Documents contained in Mr Wilfred's website are denoted by the website section and number, and the name of the document; for example "(Website section 2: Sandra divorce)". Documents provided by Mr Wilfred in hard copy and contained on his INZ file are denoted as "Document" followed by the relevant letter; for example, "(Document A)". Information provided at interview on 17 or 18 July is denoted as "Interview". Information provided in written responses following the interview are noted "Review and reply 5 November" If there is no reference, the information was gathered at interview or is otherwise not considered key to Mr Wilfred's claim.

29 May 1949

Harmon Lynn Wilfred ("Mr Wilfred") was born in Mayfield City, Kentucky State, United States of America ("US") and was a citizen of the US. Mr Wilfred was the third child born to his father, Edmund Puryear Wilfred (deceased), and his mother, Mary Sue Wilfred (DOB: 23 February 1920). Mr Wilfred has five siblings – two brothers and three sisters.

Mr Wilfred is of Caucasian ethnicity and has never experienced any difficulties because of his ethnicity.

Mr Wilfred was born and raised in the Christian Baptist faith. His mother took him to Baptist services until he was a teenager after which he discontinued attending any form of church.

1954 to 1967

Mr Wilfred attended and successfully completed primary and secondary schooling in Ohio State.

June 1967

Mr Wilfred graduated from Springfield High School.

September 1967 to March 1969

Mr Wilfred attended Akron University and then began working for the Goodyear Tire and Rubber Company.

1969

Mr Wilfred began military service as a weapons specialist with the US Air Force. His role required a comprehensive background check and he obtained the "Top Secret" clearance required for the position.

Mr Wilfred obtained leave to return to his job at Goodyear after completion of his military service.

November 1969

Mr Wilfred was sent to RAF Weathersfield, in the United Kingdom ("UK") on a military assignment where he met Margaret Anne Naylor ("Margaret"), who was attending Cambridge University and teaching at a nearby village.

1971

Mr Wilfred was transferred to RAF Upper Hexford, Oxford, UK.

3 July 1971

Mr Wilfred and Margaret married in St. Edberg's Anglican Church, Bicester, UK.

March 1973

Mr Wilfred completed his military service and, together with Margaret, returned to the US. Mr Wilfred recommenced his employment at Goodyear and his studies at Akron University where he studied Marketing and Finance.

June 1976 (Approximately)

Mr Wilfred graduated with a BSBA financial degree and worked briefly at the Goodyear tire company.

25 June 1976

Mr Wilfred's wife Margaret passed away following a self-induced overdose of prescription medicines. She had been mentally unwell and undergone treatment by a psychiatrist for clinical depression. She had made two previous attempts on her life in which Mr Wilfred had managed to intervene.

December 1976

Mr Wilfred moved to Denver, Colorado where he began working for the IBM Corporation.

8 August 1982

Mr Wilfred married Sandra Ann Allen ("Sandra").

10 January 1988

Mr Wilfred and Sandra adopted a child, Tyler Jonathon Wilfred (DOB: 31 December 1987). As part of the adoption process, Mr Wilfred and Sandra became Lutherans.

1988

Mr Wilfred had set up a real estate development and property services business. However, the real estate market in Denver collapsed and, as a result, he was facing financial and consequent marital challenges. During these hardships he returned to his spiritual roots and obtained some marital counselling through a local evangelical church. He also began viewing Christian television ministries such as the 700 Club and the Kenneth Copeland Ministries.

October 1988

Mr Wilfred was a general partner and owner of the Regatta shopping centre in Aurora, Colorado. After one of the tenant businesses, Regatta Infant Care Centre, defaulted on its rent payments, Mr Wilfred took it over. He enlisted the assistance of his friend, Thomas Jones, a member of his church, who also operated a day care business in the shopping centre. Messrs Wilfred and Jones created a corporation, Regatta Infant Care Inc., as equal shareholders. The new business was incorporated on 17 October 1988. (Website section 2: Sandra divorce)

2 March 1989

Sandra petitioned the Colorado District Court for a divorce. She appointed Ms Elaine Edinburg as her attorney. The case was assigned number 89 DR 477, Division 10 RI. (Website section 2: Sandra divorce)

6 March 1989

The Colorado District Court issued a temporary restraining order and injunction against Mr Wilfred whereby he was prevented from having contact with his son. (Website section 2: Sandra divorce)

9 March 1989

Mr Wilfred wrote to Sandra's attorney, Elaine Edinburg. Mr Wilfred noted that there had been financial and emotional difficulties over the previous two years. He agreed to Tyler remaining in Sandra's custody and hoped that he would have visitation rights. He provided some financial information regarding his income and assets, as was requested in a document served on him on 3 March 1989. (Website section 2: Sandra divorce)

16 March 1989

Mr Wilfred filed for "Chapter 11" protection under the US Bankruptcy Code for his two companies - Promenade Ltd, and Regatta Landing Ltd. Chapter 11 protection enabled a company to be re-organised in order to better meet its debts or pay its creditors. (Website section 3)

29 March 1989

Mr Wilfred wrote again to Sandra's attorney providing further financial information. Mr Wilfred stated in this letter that since Sandra had lodged

her petition for divorce, two of his largest properties, Promenade and Regatta had gone into foreclosure and receivership. (Website section 2: Sandra divorce)

18 April 1989

A hearing was held on Mr Wilfred's application to modify the temporary restraining order. Mr Wilfred's application was denied and he was given supervised visitation rights. Susan J Dycus was appointed "guardian *ad litem*" to protect Tyler's interests.

17 July 1989

Thomas Jones, the co-owner of Regatta Infant Care Inc, filed for Chapter 7 bankruptcy, whereby the assets are sold and the company liquidated. (Website section 2: Sandra divorce).

Thomas Jones reported the assets of Regatta Infant Care Inc as essentially valueless.

29 September 1989

Mr Wilfred filed a lawsuit in the Arapahoe District Court in an attempt to get Thomas Jones to reveal financial information about Regatta Infant Care Inc. However, this lawsuit was not progressed as Thomas Jones and other owners, unbeknown to Mr Wilfred, had filed for bankruptcy. (Website section 2: Sandra divorce)

Thomas Jones and the other owners subsequently renewed the lease on Regatta Infant Care Inc and continued to trade. (Website section 2: Sandra divorce)

30 November 1989

At a depositions hearing regarding the bankruptcy and Regatta Infant Care Inc, Mr Jones stated that he had acquired 100 percent of the stock of the company. This was denied by Mr Wilfred who stated he did not consent to this stock transfer. (Website section 2: Sandra divorce)

26 January 1990

One of Mr Wilfred's attorneys, Robert Hinds, a custody specialist, withdrew from the divorce case as Mr Wilfred was unable to pay him due to his bankruptcy. Mr Wilfred then relied on his original attorney, Frederick Epstein.

28 February 1990

Mr Wilfred converted his bankruptcy from Chapter 11 to Chapter 7. (Website section 2: Sandra divorce)

12 April 1990

Mr Epstein's firm withdrew from the case as Mr Epstein had died. Mr Wilfred was thereafter unrepresented in his legal actions.

8 May 1990

At a pre-trial conference on his divorce, Mr Wilfred asked for a "continuance" (reschedule) of the trial in order for him to retain legal counsel. This was denied. (Website transcripts section 8)

10 May 1990

Mr Wilfred retained Lloyd Percy as legal counsel on the proviso that a continuance was obtained to allow him to prepare and that Mr Wilfred made arrangements to pay him over time.

22 May 1990

At a telephone conference with Judge Steinhardt, Lloyd Percy asked for a continuance, but this was again denied. (Website transcripts section 9)

4 June 1990

Mr Wilfred filed a complaint against Judge Steinhardt regarding his treatment in his divorce proceedings in the US District Court for the District of Colorado (a federal court).

This federal court dismissed Mr Wilfred's complaint because the Colorado District Court had not yet issued its final orders. The federal court also found that Mr Wilfred's rights could be "amply protected" in the state court. (Website section 3: Wilfred v Wilfred Civil rights).

6 and 7 June 1990

The divorce case was heard before Judge Steinhardt in the Colorado District Court. Mr Wilfred refused to participate because he did not have legal counsel and he believed his constitutional rights of due process and religious freedom were being denied. The judge found him to be in contempt of court, and he was imprisoned in Arapahoe County Jail. Afterwards, he was forced to attend the hearing and defend himself. During the hearing Judge Steinhardt mocked Mr Wilfred's religious beliefs and practices.

While in jail, Judge Steinhardt allowed Mr Wilfred's home to be searched without a warrant. Documents were taken from Mr Wilfred's home, his safe and his computer, including privileged communications between him and his attorney. These documents were used against Mr Wilfred at the hearing where he was accused of hiding money off-shore. (Interview)

12 June 1990

Mr Wilfred was released from Arapahoe County Jail.

Mr Wilfred was examined by a psychiatrist and a psychologist but neither found anything wrong with him. (Interview)

Mr Wilfred contracted an accounting firm to audit his finances, which showed he was not hiding any money. (Interview)

27 June 1990

Judge Steinhardt issued her final orders. She dissolved the marriage between Mr Wilfred and Sandra and awarded sole custody of Tyler to

Sandra, who had been primarily responsible for him and, Judge Steinhardt stated, had looked after him well. The judge recorded that the visitation supervisor chosen by Mr Wilfred for his meetings with Tyler, David Campbell, had expressed concerns over Mr Wilfred's behaviour that in turn raised concerns with the Judge Steinhardt about Mr Wilfred's mental health. She therefore forbade Mr Wilfred from having contact with Tyler until he had a psychiatric examination and a similar professional evaluation of his interactions with Tyler. Judge Steinhardt ordered a restraining order forbidding Mr Wilfred from making contact with Sandra, her legal counsel or any of the witnesses she had called including Thomas Jones.

Judge Steinhardt found that Mr Wilfred had not cooperated in "discovery" and had refused court orders to take the stand with respect to providing information as to his assets and income. She found that the marital estate was valued at US dollars ("USD") 1 million and on that basis ordered that half, being USD 500,000, be paid immediately to Sandra. Mr Wilfred was also ordered to pay maintenance towards Sandra of USD 4,500 per month on the basis that Mr Wilfred earned between USD 10,000 and 20,000 per month. Mr Wilfred was also ordered to pay court costs and Sandra's legal fees. (Website section 3: The complaint)

Mr Wilfred considered the orders to be a violation of his parental rights, and the support requirements to be prohibitive, considering that he was bankrupt and without employment.

Because Mr Wilfred had not had an opportunity to put his case to the court, all the evidence contained in the eventual judgement was from Sandra and her witnesses. (Review and Reply 5 November)

5 October 1990

Mr Wilfred re-filed his complaint (an application for relief) against Judge Steinhardt, as per the previous one of 4 June 1990, in the Colorado Supreme Court (a state court).

11 October 1990

The Colorado Supreme Court denied Mr Wilfred's application for relief.

15 October 1990

Mr Wilfred then filed an application to have the Colorado Supreme Court judge disqualified ("motion to recuse") which was also dismissed. (Website section 3).

25 October 1990

Mr Wilfred filed an application in the US District Court for the District of Colorado (a federal court), civil action no. 90-1892.

Mr Wilfred alleged that Judge Steinhardt had violated his civil and constitutional rights, and persecuted him for his religious beliefs by: refusing to release transcripts of the hearing; denying him the opportunity to obtain legal counsel; imprisoning him when he refused to participate in the hearing without counsel; ordering his assets be distributed despite

their being protected under his bankruptcy status; condoning breaking and entering into his house and the seizure of documents without a search warrant; accepting as evidence documents obtained in that search which violated attorney-client privilege; and accepting arguments that he was mentally unstable and a religious fanatic and ordering he not have access to his son subject to a year of psychiatric care.

Judge Steinhardt was summoned to provide a response to Mr Wilfred's complaint against her.

8 November 1990

Chief Judge Sherman G Finesilver dismissed Mr Wilfred's complaint on the legal basis that federal courts should not interfere in domestic relations cases. The judge found that Mr Wilfred had not proved that he was without a remedy at law or would suffer irreparable harm without federal court intervention.

Judge Finesilver stated that: "It is axiomatic that federal courts should decline jurisdiction in domestic relations cases." (Website section 3: transcripts: ss 1-16 and ss 11 & 12).

10 December 1990

In the bankruptcy court, Mr Wilfred's claims over the other Regatta Infant Care Inc owners were excepted from the bankruptcy discharge orders. (Website section 2: Sandra divorce)

11 December 1990

Mr Wilfred married Dearnna Garcia whom he had met at his church several years earlier. Mr Wilfred had employed Dearnna's father who was a building contractor. After they were married, Mr Wilfred and Dearnna moved from Denver to Colorado Springs.

28 August 1991

The infant care centre (formerly Mr Wilfred's Regatta Infant Care Ltd) was listed for sale with equipment to the value of USD 25,000 and annual income of USD 62,752. (Website section 2: Sandra divorce)

Mr Wilfred's ex-wife, Sandra, a former director of Regatta Infant Care Ltd, and Thomas Jones, a director and shareholder, had illegally (because it was done without Mr Wilfred's agreement) converted the centre to the ownership another company called Real Life Vision. Thomas Jones then sold this child care business for USD 70,000. In return, Sandra obtained one of Mr Jones other day care centres which she operated profitably. (Review and Reply 5 November).

Together with his attorney, Phil Freytag, Mr Wilfred later made an agreement with Sandra that he would not pursue the issue of the illegality of Sandra's sale of Regatta in return for her assistance in his legal action against Thomas Jones. She also agreed to not pursue maintenance payments owed by Mr Wilfred. As evidence of this agreement, Sandra did not attempt to legally pursue the maintenance Mr Wilfred owed through the courts until 1997.

