

## 278. INFORMAL MEANS

Aside from the formal methods (e.g., letters rogatory, MLATs, and executive agreements) described above, there are a variety of other possible methods of obtaining assistance in particular cases in certain countries. Bear in mind that these methods, though certainly useful at the investigative stage, may not provide evidence in a form that would be admissible in a criminal trial. These methods include:

- A. Persuading the authorities in the other country to open an investigation whereby the needed evidence is obtained by their authorities and then shared with us. CAUTION: evidence gathered by foreign officials in a manner that "shock[s] the judicial conscience" may be excluded at trial. See, e.g., *United States v. Behety*, 32 F.3d 503 (11th Cir. 1994), *cert. denied*, 115 S. Ct. 2568 (1995). Additionally, if American law enforcement officials substantially participated in the search, or if the foreign officials conducting the search were acting as agents for the American officials, the search may be deemed a joint venture and its fruits may be excluded unless the search was "reasonable" under the Fourth Amendment. See *United States v. Barona*, 56 F.3d 1087 (9th Cir. 1995), *cert. denied*, 116 S. Ct. 813 (1996); *United States v. Behety*, *supra*; *United States v. LaChappelle*, 869 F.2d 488 (9th Cir. 1989).
- B. Making requests through diplomatic channels for documents (e.g., hotel records) that may be considered public records in the requested country and that the foreign authorities will release to us if officially requested.
- C. Taking depositions of voluntary witnesses at United States embassies and consulates. See this [Manual at 285](#).
- D. Making treaty-type requests that, even though no treaty is in force, the authorities in the requested country have indicated they will accept and execute. In some countries, (e.g., Germany, Japan) domestic law governs the acceptance of such requests; in others, custom or precedent governs.
- E. Making informal police-to-police requests (often accomplished through United States law enforcement agents stationed at our embassies abroad).
- F. Making requests through Interpol for evidence (or more often for information) that can be obtained by foreign police without an official request (e.g., current location or photo of an individual).

[cited in [Criminal Resource Manual 274](#)]

‹ [277. Executive Agreements and Memoranda of Understanding on Mutual Assistance in Criminal Matters](#)

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[279. Subpoenas](#) ›