In Mr Wilfred's view, the net profit Sandra made from the deal, whereby she obtained ownership of Mr Wilfred's child care centre, was at least equal to or greater than the child support and maintenance of USD 5,500 per month that Mr Wilfred was ordered to pay by the court, but was unable to do so as he was bankrupt and had no income.

At the time, neither Sandra nor the Colorado child support services pursued the matter of Mr Wilfred's maintenance payments. Much later, Sandra became involved when Dearnna revealed to her that Mr Wilfred was involved in a multi-million dollar financial transaction. The District Attorney ("DA"), John Suthers, also became aware of the financial transaction at this later time and was motivated by revenge and greed. (Review and Reply 5 November).

Mr Wilfred did not make any maintenance payments because he was unemployed and did not have an income. (Interview) He had also remarried, to Dearnna, and later, was supporting her and their two children. (Review and Reply 5 November)

16 October 1991

Mr Wilfred and Dearnna's daughter, Danielle Marie, was born.

Late 1991

The Resolution Trust Corporation ("RTC") sent Mr Wilfred a default notice threatening a personal suit.

In 1985, Mr Wilfred's company, Falcon Ltd Number One ("Falcon"), had borrowed USD 3,200,000 from the American Federal Savings and Loan Association of Colorado, secured by a commercial property located in Englewood, Colorado, which Falcon owned. (Website section 4: the complaint).

In the late 1980s, the US property market collapsed, and the American federal savings schemes, which had underwritten many real estate deals, fell into financial difficulties. On 28 September 1989 the government appointed the RTC as receiver for the federal savings schemes.

The Englewood property had been vacant since 1990 and Mr Wilfred was unable to meet the loan interest payments. Mr Wilfred attempted to negotiate with the RTC to find a way to retain the Englewood property without foreclosure. However, the RTC sent Mr Wilfred the above default notice threatening a personal suit. (Website section 4: the complaint).

1992 (Approximately)

Mr Wilfred ceased to have any religious or denominational affiliations.

9 February 1992

Mr Wilfred contacted the RTC saying he had found a buyer for the Englewood property for USD 1,500,000. The RTC responded that they had sold his loan for USD 500,000 to a company called 3M-Greco, as part of a

package of loans totalling USD 100 million and that any attempt to sell the property would result in legal action.

Mr Wilfred then contacted representatives of 3M-Greco to discuss selling the Englewood property. (Website section 4: the complaint).

March 1992

Child Care Centers of North America purchased the Regatta child care business and assets for USD 60,000. There were some financial irregularities noted by the purchasers with respect to the legal ownership of Thomas Jones. (Website section 2: Sandra divorce) The total value of the sale was actually USD 70,000. (Review and Reply 5 November)

10 to 16 June 1992

Despite his belief that he was in negotiations to sell the Englewood property and repay the loan himself, Mr Wilfred received notice that 3M-Greco had foreclosed on the property and had listed it for sale at USD 1,250,000. (Website section 4: the complaint) Although the mortgage holder listed the property for sale at this time, it had actually pre-sold it to the loan purchaser for the above amount. Mr Wilfred was not notified of the foreclosure, as required by the statutes, until it was too late to stop the "illegal" sale. (Review and Reply 5 November)

Mr Wilfred considered this a breach of trust and fairness and threatened to continue with his private sale, whereupon the 3M-Greco representative company sent contractors to change the locks and take possession of the building. (Website section 4: the complaint)

24 September 1992

3M-Greco sold the Englewood property for USD 1,250,000. (Website section 4: the complaint)

From the information he had received, Mr Wilfred believed that his USD 3.2 million debt had been sold for USD 500,000, and the Englewood property which had secured the loan was then sold for USD 1.25 million. Mr Wilfred calculated that 3M-Greco had profited by USD 750,000 from the deal, and that he, and US taxpayers, who were funding the RTC, had therefore been denied opportunity to settle the debt in a more equitable fashion. (Website section 4: the complaint)

16 October 1992

Mr Wilfred filed case no. 92-N-2042, a USD 30 billion class action law suit against the RTC, 3M-Greco Ltd and other companies on behalf of himself and "the tax paying citizens of the US", alleging widespread fraud and corruption in the real estate property market. Mr Wilfred represented himself. (Website section 4: the summons)

17 October 1992

The Denver Post newspaper published an article stating that Mr Wilfred was suing the RTC for "irresponsible actions in selling assets below market value and generating unconscionable and exorbitant profits for some private firms".

11 November 1992

Mr Wilfred's class action suit against the RTC, 3M-Greco Ltd and others was dismissed by Judge Nottingham of the Colorado federal court who ordered:

[Mr Wilfred] is hereby enjoined from filing any legal action against the defendants named at the beginning of this Order unless and until he retains a licensed attorney to represent him in the action.

He declined to award costs to the defendants. (Website section 4: Case dismissal).

Mr Wilfred's class action was defeated on a technicality; he was not legally represented. Because he did not have sufficient funds to employ an attorney, he withdrew. (Interview)

20 January 1993

Mr Wilfred's bankruptcy was closed, allowing him to seek settlement for his interest in Regatta Infant Care Inc then known by another name. (Website section 2: Sandra divorce)

14 May 1993

Mr Wilfred sold or assigned his 50 percent share of Regatta Infant Care Inc to his friend Phil Freytag.

25 May 1993

Freytag lodged a complaint against the shareholders of Regatta Infant Care Inc, including Sandra and Thomas Jones, Mr Wilfred's former business partner, and a company called Real Life Vision Inc in the Arapahoe District Court. Freytag alleged that the other shareholders had hidden information from Mr Wilfred and that on or about 28 August 1991 they had transferred assets and operations of Regatta Infant Care Inc to Real Life Vision Inc without Mr Wilfred's knowledge or consent, and then on-sold them to another company. Freytag alleged that income due Mr Wilfred as a shareholder of Regatta Infant Care Inc had been withheld from him. (Website section 2: Sandra divorce)

30 September 1993

Through her attorney, Sandra filed a response to Freytag's complaint. She stated that she had not been involved in the setting up and directing of Regatta Infant Care Inc and had only worked there as a paid employee under Anitha Jones. She stated that in September 1990 she had bought the Depot Hill Preschool and Daycare from Thomas Jones for USD 6,575. (Website section 2: Sandra divorce)

6 December 1993

Mr Wilfred and Dearn's son, Isaac Arthur Wilfred, was born. Isaac's birth had been traumatic and he was hospitalised for a period. Afterwards, Dearn did not go with Mr Wilfred to the hospital to bring Isaac home. Dearn did not bond with Isaac and did not breast feed him. (Interview)

1994

Mr Wilfred again became involved in commercial property development in Denver, where he worked for a company called Re-Max Real Estate and another called Paragon Properties. He was involved in renovating to lease and sell commercial properties bought by the El Paso County Pension Fund ("Pension Fund").

August 1994

From time to time Mr Wilfred would need to pay contractors. He noticed that whenever he received funds from the Pension Fund to make such payments, the cheques would bounce. He queried his superiors at the real estate company who told him not to worry and to draw down additional funds from the next contract to cover the short fall. Mr Wilfred checked the bank records and found that funds were being withdrawn and then put back into the account several days later. He also found that contractor and other expenses were being inflated by up to 400 percent when invoices were presented to the Pension Fund.

Late August 1994

Mr Wilfred reported his concerns about the bounced cheques and inflated invoices to the administrator of the Pension Fund, Michael Witty ("Witty"), who essentially told him to mind his own business and keep quiet.

7 September 1994

Mr Wilfred reported the suspected embezzlement of the funds to John Kramer, an investigator for the DA for El Paso County. (Document A)

The DA was John Suthers and his assistant DA was Jeanne Smith. Suthers and Witty were part of the "good old boys" crony system that operated in Colorado. (Interview)

21 September 1994 (approximately)

Two weeks after Mr Wilfred had reported his complaint to the DA's office, he took his complaint to the newspaper and a local journalist, Pam Zubeck, contacted the DA's office. (Interview)

22 September 1994

The DA's office publicly announced it was investigating the Pension Fund and its commercial property dealings. Mr Wilfred realised that no investigation had previously been initiated.

Witty verbally cancelled Mr Wilfred's contract with the Pension Fund. Mr Wilfred was owed USD 75,000 in back payments and Witty undertook to pay this money to Mr Wilfred, but did not do so.

24 September 1994

The Denver Post published an article on the DA office's criminal investigation of the Pension Fund and linked it to allegations made by Mr Wilfred.

November 1994

The DA's office announced that the Pension Fund and the commercial property contracting entities were cleared of any wrong-doing.

January 1995

Mr Wilfred sued the Pension Fund to be paid for his services.

Mr Wilfred, along with journalist Pam Zubeck and others, continued to investigate the Pension Fund and Witty and uncovered even more embezzlement and fraudulent transactions.

27 January 1995

Mr Wilfred wrote and reported his suspicions to his friend Michael Austin, who fed the information to someone in Washington, who in turn contacted the Federal Bureau of Investigations ("FBI") in Washington, which then compelled the Colorado DA's office to investigate properly. (Interview)

Mr Wilfred had met Austin in 1994 when he answered an advertisement on the Internet and they had become involved in a property deal. Austin had been a US Navy SEAL and knew influential people in the US government. Austin was motivated to become involved in the Pension Fund case because he believed in doing the right thing and did not want to see pensioners being exploited or defrauded of their money. (Interview)

29 June 1995

Mr Wilfred reported the information obtained during his investigation to the Colorado State Attorney General, who referred him to the Colorado FBI.

16 July 1995

Mr Wilfred appeared on the KVOR radio station and accused DA Suthers of involvement in the Pension Fund embezzlements.

25 July 1995

Mr Wilfred was interviewed by an FBI investigator in Colorado Springs who recommended obtaining a special investigator from Washington DC.

14 August 1995

DA Suthers wrote to Mr Wilfred accusing him of making irresponsible accusations and daring him to bring forward his evidence for judicial scrutiny. (Document C)

30 January 1996

In Mr Wilfred's suit to be paid by the Pension Fund, Witty and the Pension Fund were represented by DA Suthers' former law firm, Sparks and Dix. Mr Wilfred received a partial payment from the Pension Fund, but Sparks and Dix, together with another law firm, Kane and Donnelly, obliged Mr Wilfred to sign an agreement (in lieu of payment) requiring that he "keep his mouth shut" or suffer a penalty of USD 50,000. (Website section 28: fax 25 October 2000 to Horowitz)

This agreement was forced on Mr Wilfred at a time when DA Suthers was hiding the fact that Witty and his contractor accomplices were indeed embezzling funds, evidence of which Mr Wilfred had already provided to the DA's office. (Review and Reply 5 November)

As he was no longer employed by the Pension Fund, Mr Wilfred set up Arcore International Funding Ltd where he worked as an International Financial Consultant.

May 1996 (Approximately)

The Colorado DA's office launched a criminal investigation of Witty's activities. The Pension Fund board members voted to cancel Witty's final contract. The FBI conducted further investigations of the Pension Fund scheme.

March to May (Spring) 1996 (Approximately)

Mr Wilfred's wife, Dearna, began to physically and mentally abuse their children. She neglected their care and acted as if she did not want them. Mr Wilfred did most of the night feeding.

While Dearna was living in Denver, Mr Wilfred engaged Janet Reinhard as a nanny to care for Danielle and Isaac when he was away on business trips. Later, Dearna moved to live with them and Reinhard continued to work as a nanny.

June to August (Summer) 1996

Mr Wilfred's friend Austin contacted Mr Wilfred and told him that he worked for the Central Intelligence Agency ("CIA"). He asked Mr Wilfred to act as a financial broker. Austin said he had a deal which required someone with knowledge of international finance in order for it to be transacted and the CIA lacked expertise in that area. Austin told Mr Wilfred about a note from the Mitsubishi Bank of Japan which entitled the bearer to USD 6 billion (the "Mitsubishi Note"). He said the funds would be used for infrastructure and development projects in Guatemala.

Austin needed Mr Wilfred's assistance because the CIA did not have the necessary contacts in international finance to transact the Mitsubishi Note. Mr Wilfred knew of two international European trusts, the Bay State Trust and the Alpha and Omega Trust, both registered in Liechtenstein and associated with the Credit Suisse Bank of Zurich.

Mr Wilfred flew to Zurich and met with Marilyn Perry of the Bay State Trust. Perry worked with Daniel Todt and another person called Legget and the CIA on the Mitsubishi Note. Mr Wilfred showed Perry a facsimile copy of the Mitsubishi Note and then destroyed it. He did not meet or speak to Daniel Todt.

Perry authenticated the Mitsubishi Note at an international bank in Geneva. The Mitsubishi Bank refused to publicly acknowledge that the note existed, but agreed to transact it covertly.

Mr Wilfred wanted to know why the Mitsubishi Bank refused to transact their own note openly and asked various people this question. He was then contacted by a CIA "cleaner" called George Bryson, who told him that he should stop asking questions and that "curiosity killed the cat". Mr Wilfred was scared and desisted from asking such questions.

When Perry learnt that similar notes had been used in the CIA's Iran-Contra deals in Nicaragua, she also began to be scared.

1997

Dearna's abuse of the children worsened.

January 1997

Witty and the El Paso County treasurer were found guilty of embezzlement. Witty was sentenced to 18 years imprisonment. The treasurer and certain pension fund members were fired and fined.¹

Suthers, the El Paso County DA, was embarrassed by the whole saga as he had originally refused to investigate Mr Wilfred's allegations. Mr Wilfred could not connect Suthers to any wrong doing, but believed he had been negligent in his investigation and may have been covering up for Witty.

Sometime later, Suthers campaigned for Colorado State Attorney General but was defeated. Mr Wilfred suspected that Suthers may have blamed him for this electoral defeat.

March 1997

Mr Wilfred was served with a "Rule 69 Financial Review" requirement by the Arapahoe County DA due to the non-payment of child support, allegedly to the amount of USD 500,000. Mr Wilfred offered to pay the entire amount pending a business transaction (the Mitsubishi Note) and the Arapahoe County DA agreed to stay further proceedings and await the outcome of the business deal (Website section 27: fax to Gold 18 September 2000)

April 1997

Mr Wilfred filed a report on Dearna's child abuse with the El Paso County Social Services. (Interview)

Mr Wilfred retained the services of a solicitor, Seymour Wheelock, to advise him. Dearna agreed to attend counselling for her abusive behaviour and to re-hire a nanny to help care for the children, as Reinhard no longer worked for them.

June 1997

Mr Wilfred travelled to Florida to meet with Marilyn Perry to assist in the identification of humanitarian and infrastructure projects in Guatemala as part of the Mitsubishi Note deal.

¹ (Perry Swanson, "Retirement plan embezzler gets freedom early" (11 January 2005) www.gazette.com (Accessed 6 August 2007).

Mr Wilfred had not linked the Mitsubishi Note and the Iran-Contra deal two years earlier. He only wanted to make money. Mr Wilfred knew that it was a strange arrangement for the delivery of humanitarian aid, but believed people in Florida who said they did not want to arrange it through the Guatemalan government because of the high levels of corruption and embezzlement in official agencies. Those attempting to transact the Mitsubishi Note had foundations which included the Guatemalan Bishop, and projects that included portable hospitals and bridges. Marilyn Perry said she had met with over 200 community groups and the whole thing seemed very well organised.

6 June 1997

Mr Wilfred met Carolyn Dare ("Carolyn") while on a business trip to Ontario Canada.

August 1997

Dearna dismissed the nanny while Mr Wilfred was in Ontario. She did not attend counselling as agreed.

While in Ontario, Mr Wilfred had several telephone conversations with Dearna and his children where he heard Dearna physically and emotionally abusing them. He decided to take custody of his children and bring them to Canada. Carolyn agreed to help Mr Wilfred care for them. Mr Wilfred was deeply involved in the Mitsubishi Note transaction at the time and felt he was unable to leave Canada for long to assist his family. Mr Wilfred's attorney, Seymour Wheelock, advised Mr Wilfred that because he was a parent, there were no custody issues with respect to his taking the children into his care.

10 October 1997

Mr Wilfred and Carolyn travelled to Scottsdale, Arizona where Mr Wilfred was due to meet with Austin in connection with the Mitsubishi Note transaction. Mr Wilfred had previously arranged for Dearna to bring the children to Arizona to meet him.

Once he had arrived, Mr Wilfred met with his attorney, Wheelock, and his wife, social worker Jenene Kelly. Mr Wilfred then met Dearna, as arranged who readily handed the children to him then drove away.

Through Wheelock, Mr Wilfred served Dearna with a notice of divorce at her hotel and took the children into his sole custody (Website section 21).

When Wheelock and Kelly returned to Colorado, Kelly filed a report of child abuse in relation to the Wilfred children with the El Paso County child protection authorities. (Website section 21: Letter, Parrish to Hayward 7 March 2000)

14 October 1997

With the assistance of her mother, Dearna filed an application for custody of the children at a Colorado Springs court. Dearna retained John Ciccolella as her attorney.

Although Dearna had consented to Mr Wilfred taking the children, and had no interest in having custody of them, her mother was the protagonist in her petitioning the court for custody. Dearna was influenced by her mother who wanted to destroy the marriage and take retribution against Mr Wilfred.

16 October 1997

Judge Kane (of law firm Kane & Donelly and a close friend of Suthers) of the Colorado Springs District Court held a status conference on Dearna's custody application. He ordered that Mr Wilfred be present at a hearing the following day. However, Mr Wilfred was at that time en-route to Canada with Carolyn and his children. Thus, Wheelock was unable to communicate with Mr Wilfred before the hearing. (Website section 21 – Parrish letter)

Mr Wilfred, Carolyn and the children flew from Phoenix Arizona to Chicago and then on to Toronto, a journey which took the whole day. (Website section 15: fax of travel company).

17 October 1997

An ex-parte hearing on the temporary custody issue was held. Mr Wilfred was represented by Wheelock. Judge Kane awarded temporary custody of the children to Dearna. According to the transcript of the hearing, Wheelock stated that he had informed Mr Wilfred of the hearing in advance, but he had not appeared and Wheelock did not know where he was. Wheelock stated that Mr Wilfred had contacted one of his witnesses at 9.00 that morning and said he would be there. Wheelock surmised that Mr Wilfred may have got lost.

Judge Kane noted that a court in Arapahoe County had issued a bench warrant for Mr Wilfred's arrest for monies owed [in the Sandra case] and that Wheelock had been made aware of that warrant during the telephone conference the previous day. Judge Kane stated he would issue a bench warrant for Mr Wilfred and would need to set bail.

Wheelock stated that he had witnesses and evidence in the court that day that would attest to the children being mistreated and neglected. Wheelock stated that: "If only for the record, I want to state that I think that the children are at an emotional risk should they be returned to the mother." The court noted that "for the record".

Judge Kane stated that he was concerned that this "could be a child snatching of sorts" and was considering no bond, so that Mr Wilfred would be brought before him "so that some of these concerns I have about the well being of these children can be addressed." Judge Kane stated: "We have two children here and we don't know where they are, how they're doing and the circumstances of their being in their father's custody are at least questionable based on what I've seen in the [ex parte] motion." (Website section 9: "re Ciccolella" contains transcript)

Judge Kane refused to hear testimony regarding Dearna's abusive behaviour towards the children, and none of Mr Wilfred's witnesses were

allowed to give evidence. Mr Wilfred was ordered by Judge Kane to be present but did not attend as he did not know of the hearing. (Interview)

Mr Wilfred's friend and business associate, Freytag, was also present at the hearing, where afterwards he heard Dearna comment that she was not concerned about the children being with Mr Wilfred who would take good care of them. (Interview)

After 17 October 1997

Mr Wilfred and the children resided with Carolyn and her two daughters in Stratford, Ontario, Canada.

Carolyn began to home school Danielle, who was behind in her schooling. Mr Wilfred also felt that it would be unsettling for the children to attempt to send them to school immediately. Later, Carolyn's elder daughter was employed as a nanny, and her younger daughter later took over the home schooling of Danielle in December 1997.

23 October 1997

A charge was laid against Mr Wilfred of violation of a custody order and a warrant for his arrest issued. (Website section 21: Parrish depositions 6 March 2000)

7 November 1997 (Approximately)

Three weeks after the 17 October hearing, Wheelock had a nervous breakdown and was committed to a psychiatric hospital. He risked being disbarred because he had assisted Mr Wilfred in taking custody of the children without a court order.

Mr Wilfred asked Freytag to act as a mediator between Mr Wilfred and Dearna and their respective attorneys. Freytag tried to engage Dearna and her attorney in mediation, but he was unsuccessful.

Mr Wilfred was unaware of the custody charge and arrest warrant at this time.

22 November 1997

On behalf of Mr Wilfred, Freytag wrote to Dearna in an attempt to resolve the divorce. In the letter, Freytag asked Dearna to instruct her attorney to arrange release of the bench warrant in her custody case. Freytag also asked Dearna to intercede in the Sandra case, as she had said she was willing to do in a previous conversation with Freytag, to try and have that bench warrant rescinded as well. Freytag wrote: "Releasing both warrants is essential for me to provide contact between you and your children." (Website section 21: letter Freytag to Dearna 22 November 1997)

Colorado DA Jeanne Smith and Dearna's attorney John Ciccolella collaborated to bring a second charge of criminal extortion against Freytag in connection with this letter.

They also applied for Mr Wilfred's extradition from Canada under the Hague Convention. It was unusual for an extradition case to be initiated on the basis of violation of custody orders.

14 February 1998

Canadian authorities seized Mr Wilfred's children while they were out walking with their nanny, Carolyn's daughter, and returned them to Colorado. Carolyn's daughter later wrote in an affidavit that Dearna was present with the Canadian police when the children were taken from her care, and that they had not been pleased to see their mother, and that she had been asked by the police to accompany the children to the police station because Isaac had refused to leave her and go with his mother.

Canadian authorities arrested Mr Wilfred at his home and detained him in an underground maximum security prison in Kitchener, Ontario, pending extradition to face charges of violation of custody orders and criminal extortion.

While in prison, Dearna's attorney initiated two proceedings in the Colorado family court; the first to waive the divorce mediation process because Mr Wilfred was in prison on criminal charges and the second an application for an *ex parte* divorce order on the same basis.

The El Paso County DA accused Freytag of criminal extortion for his role in assisting to remove Mr Wilfred's children.

While Mr Wilfred was in prison, a person who used to work for the Colorado DA's office, contacted him by telephone and said that if [he] "lay low and kept [his] mouth shut [he'd] get his kids back."

Meanwhile, Carolyn approached the Hague Commission, the US Embassy, other state and federal agencies and the Department of Social Services in Colorado Springs in an attempt to rescue Mr Wilfred's children from further child abuse. She also began collecting affidavits from key witnesses.

18 February 1998

Janet Reinhard, the nanny Mr Wilfred had engaged to care for his children, faxed a hand written statement to Arcore International, Mr Wilfred's finance company, which supported Mr Wilfred's contention that Dearna neglected her children and was verbally abusive towards them and that Mr Wilfred was a loving father.

Affidavits as to Dearna's poor parenting skills and Danielle and Isaac's obvious fear of her were also obtained from Wheelock's wife, social worker Jenene Kelly, Carolyn, Carolyn's two daughters, and two other people who had witnessed some of Dearna's erratic behaviour.

Kelly's affidavit stated she had gone to the Colorado authorities to obtain copies of records of the conditions (attend counselling and employ a nanny) to which Dearna had agreed, but the documents were absent. (Website section 21)

Carolyn and Mr Wilfred solicited support in getting his children returned to him from a lot of people such as members of Congress and the Senate and the Governor of Colorado. However, in general, support was not forthcoming and people backed the Colorado DA and courts. (interview)

18 April 1998

Austin emailed Freytag instructing him to not reveal that the Mitsubishi Note deal existed. (Document G)

21 April 1998

Austin emailed Freytag again saying "he" [Mr Wilfred] was in jail and that the company would eliminate the problem and instructed Freytag to convey this to Mr Wilfred. (Document H)

In another email at this time, Austin commented that Mr Wilfred should not have gone to get his children.

Austin was angry that Mr Wilfred had broken ranks and travelled to the US to deal with his domestic situation when the Mitsubishi Note deal was about to close. When Mr Wilfred was arrested in Canada and his documents seized, Austin was even angrier as the Mitsubishi Bank had said it would deny the note was genuine if the deal became public. The Mitsubishi Bank wanted to keep the transaction confidential because they knew that the money had been used for covert operations by the CIA. (Interview)

While in prison, Mr Wilfred had a telephone conference call with associates in the Mitsubishi Note transaction - Don Gilmour, Carolyn and Wayne Legget. Legget informed Mr Wilfred that the Mitsubishi Note had been transacted covertly by the CIA and that its value was USD 15 billion in US treasury bills. Five billion of those went to Guatemala and the remaining 10 billion went to unknown destinations.

27 April 1998

A final orders hearing was held before magistrate January Dubois in the El Paso County District Court on the matter of Mr Wilfred and Dearnna's divorce and maintenance of her and the children. Mr Wilfred was not present. However, he was represented by Wheelock who attended by telephone. According to the court transcript, at an earlier status conference, Judge Hall ruled that the temporary custody of the children was uncontested by Mr Wilfred because he was refusing extradition and hence would not attend the hearing. Wheelock objected to this but was overruled.

Mr Weston, acting for Dearnna, tendered court documents relating to Mr Wilfred's earnings in 1990. Wheelock objected to this as evidence of Mr Wilfred's earning potential in 1998, owing to changes in the real estate property market. Weston also tendered documents relating to the Mitsubishi Note and Mr Wilfred's expected fee of USD 20 million as part of Dearnna's case for financial support. Dearnna recorded her legal and other expenses in going to Canada to get her children. Wheelock did not bring

any witnesses nor make any submissions. The court found the marriage irretrievably broken and deferred the issue of permanent custody orders as per Judge Hall's instructions until a hearing scheduled for 14 September 1998. The court ordered Mr Wilfred liable for spousal maintenance of USD 3,000 and child maintenance of USD 1,092 per month. (Website section 9: "re Ciccolella" contains transcript)

14 May 1998

After 89 days detention, Mr Wilfred obtained bail and was released from prison in Ontario. A condition of his release was that Mr Wilfred had to reveal details of the Mitsubishi Note transaction in order for the bail amount to be set. This, however, contravened CIA instructions. (Document M). Bail was set at 300,000 Canadian dollars. (interview)

1 June 1998

Mr Wilfred's extradition case was heard in Ontario. Mr Wilfred was represented by attorney James Marintette.

The Honourable Justice Glithero signed an order that Mr Wilfred be extradited to the US from Canada on charges of non-payment of custody orders and criminal extortion. The latter charge strongly influenced the court's decision, although Freytag had not been formally charged at that time. This hearsay evidence was provided to the court by the El Paso County DA.

Freytag was actually arrested and charged three weeks later. (Review and Reply 5 November)

Mr Wilfred lodged an appeal against his extradition with the Ontario Court of Appeal. He retained attorney Alan Gold to represent him at appeal.

5 June 1998

The US Securities Exchange Commission ("SEC") lodged a complaint in a New York district court against certain people involved in the Mitsubishi Note transaction, alleging it was a conspiracy to defraud. People named as defendants in the case included Daniel Todt, Perry and others with whom Mr Wilfred had been dealing, but not Mr Wilfred, as Arcore International was only an intermediary in the deal.

During the SEC investigation Mr Wilfred started receiving threats from the CIA warning him not to reveal anything about the Mitsubishi Note.

The Mitsubishi Bank denied the document was genuine as it had been exposed. (Interview)

18 June 1998

The charges of criminal extortion against Freytag, in connection with his attempted mediation between Mr Wilfred and Dearn, were dismissed at the request of the Colorado DA. The record was sealed to protect Freytag in that information about the charge could not be publicly accessed. (Website section 21: Parrish letter 7 March 2000).

26 July 1998

Austin emailed Freytag saying Mr Wilfred had "not had the balls to call me [Austin] personally." (Document I)

2 August 1998

Mr Wilfred and Carolyn married.

6 August 1998

The SEC came to Canada and interviewed Mr Wilfred. They said that they were connected with his case in Colorado. Mr Wilfred's attorney, Alan Gold, told them that Mr Wilfred was there to help and that they should not bring up the Colorado case. The SEC said that the Mitsubishi Note was "lost" and that the CIA had denied any knowledge or involvement. Mr Wilfred referred to the conversation he had had with Legget while in prison to demonstrate that the Mitsubishi Note deal was real and that he was not involved in fraud. When the SEC saw the documents Mr Wilfred had in his possession, they got up from the meeting, and left the room to telephone Washington. They did not return. Mr Wilfred believed that because his documents showed the Mitsubishi Note was not fraudulent, the SEC ignored him and refused to accept his evidence.

14 September 1998

A final orders hearing with respect to custody of Mr Wilfred's children from his marriage with Dearna was heard by Judge Hall of the El Paso County District Court. Mr Wilfred did not attend and was not represented at the hearing. At the time, Mr Wilfred was in Canada appealing his extradition. Mr Wilfred did not have the resources at the time to obtain new counsel following the withdrawal of Wheelock. Dearna was represented by John Ciccolella. (Website section 9: "re Ciccolella" contains transcript)

Ciccolella asked for sole legal and physical custody, and a restraining order preventing Mr Wilfred or his associates from coming near Dearna or the children. Ciccolella deposed that Mr Wilfred had been charged with kidnapping the children and fraud in relation to the Mitsubishi Note.

The court noted that it had affidavits, including one from Freytag, which stated that Dearna was generally a good mother and that the children related well to her. The court noted that affidavits filed by Mr Wilfred's former attorney regarding Dearna's abuse or neglect of the children had not been pursued by Mr Wilfred either personally or through his attorney, and thus the evidence as to Dearna being a good mother was uncontested.

Full custody of the children was determined in Dearna's favour. The court ruled that Mr Wilfred would have no parenting rights until such time as he came before the court for evaluation and security assurances could be imposed. Ciccolella provided the court with a copy of Mr Wilfred's divorce trial with Sandra in Arapahoe County. The court asked Ciccolella where the documents had come from and Ciccolella said he did not know, but they indicated that Mr Wilfred had psychological problems. (Website section 9: "re Ciccolella" contains transcript)

Ciccolella was lying when he told the court that he did not know where he got the Sandra divorce transcripts. Mr Wilfred had asked Ciccolella to represent him in February 1997, and had provided him with a copy of the Sandra divorce documents at that time. In the end, Ciccolella did not represent Mr Wilfred, but he kept a copy of the documents and instead accepted instruction from Dearn, a clear conflict of interest (Review and Reply 5 November).

The court's contention that Mr Wilfred had not pursued the issue of Dearn being an unfit mother was also untrue. Mr Wilfred's former attorney had pursued the issue through presenting witnessing and later affidavits from witnesses (contained in Website section 15). However, all attempts to enter such evidence into the record were blatantly rejected by the court, in contravention of its legal obligation to act in accordance with the best interests of the child. In addition, Mr Wilfred had not been duly notified of the hearing nor given an opportunity to be heard. Mr Wilfred had also made numerous appeals and petitions to members of Congress, Senators, and local authorities. The courts choice to ignore this material was explicable as the undue influence of the DA's office seeking retribution for Mr Wilfred's whistle blowing. (Review and Reply 5 November)

Ciccolella's allegations that Mr Wilfred had been charged with kidnapping and fraud (Mitsubishi Note) were also both untrue. Mr Wilfred was never charged with either.

10 November 1998

An email, of unknown origin, stated that Perry (Bay Trust) had fled to Liechtenstein and that some people were looking for her. (Document J)

12 November 1998

Freytag emailed Mr Wilfred stating that he has been told the company (meaning the CIA) was monitoring the movements of everyone involved in the Mitsubishi Note deal. (Document K)

2 February 1999

Carolyn wrote to Hillary Clinton requesting her assistance with Mr Wilfred's situation.

June 1999

On behalf of Mr Wilfred, a new attorney, Dale Parrish ("Parrish"), entered the Sandra divorce case in Arapahoe County with a motion to dismiss the child support maintenance order. However, Sandra did not turn up to the hearing that was scheduled as a result. (Website section 27)

1 September 1999

Mr Wilfred faxed Parrish stating that he was unwilling to return to Colorado until an investigation was initiated into his allegations around the links between the Pension Fund embezzlement and the Colorado DA's prejudice and hostility towards him. (Website section 5)

8 September 1999

Mr Wilfred again faxed Parrish. He alluded to Parrish's response to Mr Wilfred's facsimile of 1 September in which Parrish had argued against demanding such an investigation for the following reasons: the Family Court judge might think Mr Wilfred was "wacko"; it might cause the DA's office to redouble its efforts to extradite and prosecute Mr Wilfred and to do so carefully and well; and because he wished to review the Witty case to be sure that the DA had not investigated the issues raised by Mr Wilfred regarding the disposition of Pension Fund money. (Website section 5)

Mr Wilfred reiterated his conviction that the link must be made between the Pension Fund embezzlement and the actions of the DA in extraditing him for prosecution and attached the verbatim record of his interview with a DA investigator in September 1994. (Website section 5)

19 October 1999

On advice from Alan Gold, Mr Wilfred wrote to Gregory Craig, a lawyer in Washington who acted for Bill Clinton and who had contacted Alan Gold seeking a meeting with Mr Wilfred. Mr Wilfred thought it was very unusual that the President's personal attorney wanted a meeting with him. (Review and Reply 5 November)

October or November 1999

Craig contacted Mr Wilfred and they met together with Gold in a hotel in Toronto. Craig told Mr Wilfred to "stop" and to "make peace with his government." Mr Wilfred responded that he did not see how he could when they had his children and were trying to destroy him. Craig admitted to Mr Wilfred that what was happening to him was "real" but also said that no one would ever admit it.

Craig also told Mr Wilfred that if he went to the US Department of Justice with his allegations about Suthers and the Mitsubishi Note deal, he "would never see [his] kids again".

December 1999

Mr Wilfred engaged attorney Dale Parrish to enter and re-open all his US proceedings. Parrish struck a verbal deal with Colorado deputy DA, Robert Harward: that Mr Wilfred would abandon his appeal against extradition, and in fact, be extradited to the US, without escort, for the purpose of filing a dismissal of all charges. (Review and Reply 5 November)

10 December 1999

The El Paso County District Court ordered that a special advocate be appointed for the minor children of Dearnna and Mr Wilfred and that telephone contact be established between Mr Wilfred and his children.

Meanwhile Parrish was trying to locate Dearnna in California to serve a court order on her because she was not responding and in contempt.

20 March 2000

Dearna's attorney entered the case to represent her in respect to the court order that the possibility of contact between Mr Wilfred and his children be investigated.

25 January 2000

Deputy DA Harward wrote to Parrish indicating his willingness to consider Mr Wilfred's evidence and a resolution by arrangement of the parties regarding custody and support.

7 March 2000

Parrish wrote to Deputy DA Harward concerning Mr Wilfred's pending criminal trial (People vs Harmon Wilfred, case no. 98 CR 215).

Parrish noted an earlier interview with Janet Reinhard (the nanny) at Harward's office on 14 February 2000, where she provided information on Mr Wilfred's children and Dearna's poor parenting, the recording of which Parrish wished to obtain. Parrish also referred to Ms Gladys Garcia (Dearna's mother) arriving at the office after the interview, and that her descriptions of the children were very different from those provided by Reinhard, and Kelly (the social worker and wife of Mr Wilfred's former attorney).

Parrish stated that he believed Mr Wilfred had two bases for his defence; the first being that he took his children because he feared for their safety; the second that he would not have employed a lawyer (Wheelock) to assist in his taking of the children if he "[had] an intent to deprive them of their lawful custodian".

Parrish noted that Harward had indicated he wished to speak to Wheelock and observed that in the period following the custody order of 7 October 1997, Wheelock had suffered from a "disability". Parrish noted that Harward stated he was focussing on the time period following the custody order of 17 October and had indicated he wished to speak to Wheelock about this. However, Parrish stated that Mr Wilfred would not waive attorney-client privilege, and would not allow Harward to speak to Wheelock. Parrish noted that Mr Wilfred "does not need to do so in order to establish several viable defences".

Parrish urged Harward to review the Janet Reinhard interview and asked for a joint motion to dismiss the criminal charges against Mr Wilfred. He stated that Mr Wilfred was willing to attend court but wished to "waive extradition". (Website section 21)

31 March 2000

Mr Wilfred formally lodged an abandonment of his appeal on extradition with the Ontario Court of Appeal. (Cases No. C#30012 and C# 31369).

5 April 2000

In contravention of the agreement Parrish had made with Harward, Colorado DA Jeanne Smith ordered Mr Wilfred's arrest and transport under

escort and in restraints, from Waterloo Detention Centre in Ontario to El Paso County, where he was incarcerated.

6 April 2000

Mr Wilfred was told he would be transferred to Arapahoe County where he would face further charges unrelated to the extradition. Mr Wilfred produced a letter from Alan Gold concerning the Rule of Speciality, whereby he could not face any charges other than those included on the extradition agreement. Mr Wilfred was then taken before a televised judge in El Paso County who ordered he be released pending trial on a USD 10,000 bond, which covered the costs of his extradition. Mr Wilfred was obliged to consent to this extortion to obtain his release. (Review and Reply 5 November)

7 April 2000

Mr Wilfred returned to Canada.

11 May 2000

Mr Wilfred returned to Colorado to attend hearing on his motion for dismissal of the breach of custody orders. However, before he could enter the El Paso County court, he was arrested at the court house door on charges relating to non-payment of support to his second wife, Sandra. These charges, which were previously unknown to him, had originated with the Arapahoe County Colorado. He was transported to Denver Colorado where the DA laid federal charges against him regarding non-payment of child support. In total, Mr Wilfred legally owed USD 10,500 per month, but had been unable to pay because he had been incarcerated while working on his extradition. Mr Wilfred was released on USD 150,000 bail but due to his inability to pay this amount, he was further detained in a Denver federal prison.

23 May 2000

Mr Wilfred attended a pre-trial conference before a Federal Magistrate in Denver [Documents R & S]. In court, Mr Wilfred again produced a letter from Alan Gold relating to the Rule of Speciality. The charges he faced in Arapahoe County were not included in the extradition order. On this basis, Mr Wilfred moved for a dismissal. However, his motion was dismissed and the court ordered that trial should continue on 12 June 2000.

26 May 2000

A federal district attorney, together with the US Department of Justice investigated the non-payment of support charge from Arapahoe and found that it did indeed violate the terms of the extradition order, which related solely to the custody issue with his second wife, Dearnna. As a result, Judge Miller dismissed the non-payment of child support charges and ordered Mr Wilfred be released.

However, instead Mr Wilfred was re-arrested and transferred to a Denver drug detention centre where he was held over a four-day holiday weekend.

30 May 2000

Mr Wilfred was transferred to a jail in Arapahoe County.

31 May 2000

Mr Wilfred was brought before the Arapahoe County Court in connection with the enforcement of a Rule 69 financial examination to determine his ability to pay maintenance and support. This was not a charge, as such, but was unrelated to the extradition, and therefore was also an illegal action. Mr Wilfred was released on a USD 750,000 bond and his forced agreement to return to face the Rule 69 financial examination. There were no charges and hence no pending trial. (Review and Reply 5 November)

Mr Wilfred's passport was returned to him. The total time he had been incarcerated was 145 days. The bail document provided to him upon his release stated that he had the right to return to and reside in Canada.

Mr Wilfred's father had passed away on 30 May. After he attended the funeral in Akron, Ohio, Mr Wilfred returned to Ontario, Canada via the land border with the US. In Canada, Mr Wilfred kept in contact with immigration authorities who told him that if he went to the US and resolved the court issues he would be able to stay in Canada. (Review and Reply 5 November)

20 June 2000

Mr Wilfred was sent a summons to appear before the Arapahoe District Court on 29 June 2000 in connection with the Rule 69 financial examination. Mr Wilfred was advised that, should he not appear, a warrant could be issued for his arrest.

A handwritten note on this document stated "Received June 28, 00" and the initials "HW".

26 June 2000

Mr Wilfred filed motions in the Arapahoe Court to dismiss the Rule 69 proceedings as they were unrelated to the extradition and hence in breach of the Rule of Speciality. As a result, both the summons and bail were rescinded by the court. (Review and Reply 5 November)

October 2000

The six month period during which Mr Wilfred was able to be extradited expired. The US authorities did not subsequently pursue these charges. (Review and Reply 5 November)

4 and 24 October 2000

Mr Wilfred wrote two letters to the US Department of Justice, Criminal Division seeking an investigation of Suthers' role in prosecuting Mr Wilfred and the connection to the Pension Fund embezzlement.

26 October 2000

In connection with the Pension Fund, the Colorado Court of Appeals confirmed that the Colorado DA's office had correctly been barred from prosecuting the case against Witty because as beneficiaries of the Pension Fund, the DAs had a conflict of interest. The court also ordered that

Witty's right to a speedy trial (within six months) had been breached. (Case # 97CR2978 on INZ file)

3 to 13 December 2000

Mr Wilfred had to leave Canada to renew his visa, and he and Carolyn holidayed in the Bahamas. On return, they transited through Atlanta and Mr Wilfred received a US arrival stamp in his US passport.

Mr Wilfred was not concerned that he would be apprehended by the US authorities as he had been released by order of a federal court and was on track to attend the next hearing.

14 December 2000

Due to blizzards in Canada and the death of his nephew in Ohio, Mr Wilfred wrote to his attorneys Aspinwall and Watson requesting a reschedule of his trial until after the Christmas holidays.

18 December 2000

Mr Wilfred wrote to attorneys Aspinwall and Watson enclosing a document outlining reasons for his request for a federal investigation into the links between the Pension Fund and the Colorado DA as evidence for his motion to disqualify the Colorado DA and change the venue for the trial and for protection under the whistleblower statutes. (Website section 28)

20 December 2000

Mr Wilfred wrote to Aspinwall and Watson stating that he had decided not to attend the hearing set down for 22 December because he feared for his personal safety and did not believe he could get a fair trial in Colorado. (Website section 28: fax 20-21 December)

Mr Wilfred had also borrowed USD 400,000 from Carolyn and her father and did not want to keep asking them for money to support his legal problems. Mr Wilfred's father-in-law refused to finance Mr Wilfred's legal suits if he returned to Colorado. Mr Wilfred could not finance them himself. He and Mr Wilfred had suspicions that the US would again violate its own laws at his father-in-law's expense. Both he and Mr Wilfred had had enough. (Review and Reply 5 November)

19 January 2001

Mr Wilfred co-signed a petition with Dearn's representative requesting the court appoint Dr Ira Gorman as special advocate to visit the children and assess their willingness to have telephone contact with Mr Wilfred. (Website section 29 document 2 "USJD report")

Mr Wilfred later spoke to the special advocate who said he had visited the children twice. Danielle was "very withdrawn" and Isaac was "very aggressive". The special advocate stated that he wanted to visit the children again.

Mr Wilfred spoke to his children once during this time, for 10 minutes, when Dearn telephoned him without supervision. Dearn abused both Mr Wilfred and the children before abruptly ending the call. Mr Wilfred's

attorney attempted to have Dearnna censured for this action but she moved house and Mr Wilfred was unable to locate her as neither she nor her attorney would reveal her location. The court also failed to take action, and as a result, the previous order of no contact continued to prevail. (Review and Reply 5 November)

20 February 2001

In response to a letter by Alan Gold to the Canadian authorities complaining of Mr Wilfred's treatment in the US and alleging breaches of the extradition agreement, the Canadian authorities noted that the additional charges against Mr Wilfred that were not included in the extradition agreement had been dropped and therefore "any non-conformity with the Treaty was rectified by the U.S. Court." The Canadian authorities were advised that charging Mr Wilfred for the costs of extradition as bail had been at Mr Wilfred's own suggestion, as he had wished to attend his father's funeral. The US prosecutors were concerned that his extradition had been at some considerable cost, and did not wish this expense to be wasted.

The allegation that Mr Wilfred had proposed the solution that he be bailed for the cost of extradition was untrue and preposterous, as Mr Wilfred did not know of his father's death until he was released. Mr Wilfred never wanted to pay bail equivalent to the expense of escorted extradition, as he had agreed to return without escort, and was only extorted into doing so in order to obtain his release. (Review and Reply 5 November)

17 May 2001

In response to his letters of 15 and 28 March 2001, Gold received a letter from the US Department of Justice, Criminal Division stating that it did not consider that the information provided by Mr Wilfred constituted a federal crime and would not warrant an investigation. (Website section 29: USJD response)

2001

Mr Wilfred and his Canadian wife, Carolyn, did not feel safe in Canada. Mr Wilfred had not been served a further extradition request but they had received some strange telephone calls asking for Mr Wilfred's address.

During 2001, US President George W Bush appointed Suthers as US Attorney for Colorado.

March 2001

Mr Wilfred and Carolyn moved from Ontario to Victoria.

30 June 2001

Mr Wilfred and Carolyn departed Canada on his US passport. He did not receive an exit stamp when he departed. He flew with Carolyn to Hong Kong where he entered on his US passport which was stamped.

11 August 2001

Mr Wilfred and Carolyn arrived in New Zealand at Auckland International Airport. Mr Wilfred was issued a Visitor's Permit valid to 11 November 2001.

2002 (Approximately)

Mr Wilfred's business associate Colin Finn, who had sent Mr Wilfred Mitsubishi Note documents when he was in Canada, died of liver failure. Mr Wilfred found this unusual as Finn was not a hard drinker and was quite young - 54. At the time Freytag commented: "Another witness to the Mitsubishi Note deal has gone."

January 2002

Mr Wilfred contacted the Denver police because his father-in-law had been contacted by the Ontario police regarding a report that Mr Wilfred had been stalking Dearnna in Denver. As a result she had been accompanying her children to and from school fearing that he would try and kidnap them, and was so paranoid she had requested that the local police provide an escort.

April 2002

Mr Wilfred began working for companies he and his wife established in New Zealand.

Through his solicitor, John Rutherford, Mr Wilfred contacted Jenny Rutherford from the Colorado State Child Welfare Services and made arrangements to pay a large portion of his income in child support; making both arrears and regular payments. Mr Wilfred also had email contact with Marzi Papa from the same department which was connected to the Colorado courts and the DA's department.

Mr Wilfred made two one-off payments of USD 25,000 to each spouse as arrears and then began making quarterly payments through the Colorado State welfare authorities.

Rutherford advised that there was a report on Mr Wilfred's file stating that he should be arrested in Canada for non-payment of support charges. However, because he was making payments and acting in good faith, she agreed to rescind that order.

28 June 2002

Mr Wilfred was issued a Work Permit valid to 28 June 2003.

9 September 2003

Mr Wilfred's Work Permit expired and he was unable to work in New Zealand. As a result, he no longer had an income and ceased making the child support payments he had negotiated with the Colorado authorities.

Since April 2002, Mr Wilfred had paid in excess of USD 200,000 in child support.

Mr Wilfred was financially supported by his wife.

19 October 2003

Mr Wilfred was issued with a Visitor Permit valid to 19 January 2004.

21 April 2004

Mr Wilfred applied for a Work Permit.

28 June 2004

Mr Wilfred's application for a Work Permit was declined because he did not fit policy. It was recommended to Mr Wilfred that he lodge an application under the Long Term Business Visa category or the Investor category which were more suited to his situation.

August 2004

Mr Wilfred attempted to renew his passport while in NZ but his application to renew his passport was declined, allegedly because of "hits" or alerts that were raised on his name.

Mr Wilfred owed over USD 1 million in maintenance and support which had accrued from 1990 to 2001 and this had led to the "hit". (Interview)

24 October 2004

Carolyn lodged an application for a Long Term Business Permit ("LTBP").

1 November 2004

Mr Wilfred's Visitor Permit expired. Mr Wilfred did not lodge a further permit application because he did not have a current passport and believed, on legal advice, that, without a current passport of some kind, he would not be eligible for any further permit. He was also advised that he had 40 days to lodge an appeal with the Removal Review Authority ("RRA") before he would become illegal in New Zealand and liable for removal.

18 November 2004

Mr Wilfred requested a copy of his police record from the US FBI.

10 December 2004

On advice from his Christchurch solicitor, Al Manco, Mr Wilfred appealed to the RRA. As he was within the 40 day statutory period, he had not been served with a removal notice.

1 March 2005

Mr Wilfred renounced his US citizenship upon advice from and accompanied by legal counsel. He did so in front of the US consul in Auckland as required by the US Department of State.

31 March 2005

Mr Wilfred received a copy of his FBI police record, which stated, inter alia, that:

- He was also known as Harmon C Wilfred.
- He was born in the Ivory Coast (although elsewhere in the document it states he was born in "KY" (Kentucky)).

- He was arrested on 5 April 2000 for the felonies of violation of custody orders and criminal extortion.
- He was arrested on 11 May 2000 for "non-support of parent".
- He was arrested on 26 May 2000 for the misdemeanour "Fugitive other jurisdiction/Arapahoe County".
- He was arrested on 30 May 2000 for failure to appear on a domestic violence charge.

Mr Wilfred's police record stated the information was last updated on 16 November 2004.

18 April 2005

Mr Wilfred's New Zealand representative, Mr Manco, signed a memorandum/affidavit stating that he had earlier telephoned the El Paso County DA's office, who informed him that issues concerning Mr Wilfred could not be resolved until he returned to Colorado, and that if he entered the US "he would be instantly detained and incarcerated until matters could be heard." Mr Manco's affidavit further stated that the DA did not consider the matter to be serious enough to initiate extradition proceedings in New Zealand. Mr Manco commented that "In effect, it would appear that Mr Wilfred is being discouraged from returning to deal with the matters at hand by a deliberately unfair and draconian legal system without due process of law."

16 June 2005

The US Department of State issued a document certifying Mr Wilfred's renunciation of nationality under section 349(A) of the Immigration and Nationality Act 1952.

7 July 2005

Mr Wilfred sought an adjustment of his child support payments.

27 July 2005

Colorado child support services advised Mr Wilfred his child support contributions could be reduced from USD 6,000 per quarter to USD 50 per month. The letter and legal document referred to Mr Wilfred's monthly income and the child support obligations as a percentage of that income. (Website section 30)

Mr Wilfred learnt from the Colorado authorities that because his ex-wives refused to cooperate with the Colorado child support authorities by providing information on their current marital and financial situations, Mr Wilfred should reduce his payments to the minimum of USD 50 per month. (Interview)

9 August 2005

The RRA declined Mr Wilfred's appeal against removal.

16 August 2005

Mr Wilfred appealed the RRA decision to the New Zealand High Court ("High Court"). He also asked the court to judicially review the RRA decision.

22 August 2005

Mr Wilfred signed legal documents authorising the reduction in child support payments. (Website section 30)

7 October 2005

Carolyn was issued a LTBP. Mr Wilfred was not included on her application because he was advised that without a passport, he could not apply for a permit.

19 October 2005

Anne Muzzipapa of the Colorado Child Support Services wrote to Mr Manco stating that her office was unable to conduct a review of the child support payments as Mr Wilfred had renounced his US citizenship. She noted that Mr Wilfred could petition the El Paso County courts directly for modification. (Website section 30)

Mr Wilfred believed this was a ruse to try and force him to return to Colorado where he would be arrested and that Suthers, who had by that stage become Colorado Attorney General, was still motivated to seek revenge against him because of the Witty/Pension Fund case. Mr Wilfred had been unable to get before a judge in the US because Suthers kept deflecting him with other issues.

11 November 2005

Mr Manco received an email from the "family support division" stating: "I have discussed this case extensively with our Deputy District Attorney...Ms Leone [the DA] has decided that we will not proceed with a modification review at this time." (Review and Reply 5 November 2007)

14 November 2005

Through his representative, Manco, Mr Wilfred wrote to Meghann Pence of the Colorado Child Support Enforcement Unit, complaining that the notice of 19 October 2005 made no sense and was contrary to the good faith progress made to date. Mr Wilfred requested further clarification of the meaning of the notice.

Mr Wilfred did not receive a reply.

22 August 2006

Justice Gendall of the High Court asked counsel for the Department of Labour ("DoL") to provide information on policy as to removing persons illegally in New Zealand and the destination to where they might be removed.

1 September 2006

Counsel for the DoL advised the High Court by way of memorandum that should Mr Wilfred be removed, there were several possible scenarios as to where he would be returned. Factors influencing such a decision were whether the DoL or the person funded the travel, whether Immigration New Zealand ("INZ") was satisfied the person had lawful right of entry to that country and whether the receiving country knew the circumstances of

the person being compulsorily removed. The US was considered the more likely destination as Mr Wilfred had a lawful right of entry there and it was closer. Counsel indicated INZ would consider removing Mr Wilfred to Canada provided Mr Wilfred paid the cost of travel, he had a lawful right to enter that country and the Canadian authorities were aware that he was being removed.

Upon receipt of this memorandum, Mr Wilfred's lawyer, Mr Whiteside of Wynn Williams and Co, advised he would lodge a memorandum advising that Mr Wilfred also feared removal to Canada given his treatment by the authorities there.

21 September 2006

Justice Gendall of the High Court dismissed Mr Wilfred's appeal against being removed from New Zealand and his application for judicial review.

25 October 2006

Mr Wilfred wrote to the Swiss ambassador in Wellington inquiring as to whether he would be able to reside in that country. Mr Wilfred stated that he was stateless and if he was returned to the US, due to the human rights abuses he would face, he would fear for his life. Mr Wilfred did not complete any official application forms, it was more a general inquiry.

November 2006

Suthers was elected Attorney General for Colorado.

28 November 2006

The Swiss Federal Office for Migration wrote to Al Manco informing him, *inter alia*, that if Mr Wilfred feared human rights abuses in the US he could lodge an application for refugee status in New Zealand. Furthermore, Switzerland would not consider him a stateless person under the Stateless Convention because he had voluntarily renounced his citizenship.

19 March 2007

Linda Saunders, a certified paralegal at Equity Solutions, Colorado, wrote and signed an affidavit on various discrepancies, inconsistencies and contradictions between the legal record of Mr Wilfred's cases and his FBI police record.

Saunders' affidavit stated that the failure to appear on a domestic violence charge was "an error" and that Mr Wilfred had never faced such a charge. The date for the failure to appear charge was 30 May 2000. When Saunders investigated the original charging document record, she found that the correct charge for that date was failure to appear on 8 August 1997. This charge was subsequently dismissed on 30 May 2000 because Mr Wilfred agreed to appear and answer questions regarding his financial status in civil court action number 89 DR 477 (Sandra Wilfred v Harmon Wilfred).

Saunders noted that the 'domestic violence' references at the top of the county court records were citations, not charges, and were not related to the actual charges which appeared in full later in the document. She

stated that: "A review of the two irrelevant citations explains how the Colorado Bureau of Investigations and the [FBI] received false information on 'domestic violence' with respect to Mr Wilfred."

Saunders stated: "The citations are NOT crimes - but their appearance on the Information/charging document as "Domestic violence" serves to create confusion and to provide police authorities with a pretext for arresting Mr Wilfred should he ever appear in the relative jurisdiction again."

Saunders also noted that regarding the alleged domestic violence citations, the first refers to sentencing after a conviction and the second to registration of convicted sexual abuse offenders. She stated that, according to the record, no such charges let alone convictions had taken place against Mr Wilfred.

Saunders stated that the only entity that could voluntarily correct the erroneous information was the El Paso County DA's office. She stated that requests to that office for a correction have not been fruitful "due to what Mr Wilfred describes as long standing animosity between himself and the El Paso County District Attorney's office."

Saunders observed that the only judgement Mr Wilfred suffered was a civil matter regarding unpaid child support.

Saunders noted that two of the outstanding charges against Mr Wilfred had expired due to the statute of limitations, and the Speedy Trial statute also precluded prosecution of another.

12 April 2007

Mr Wilfred lodged a petition and complaint to the United Nations Office of the High Commissioner for Human Rights (OHCHR).

17 April 2007

Mr Wilfred signed a privacy waiver allowing his attorney to obtain an updated copy of his police record from the US authorities.

11 May 2007

The Refugee Status Branch ("RSB") received Mr Wilfred's Confirmation of Claim to Refugee Status in New Zealand ("Confirmation of Claim"), dated 8 May 2007. Mr Wilfred had delayed lodging a refugee claim because he had been involved in other applications and wished to await their outcome.

Mr Wilfred also lodged a refugee claim because he had been told that the best he could hope for from the Minister of Immigration was a temporary work permit, which would not enable him to complete the travel his business required.

Mr Manco sent a letter to the FBI requesting Mr Wilfred's criminal record.

17 July 2007

Mr Wilfred was interviewed by a refugee status officer. Mr Wilfred's representative in the matter of his refugee claim, Guneet Chaudry, was not present at the interview. Mr Wilfred agreed to proceed without his representative. Mr Wilfred's support person, Mr Jim Gillanders, senior lecturer at Nga Mata Waata was present from 1.45 pm. Mr Gillanders agreed to keep all matters confidential.

Mr Wilfred confirmed that he was fit and well, and agreed to be interviewed.

Mr Wilfred speaks, reads and writes English, and was interviewed in English.

Mr Wilfred stated he was not in contact with his children and had been prevented from contacting them by the courts. Mr Wilfred was in almost daily contact with his mother and communicated by Internet telephone regularly with his brothers and sisters in the US. His mother was 87 years old, lived in Akron Ohio and would like to see him but was unable to travel.

Mr Wilfred stated that he had been contacted by email by someone claiming to be his adopted son Tyler Wilfred. They conversed for a week and Mr Wilfred invited him to New Zealand. Tyler then asked for money and Mr Wilfred asked for proof that he was who he said he was.

Mr Wilfred has been in communication with Tyler's birth mother who has told him that Tyler has not been with Sandra since 2000. Mr Wilfred was unsure whether Tyler had received any benefit from the support payments he had made and whether the US authorities were correctly keeping him informed with respect to this issue and what support payments he was legally required to make.

Mr Wilfred believed that he was legally stateless and that this was "irrevocable". He believed that he could not be returned to the US and was unwilling to do so.

It was put to Mr Wilfred that by deliberately renouncing his citizenship, there was a question as to whether this activated New Zealand's humanitarian obligations under the Refugee Convention, as there did not appear to be any discrimination involved. Mr Wilfred stated that it was a question of where New Zealand authorities would send him and how, and that he had renounced his citizenship because he did not want to be a US citizen anymore due to the poor treatment and injustice he had experienced.

It was put to Mr Wilfred that according to a US government website, deliberately renouncing one's US citizenship would not prevent that person being removed to the US should they be facing criminal charges there.

Mr Wilfred stated that he was still waiting for the updated police record from the US. He had sent authority for it to be released to his solicitors on 11 May 2007 and had not received a reply.

Mr Wilfred stated that Jenny Rutherford had advised him that the US had criminalised custody and child support issues and that if one did not appear for a custody hearing this was a criminal offence. Mr Wilfred stated that this was unusual among states. He stated that in his opinion the custody issues had either lapsed or been thrown out and that he was receiving a lot of attention for someone who had supposedly violated a custody order.

Mr Wilfred stated that he believed he had upset the Colorado DA and that was why he had been pursued.

Mr Wilfred stated that he was not a traditional Christian and did not proselytise or attend a church. However, he followed traditional biblical values. Mr Wilfred stated that he had never claimed that he was Jesus or that he could talk to God or vice versa. Mr Wilfred stated that he had "intuition" which he interpreted as God talking to him and that a psychiatrist had agreed this was normal.

18 July 2007

Mr Wilfred's interview continued.

Mr Wilfred submitted a digital recording of the previous day's interview, information on statelessness and some other documents.

It was put to Mr Wilfred that his multiple arrests were explicable given the charges he faced in Colorado. Mr Wilfred stated that the repeated arrests when he had been freed by the courts were unusual and that he suspected Suthers was responsible because he had whistle blown on him. It was put to Mr Wilfred that Suthers had become Attorney General in Colorado and as such, Mr Wilfred's actions did not appear to have impaired Suthers' career. Mr Wilfred responded that he did not become Attorney General until after the arrests had happened.

It was put to Mr Wilfred that he had only been held in "illegal" detention for four days. Mr Wilfred stated that it was irrelevant how long, it was the fact that his rights had been repeatedly violated in a number of jurisdictions.

Newspaper articles concerning the Todts, a couple who were involved in the Mitsubishi Note transaction, were shown to Mr Wilfred. One article discussed how Mr Todt had been involved in other unusual schemes, allegedly believed in aliens, and had eventually murdered his family and then killed himself.

Mr Wilfred expressed surprised at this news and stated that he believed the Mitsubishi Note was real, and had been covertly transacted by the CIA. He stated that no one was convicted at the SEC and that Perry and others were merely fined for working with a fraudulent instrument. Mr

Wilfred surmised that the CIA may be going to great lengths to discredit the whole Mitsubishi Note transaction and that was the source of the information about Todt. Mr Wilfred also stated that the SEC had "walked away" and did not lay any charges against him, yet he was also involved in the Mitsubishi Note deal. Mr Wilfred stated that he had not known the Todts and had not dealt with them directly – he had mainly dealt with Perry, her associate, Legget, and Austin.

Mr Wilfred stated that his business associate, Colin Finn, who sent Mr Wilfred the Mitsubishi Note and Pension Fund documents when he was in Canada, had died of liver failure in 2002. Mr Wilfred found this curious because he was not a hard drinker and was quite young, 54, when he died. Freytag had commented: "Another witness to the Mitsubishi deal has gone".

Mr Wilfred stated that he monitored who was accessing his website and that the internet provider sources in Washington indicated that the CIA, Pentagon, Intelligence and State and Justice Departments were all accessing it up to 15 times a day. He stated this was possibly because of the law suit he had filed at the OHCHR. Mr Wilfred stated that he had never had a level playing field on which to confront the US authorities regarding his complaints and desire for fair treatment.

Mr Wilfred stated that he had been in New Zealand legally since 2001. The child support charges had been dropped following the extradition and other charges had expired. He stated that the US knew where he was and had not attempted to extradite him.

Mr Wilfred stated that if he was not accepted as a refugee, or allowed to stay in New Zealand on other grounds, he would not go back to the US. He would go anywhere, but without a passport it would be difficult to deport him. Mr Wilfred stated that he had contributed to New Zealand and was a good person. Mr Wilfred stated that he was not hiding and "wanted his day in court" and his good reputation restored.

Mr Wilfred stated that since he left Canada, the extradition process had been simplified and was more like being extradited from one US state to another.

It was put to Mr Wilfred that New Zealand did not recognise voluntary statelessness as engaging any humanitarian obligations on its part. It was also put to Mr Wilfred that New Zealand jurisprudence indicated that if he was stateless and unable to return to the US for that reason, he was outside the Refugee Convention as he could not be returned to the country where he feared being persecuted. Mr Wilfred stated that this was an interesting "Catch-22" type of situation.

It was put to Mr Wilfred that according to US law, he could be returned there if he was wanted to face criminal charges. Mr Wilfred stated that in his opinion, and in the opinion of the UNHCR, he was in fact stateless.

It was put to Mr Wilfred that he may be able to access protection in Canada, as he had spent some time there and was married to a Canadian citizen. Mr Wilfred stated that he did not trust the Canadian authorities who had cooperated with the US authorities in violating his human rights and would fear being extradited to the US. Mr Wilfred stated that Manco had queried the Canadian authorities about that and had received the response that Mr Wilfred would have to apply for residence from within Canada. Mr Wilfred stated that he would be willing to make an application for residence in Canada if requested to do so, to establish whether he was eligible for residence.

Mr Wilfred stated that the worst sentence he was facing on all charges in the US would have been, at most, one or two years. Mr Wilfred stated that when Mr Manco spoke to the DA, he indicated that Mr Wilfred would be arrested, but that there may be a plea bargain. However, Mr Wilfred would have to return to the US to resolve those issues. Mr Wilfred stated that he could not trust the Colorado or US authorities and would not risk returning.

6 September 2007

The RSB sent a report of Mr Wilfred's interview ("the interview report") to Mr Wilfred and his representative.

7 November 2007

The RSB received Mr Wilfred's partial response to the interview report, dated 5 November 2007 ("Review and Reply, 5 November 2007").

30 November 2007

Mr Wilfred made an application for New Zealand citizenship to the Minister of Internal Affairs.

3 December 2007

The RSB received Mr Wilfred's further response to the interview report ("Review and Reply, Final Issues, 30 November 2007").

9 January 2007

The Refugee Status Branch received further information from Mr Wilfred relating to his Canadian extradition case.

DETERMINATION OF CLAIM

CREDIBILITY

In accordance with Part Two B of the Office of the United Nations High Commissioner for Refugees ("UNHCR") *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*² ("the Handbook"), an assessment must first be made of Mr Wilfred's credibility in order to establish the facts on which to make a determination.

Prior to interview in July 2007, Mr Wilfred provided detailed information in support of his claim to refugee status in New Zealand. As noted at the introduction to the chronology, he has a publicly accessible website <http://www.luminadiem.com/lumina-diem/> which contains many of the documents cited in the above chronology. He has provided other documents where requested, and if available. His evidence in support of his RRA and High Court applications was available on his immigration file when received at the RSB.

At interview, Mr Wilfred presented as sincere and genuine in his intentions. He was detailed, open and spontaneous in his responses. He stated that he appreciated the opportunity to put his case in full and to be heard. He did not attempt to evade or obfuscate on potentially prejudicial issues. It was evident that he felt passionately about his case and believed strongly that he had been mistreated and denied an opportunity for justice.

Mr Wilfred was supported at interview by Jim Mr Gillanders, a senior lecturer at a local tertiary institute, who expressed his personal opinion that Mr Wilfred had a strong case and that there were issues in his claim that required serious consideration.

A number of potentially prejudicial issues arose during Mr Wilfred's claim, which were put to him at interview and in the interview report. Mr Wilfred responded at interview and in his two Review and Reply statements. Changes to the chronology contained in the interview report have been made in this decision to reflect those responses. Other submissions are on credibility dealt with below under the following headings:

1. The Mitsubishi Note
2. Suthers and the Colorado DA's office
3. Documents presented
4. Findings

The Mitsubishi Note

The refugee status determination process has a low standard of proof (a real chance) and does not require that claimants "prove" their case

² Re-edited (January 1992) Geneva: UNHCR.

conclusively. As the UNHCR Handbook states: "cases in which an applicant can provide evidence of all his statements will be the exception, rather than the rule".³ The Handbook states that the task of evaluating the relevant facts "is shared between the applicant and the examiner", but warns that "there may be statements which are not susceptible of proof."

This is certainly the case with some aspects of Mr Wilfred's claim, in particular his allegations regarding the Mitsubishi Note and his fear of retribution from covert members of the CIA. Mr Wilfred alleges an international financial conspiracy involving a Japanese bank, a Latin American government and the CIA. Although some of the details seem far-fetched, the Iran-Contra affair of the late 1980s establishes that such things can and have occurred, and Mr Wilfred's allegations were at least possible.⁴

Nevertheless, it is not possible to accept Mr Wilfred's claims with respect to the Mitsubishi Note without making some observations and reservations. First, the record from the Securities and Exchange Commission inquiry and resulting court case was that the Mitsubishi Note was an elaborate fraud and its architects fined for attempting to use a fraudulent instrument. Perry was fined USD 25,000 and "Abijah" USD 75,000 for their roles.⁵ One of the main players, Daniel Todt, had a history of being "overly credulous" and a tendency to become involved in conspiracy theories involving secret Chinese gold and aliens.⁶ The court ordered that Todt and his wife pay civil penalties of USD 200,000 and USD 100,000 respectively for their role in attempting to transact the Mitsubishi Note.⁷

Further references to the Mitsubishi Note were not located in media or other sources, and 10 years later, no subsequent revelations, confessions or exposures of the Mitsubishi Note which might suggest a kernel of truth have been found.

Mr Wilfred apparently believes the Mitsubishi Note was genuine. Another possibility is that Mr Wilfred himself was, along with others, taken in by a scam. The key point, for the purposes of this refugee claim decision, is that although the balance of the evidence tends to fall on the side of the fraud, it is not possible to make a finding one way or the other.

However, an assessment of Mr Wilfred's well-founded fear with respect to the Mitsubishi Note can be made, based, effectively on the alleged

³ Office of the UN High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, 1992.

⁴ See for example National Security Archive "The Iran-Contra Affair 20 Years on", 24 November 2006, <http://www.qwu.edu/~nsarchiv/NSAEBB/NSAEBB210/index.htm> (Accessed 14 January 2008).

⁵ See for example: Litigation release No. 16184, Securities and Exchange Commission, (10 June 1999) <http://www.sec.gov/litigation/litreleases/lr16184.htm> (Accessed 11 July 2007)

⁶ "Urban myth' exposed by trial", *BBC News* (18 September 2003), <<http://news.bbc.co.uk>> (Accessed 11 July 2007) and 'Case history: the man who killed his family', (16 June 2001) Plain Dealer (Cleveland, Ohio) [Nexis]

⁷ Litigation release No. 16467, Securities and Exchange Commission, (9 March 2000) <http://www.sec.gov/litigation/litreleases/lr16467.htm> (Accessed 11 July 2007)

repercussions from the CIA on Mr Wilfred since he ceased being involved, approximately 10 years ago.

Suthers and the Colorado DA's office

A core element of Mr Wilfred's claim is the actions of Suthers and the Colorado DA's office in prosecuting him on various charges. Mr Wilfred alleges that Suthers is seeking revenge against him for the exposure of the Pension Fund embezzlement and eventual imprisonment of Suthers' friend, Witty. In addition, public allegations Mr Wilfred made against the DA's office during the Pension Fund scandal embarrassed Suthers and led to his losing an election for state attorney general.

The broad details of Mr Wilfred's description of the Pension Fund events are supported by country information.⁸ However, Suthers' motivations with respect to Mr Wilfred are not apparent in the evidence submitted or country information located. It is clear from Suthers' letter of 14 August 1995 that he was upset at accusations Mr Wilfred had made about him in the media, and challenged Mr Wilfred to "bring forward his evidence for judicial scrutiny". Although an "icy tone" can be detected, there is nothing surprising or indeed improper in this. Mr Wilfred, by his own admission, had publicly accused the DA of cronyism, and un-professionalism in investigating Witty and the Pension Fund. Suthers' response is predictable and unremarkable.

It was put to Mr Wilfred in the interview report that although he alleges his role in exposing Witty led to Suthers' seeking revenge against him, it appeared from media records of the Pension Fund investigation and trial that accusations against Witty predated Mr Wilfred's interview with the investigator⁹ and that he was not therefore the catalyst for the investigation of Witty. Furthermore, Mr Wilfred's evidence did not form part of the eventual prosecution case at Witty's trial. As such, Mr Wilfred's role appeared peripheral and the accusation that Suthers wished to exact revenge on Mr Wilfred because he had caused the downfall of his friend Witty may not be made out.

In response (Review and Reply, 5 November 2007), Mr Wilfred stated that following Witty's resignation as administrator, he continued to act as a consultant to the Pension Fund, and, along with others who were not eventually prosecuted, he also continued to embezzle funds which were then laundered through Paragon Properties. Mr Wilfred observed that the DA did not call on him to give evidence as they wished to suppress the information he had to protect others involved in the embezzlement. Mr Wilfred observed that the DA's office had covered up Witty's role for 18 months before finally charging him. He also noted that there was no trial and that Witty had pled guilty and plea bargained, thus avoiding a public

⁸ Preston, D 'Colorado County alleges pension fund misuse' (8 May 1996) The Bond Buyer [NEXIS]

⁹Retirement plan embezzler gets freedom early' (11 January 2005) Colorado Springs Gazette, <http://www.gazette.com/common/printer/view.php?db=colgazette&id=7283> (Accessed 6 August 2007) and Preston, D 'Colorado County alleges pension fund misuse' (8 May 1996) The Bond Buyer [NEXIS]

trial where other facts and co-conspirators may have been exposed. Mr Wilfred cited in support an article in the Colorado Springs Gazette of 13 June 2002 which states that Witty did continue to act as consultant after 1994.¹⁰ It is silent of the other matters alleged by Mr Wilfred although it does record that two other Pension Fund board members were convicted of misdemeanour charges and fined USD 1000 each in relation to loans they had accepted from Witty.

No country information has been found or submitted that supports Mr Wilfred's allegations that Suthers was protecting Witty, or that the DA was remiss, unprofessional or biased in its investigation of Witty and the Pension Fund. In fact, country information indicates that the Colorado DA did initially head the investigation of Witty up to trial, whereupon he was replaced because, as a beneficiary of the fund, there may have been a perception of bias.¹¹ Thus, the Colorado DA was removed from responsibility for prosecuting the case and his alleged involvement in any cover up plea bargain is not clear. The rather severe 18 year prison term Witty received also tends to argue against any secret or shady backroom deal with respect to the sentencing.

The evidence with respect to Suthers' vendetta is essentially an inference, the proof of which Mr Wilfred cites: the DA's actions pursuing and extraditing him from Canada, particularly the false extortion charge; the collusion of Sandra and Dearnna, allegedly at the DA's behest; Mr Wilfred's mistreatment by Colorado authorities following his extradition; Mr Wilfred's inaccurate and potentially harmful FBI record; and the DA's alleged interference in Mr Wilfred's attempts to have his maintenance payments reduced while in New Zealand.

The above factors, taken cumulatively, are grounds for at least considering there may be an element of vendetta or malicious intent on behalf of the DA, and it is accepted that Mr Wilfred believes this to be the case. Furthermore, the refugee status determination process does not require that a person prove their claim – a real chance is the appropriate standard.¹² However, there are other possible (and competing) explanations for the actions of Suthers and the Colorado authorities and for the outcomes of Mr Wilfred's various court cases, or facts that argue against vindictive or persecutory motivations being imputed to the DA.

For example, Mr Wilfred's first "run in" with and, he alleges, unjust decision from the Colorado courts occurred during his separation from Sandra, long before he became involved in the Pension Fund and came to Suthers' attention. Thus, the inference that Suthers unduly interfered in the court's process cannot be made in respect of the Sandra decision.

¹⁰ Vogrin B, "Embezzler denied Springs release" (13 June 2002) http://findarticles.com/p/articles/mi_qn4191/is_20020613/ai_n10003916 (Accessed 15 January 2008)

¹¹ 'Western Empire: Judge bars prosecutors' (22 June 1996), *The Denver Post*, [NEXIS] and 'Western Empire: Denver Das get pension case' (29 June 1996) *The Denver Post*, [NEXIS]. This is also apparent from the court decision of the Colorado Court of Appeals 26 October 2000 (99CA0360) submitted by Mr Wilfred.

¹² See for example, *Refugee Appeal No. 70074* (19 September 1996).

From the DA's perspective, when considering whether to extradite Mr Wilfred, the fact that Mr Wilfred had defaulted on his court ordered maintenance payments in his first marriage, a criminal offence, and then did not obey a subsequent court order to return his children to Colorado, combined to give him a higher profile. Furthermore, a *prima facie* case could be made that Freytag's letter to Dearn of 22 November 1997 was extortionate as it implied she would not get access to her children unless she assisted in having warrants for Mr Wilfred's arrest withdrawn, in both her and Sandra's cases. These were serious issues with which the DA was legitimately concerned. It was predictable that unresolved legal and financial issues with respect to his separation from Sandra would arise during the Dearn separation, and no improper collusion by the DA need be inferred. With respect to Mr Wilfred's inaccurate FBI record, in his Review and Reply, 5 November 2007, Mr Wilfred stated that he had not actually requested a correction to that record.

In 1995, Mr Wilfred made accusations against Suthers and the DA's office, and continues to maintain those allegations today. There is nothing remarkable in thereby inferring some negative personal feelings against him by these officials. However, this does not necessarily mean they have acted unprofessionally, or *ultra vires*. In any case, a key issue is not whether Suthers has a personal vendetta against Mr Wilfred, but whether Mr Wilfred is able to get due process and justice under the Colorado and US justice systems, an issue which will be considered later.

Documents presented

Mr Wilfred has presented or made available through his website numerous documents in support of his claim. Much of this material are letters, affidavits, submissions and the like made by Mr Wilfred or his supporters and representatives, outlining Mr Wilfred's case. The onus is on Mr Wilfred to make out his case¹³, and he has done so very fully in the above documents.

Nevertheless, many of the documents are one-sided, which must be kept in mind when the totality of the evidence is considered and an objective assessment made of Mr Wilfred's well-founded fear.¹⁴

Findings

The following conclusions are drawn with respect to Mr Wilfred's credibility:

- Mr Wilfred is a sincere and genuine witness. He has presented a range of documents which verify many of the details of his account, such as the court cases and their outcomes, which are accepted as the basis of his claim.

¹³ *Refugee Appeal No. 72668/01* (5 April 2002) at [108].

¹⁴ *Refugee Appeal No. 72668* (5 April 2002) at [133].

- Mr Wilfred was involved in the Mitsubishi Note deal but no conclusions are drawn with respect to whether the Note itself was genuine.
- It is accepted that Suthers and the DA's office may have some personal feelings of animosity against Mr Wilfred, as would be expected in the circumstances, but this is not the sole or determining factor in their pursuit of prosecutions against Mr Wilfred.
- Some of the evidence presented by Mr Wilfred in support of his claim represents Mr Wilfred's perspective on the actions or motivations of, for example, the US courts and the DA's office. As such, this is subjective evidence, of which the objective element, namely Mr Wilfred's well-founded fear, must be determined.

IS THERE A WELL-FOUNDED FEAR OF BEING PERSECUTED?

Article 1A(2) of the Convention refers to a well-founded fear, thereby establishing an objective test for determining refugee status. In *Refugee Appeal No. 71427/99* (16 August 2000) the Authority held that in establishing whether the particular facts of a claim amount to persecution, the following formula must be applied:

Persecution = Serious Harm + The Failure of State Protection.¹⁵

In terms of *Refugee Appeal No. 70074/96 Re ELLM* (17 September 1996), the criteria which will be used in this determination are as follows:

Objectively, on the facts as found, is there a real chance of the refugee claimant being persecuted if returned to the country of nationality?

If the answer is Yes, is there a Convention reason for that persecution?

If the answers to the first two questions are in the affirmative, *Refugee Appeal No. 71684/99* (29 October 1999) at [73] requires a further issue be addressed:

Can the refugee claimant genuinely access domestic protection which is meaningful?

Mr Wilfred's claim

Mr Wilfred fears returning to the US. If he were to return to the US, he fears that he would be incarcerated and denied his legal and human rights. He fears retribution from the CIA for his role and exposure of the Mitsubishi Note. He fears mistreatment by the Colorado DA and that he will not be able to have a fair hearing in the state of Colorado. He fears mistreatment and other consequences flowing on from his inaccurate police/FBI record.

¹⁵ *Ibid* at [67].

The assessment of Mr Wilfred's claim will be considered with regard to the following:

- a) Nationality
- b) Mitsubishi Note
- c) Suthers and the Colorado DA's office
- d) State protection

A conclusion as to the well-foundedness of Mr Wilfred's claim will be made at the end of this section.

Nationality

Mr Wilfred has irrevocably renounced his US citizenship and obtained confirmation of the same from the responsible US authorities. His US passport was seized by the US authorities and he currently holds no passport. Although he may be eligible for Canadian residence, he states that he also fears being returned to that country, from whence he fears being summarily returned to the US. He has also applied for New Zealand citizenship. Nevertheless, at this point it is apparent that he is, in the *de jure* sense, stateless.

Mr Wilfred has clearly stated that he does not wish to return to the US and would not voluntarily do so. He stated that if he was not able to stay in New Zealand, he would rather go to another country but this would be difficult without a passport.

In *Refugee Appeal No. 72635* (6 September 2002) at [149] the Authority found that a person who cannot be returned to their country of nationality or country of former habitual residence cannot be found a refugee because if a person is unable to enter a country, she or he cannot face a well-founded fear in that country.

Issues with respect to Mr Wilfred's nationality are thus:

1. Whether he can return or be returned to the US, and if not,
2. Whether his *de jure* statelessness is a ground upon which a refugee claim could be founded.

Information sourced from the US Department of State website indicated that a renunciation of US citizenship may not prevent a person being deported to the US in some non-citizen status, nor would it pose a barrier to possible prosecution for crimes which they may have committed, or allow them to escape repayment of financial obligations previously incurred in the US.¹⁶ In the interview report it was put to Mr Wilfred that this information suggested that even if he was *de jure* stateless, he could in effect be returned to the US with their knowledge and consent.

¹⁶ US Department of State [n.d.] "Renunciation of US citizenship" http://travel.state.gov/law/citizenship/citizenship_776.html (Accessed 11 July 2007).

In his Review and Reply 30 November 2007 Mr Wilfred stated that the US had not requested his extradition as there were no legitimate charges on record that had not been dismissed or had expired due to non-action and or statute of limitation. He also stated that the information from the Department of State website concerning deportation was not US law and according to the UNHCR did not comply with international human rights law on such practices. Mr Wilfred did not provide any specific information as to US law or how his human rights would be breached in such a situation.

Mr Wilfred is correct in stating that New Zealand has not received an extradition request from the US, and his own evidence is that the Colorado DA indicated his case did not warrant such action. Nevertheless, extradition by another state is not required for Mr Wilfred to be removed from New Zealand. Given that Mr Wilfred does not hold a passport, it would seem likely that he could only be removed to the US, which matter was clarified during his High Court application.

The Saunders' affidavit states that the charges against Mr Wilfred should have expired due to the statute of limitations, but she also indicates that the charges are still current. This is supported by the statement of the Colorado DA's office to Mr Manco – that Mr Wilfred faces charges and would be arrested upon return to any US port. It is also clear from Mr Wilfred's evidence that he has substantial financial obligations in the US, namely his outstanding maintenance and support payments.

As such, the first issue above is answered in the affirmative, and the second does not arise. Mr Wilfred can be returned to the US, and thus he is eligible to have his claim for refugee status considered.

Mitsubishi Note

Mr Wilfred alleges that he risks physical harm from the CIA as retribution for his actions in exposing the Mitsubishi Note transaction, or the potentially damaging information he has collected about the CIA's role and purpose in the Mitsubishi Note deal.

At interview and in the interview report, it was put to Mr Wilfred that country information suggested the Mitsubishi Note deal was a scam and that one of its architects, Daniel Todt, was mentally unstable. It was further put to him that even if it were true, his prospective risk appeared to have lessened considerably as the CIA was, he alleges, able to complete the transaction and the events were now distant in time. There was no indication that the CIA still considered Mr Wilfred a threat.

In his response (Review and Reply, 5 November 2007) Mr Wilfred stated that the proposition that the risk had abated was naïve. He noted that the first note was only one of 36, and that the successful transaction of the first precipitated the transaction of a further 10 notes that had been assigned to the CIA, at the rate of one per year. Mr Wilfred stated that he had discovered that the proceeds would be used to fund covert CIA operations. Mr Wilfred stated that upon discovery of this information, he

began assembling documents with the intention of reporting it to the US Justice Department. Mr Wilfred stated that as long as the information he had collected could be used to launch a full investigation to expose the CIA and others, he continued to be at risk.

The issue of whether the Mitsubishi Note was real has been discussed above and it is noted that substantial evidence points to it being a fraud. Nevertheless, emails submitted by Mr Wilfred indicate that those involved in the deal, whether fraudulent or not, threatened Mr Wilfred if he revealed further details, and also were very displeased with his actions. For the purposes of this decision, the benefit of the doubt will be extended to Mr Wilfred that one of those people may have had CIA contacts, or that the CIA was somehow involved.

The information potentially damaging to the CIA that Mr Wilfred alleges he holds has not been provided to the RSB. Allegations about the CIA's involvement in the Mitsubishi Note are available on Mr Wilfred's website. He revealed details of the Mitsubishi Note at the time of his bail hearing when he was incarcerated in Canada. Mr Wilfred was also interviewed by the Securities and Exchange Commission in connection with his role in the Mitsubishi Note transaction. At that time, Mr Wilfred received the threats from people involved in the Mitsubishi Note to not release any further details of the transaction.

The Mitsubishi Note events occurred nearly 10 years ago. Mr Wilfred's allegations about the CIA and the Mitsubishi Note are now freely available to anyone who has access to the Internet. Nevertheless, there is no evidence that the CIA currently has any interest in Mr Wilfred or that his allegations about the Mitsubishi Note have led to any repercussions from that organisation. His allegations have not gained any traction among media or others to whom they may be of interest, and it would seem that they are largely dismissed.

Mr Wilfred's suggestion that Todt's death, and that of another Mitsubishi Note player, Colin Finn, were suspicious and may have been engineered by the CIA is considered speculative.

Whether the Mitsubishi Note was true or not, it is not possible to find that there is a future risk of serious harm to him for reasons of his allegations that the CIA, or a person connected to that organisation, seek revenge against him for his role in revealing the details of the deal or because he holds potentially damaging information.

STATE PROTECTION

According to New Zealand jurisprudence on refugees, as formulated in the decisions of the Authority, being persecuted requires the following:

Persecution = serious harm + a failure of state protection¹⁷

¹⁷ *Refugee Appeal No. 71427* (16 August 2000) at [67].

With respect to state protection in the US, in *Refugee Appeal No. 71759* (31 March 2000) the Authority commented:

It is a well-established principle of refugee law that there is a presumption of state protection. See *Canada (Attorney General) v Ward* (1993) 2 SCR 689. If a claimant is unable to rebut that presumption by providing clear and convincing evidence of the state's inability or unwillingness to protect, then the claim must fail as nations are presumed capable of protecting their citizens. In the New Zealand context, see *Refugee Appeal No. 523/92 Re RS* (17 March 1995) and see also *Refugee Appeal No 70074/96 Re ELLM* (17 September 1996), where the Authority was required to consider a claim brought by a citizen of the United States and held, at p.10:

"The United States of America is an open and democratic society, possessing an efficient and multi-layered system of law enforcement, both at state and federal level. It would be incongruous, to say the least, for New Zealand to accept that citizens of the United States are able to satisfy the criteria of the refugee definition. There is every reason, therefore, to require of the appellant that she provide "clear and convincing confirmation" of the inability of the United States to protect her from the Sendero Luminoso."

After citing with approval the decision of the *Supreme Court of Canada in Canada (Attorney General) v Ward* (1993) 2 SCR 689, the Authority concluded in *Refugee Appeal No 70074/96 Re ELLM* (17 September 1996) at p.12:

The short point is that where a refugee claimant comes from an open democratic society with a developed legal system and which makes serious efforts to protect its citizens from harm, the presumption of state protection as formulated in Ward has particular application. Unless the refugee claimant is in possession of evidence establishing clear and convincing confirmation of such a state's inability to protect **the claimant**, the claim should fail. It could even be said that in the absence of such evidence, the claim is manifestly unfounded or clearly abusive. There is every justification for expediting such claims and for confining the hearing to an initial determination as to whether clear and convincing evidence of the kind required by Ward is present.

At interview Mr Wilfred was assured that a refugee status officer was not bound by the decisions of the RRA and the High Court and was required to make his or her own decision on whether a person was a refugee, even if, as was the case with Mr Wilfred, he had failed in other immigration applications in related jurisdictions.

Nevertheless, it was put to Mr Wilfred at interview and in the interview report, the refugee status officer may have regard for the findings of those bodies on issues overlapping with those considered under the Refugee Convention. In particular it was put to Mr Wilfred in the interview report that at paragraph 82 of its decision, the High Court found:

The [RRA] acknowledged the appellant's statement that he feared risk of arrest if returned to the [US] and that the law enforcement authorities

there had mistreated him in the past and were likely to do so in the future. However, the [RRA] observed correctly that the appellant, if unlawfully treated, had appropriate remedies in that country. It was acknowledged in this Court that no criticism was or could be made about the US justice system.

In short, the High Court upheld the RRA's finding that Mr Wilfred's human and legal rights could be adequately protected in the US, whose justice system was capable of providing relief for Mr Wilfred should that be appropriate.

It was therefore put to Mr Wilfred at interview and in the interview report that the above Authority decisions indicated that state protection in the US was of a high standard and that it was necessary for Mr Wilfred to convincingly rebut this presumption.

In response, (Review and Reply, Final Issues, 30 November 2007) Mr Wilfred stated:

As to the presumption of state protection, "If a claimant is unable to rebut that presumption by providing clear and convincing evidence of the state's inability or unwillingness to protect, then the claim must fail.." This case goes on to provide a US example. My case is not one of "inability", as the US does have the legal infrastructure to protect and indeed to redress any or all violations of civil and human rights. This is a case of unwillingness, to provide such redress by default to the extent of political retribution and persecution as evidenced by the prima facie case presented as to the documented multiple human and civil rights violations committed against me during the course of my efforts to cooperate with and depend on the Colorado and US law enforcement and justice systems as well as the justice system in Canada in complicity with the US. (See website - www.luminadiem.com). The capability to adequately protect one's human rights does not automatically presume the willingness to put such protection into action; and political corruption and persecution can, and in this case has generated the result of at least unwillingness and at most, criminal intent on the part of those officials involved. In short, my refugee claim is an exception that rebuts the presumption.

Mr Wilfred therefore claims that the US justice system is capable of protecting his human rights, but that it is unwilling to do so, as evidenced by his case as contained on his website.

In assessing the actions of the US justice system, as represented by the Colorado courts, a number of issues arise, which both support and counter Mr Wilfred's submission.

In support, it can be accepted that he perceived the financial settlement the court ordered in his separation from Sandra was unjust, and that his attempts to get a rehearing or a review of the decision were ultimately to no avail. It is also accepted that in matters of family law, the state courts enjoy a degree of final authority not matched in the criminal jurisdiction. There are limited rights of appeal, and the federal courts are loath to

intervene. For these and other reasons, the potential for fathers to receive perhaps unfair decisions in these jurisdictions is therefore increased¹⁸

With respect to his separation from Dearnna, Mr Wilfred has presented strong evidence in the form of affidavits from witnesses that Dearnna was abusive and having difficulties parenting their children. In the circumstances, Mr Wilfred's decision to take them into his sole custody can be interpreted as a genuine effort to protect them.

It can also be accepted that his imprisonments in Colorado following his extradition were distressing and that some of the charges laid against him were illegal, in the sense that they violated the Rule of Speciality.

There is a prima facie case that the criminal charges appearing on his FBI record are wrong and potentially prejudicial.

Against Mr Wilfred's submission on the US justice system, the following observations can be made. In his Sandra divorce, although severe, there is no apparent breach of the law and the court appeared to act within its powers. The court was not made aware of the arrangement Mr Wilfred stated he later came to with Sandra over the child care centre, and thus no failure of justice can be inferred from its continuing to require he make maintenance payments as ordered.

In the Review and Reply, 5 November 2007 Mr Wilfred acknowledged that Dearnna had rights with respect to her children and stated that at the time he was willing to go through the legal process, but his first concern was for his children. However, it is incontrovertible that he unilaterally took them into his sole care and by removing them to Canada, denied Dearnna access to them. He did not attend the first custody hearing. In the court transcript, his attorney, Wheelock, stated that Mr Wilfred was aware the hearing had been scheduled and had told one of his witnesses that he would be there. Mr Wilfred instead was on his way to Canada with his children – an option which ultimately led to the loss of his children and his own incarceration. There is no intention to apportion blame, but simply to note that the court, quite rationally, noted that there was a possible child snatch situation, and ordered that the children be returned and that all parties, including Mr Wilfred, appear in person so that custody could be appropriately and legally determined. When Mr Wilfred did not appear, at the final orders hearing, his opportunity to put his case was lost.

As the High Court noted, these issues cannot be resolved in New Zealand, and should Mr Wilfred wish to resolve them, he must do so in the US. It is acknowledged that on return to the US he would be arrested and incarcerated pending judicial consideration of outstanding issues. However, the Colorado courts protected Mr Wilfred's legal rights with respect to the Law of Speciality and ended his incarcerations on invalid charges when he was returned there in 1999. There is no reason to

¹⁸ See for example the comments of Dr Stephen Baskerville of the Howard University cited at p 21 and 22 of Mr Wilfred's Review and Reply, 5 November 2007 (www.eifi.org/Cts/Cts-11.htm).

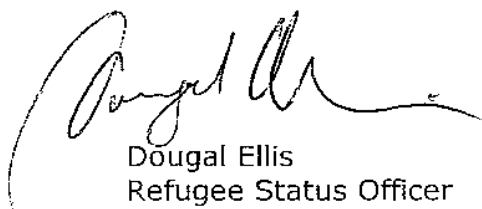
suggest that the courts would not similarly uphold his legal rights should he again be incarcerated upon future return. He would continue to have access to legal counsel, and appeal rights in an open judicial system.

As such, the evidence available does not constitute clear and convincing proof that the US justice system is unwilling or incapable of protecting Mr Wilfred. The required level of proof that he would face breaches of his fundamental human rights and cannot obtain a fair resolution in the US has not been met.

For all the reasons set out above it is considered that there is not a real chance of Mr Wilfred being persecuted if he returns to the US now. His fear of being persecuted is not therefore considered to be well-founded.

DECISION

For these reasons Mr Harmon Lynn Wilfred is not recognised as a refugee within the meaning of the Convention. Refugee status is declined.



Dougal Ellis
Refugee Status Officer
Refugee Status Branch



Refugee Status Officer
Quality Assurance Programme
Refugee Status Branch

Appendix 1.**DOCUMENTS**

As noted above, Mr Wilfred has tendered a number of documents and other materials in support of his claim. Many of those documents are available on his website and are not listed here. Documents which have been submitted particularly for the Refugee Status Branch's refugee status determination process are:

- a) Confirmation of Claim, dated 8 May 2007.
- b) Compact disc of Wilfred vs USA, UN OHCHR Petition and Complaint & Exhibits.
- c) Two compact discs containing digital recordings of the two days of interview on 17 & 18 July 2007.
- d) Privacy waiver of Harmon Wilfred in favour of the US government and judicial authorities dated 18 July 2007.
- e) The People v. Michael Witty, decision of the Colorado Court of Appeals No. 99CA0360, (26 October 2000).
- f) Various correspondence between the Refugee Status Branch and various US and Canadian courts re obtaining records of Mr Wilfred's court cases.
- g) Various correspondence between the Refugee Status Branch and the Colorado child support services.
- h) Various correspondence between Refugee Status Branch and Mr Wilfred.
- i) Review and Reply, dated 5 November 2007.
- j) Review and Reply, Final Issues dated 30 November 2007.
- k) Documents relating to Mr Wilfred's appeal in Ontario against extradition, submitted 9 January 2008.