Evolving Extradition

Extradition Defense in the 21st Century

Criminal defense attorneys will discover that extradition law issues have an ever-increasing relevance to their practice. More frequently, foreign nationals who have criminal charges pending abroad are found and arrested in the United States for purposes of extradition.

A magistrate judge handling an international extradition case has a great deal of discretion in the way in which an extradition hearing is conducted. This is partially due to the lack of guidance in the statutes, as well as the fact that there is no direct appellate review of the magistrate judge's decision. Once the magistrate court has certified a defendant's case for extradition, if the defendant seeks to prevent extradition, he must request both a stay of the magistrate judge's order and habeas corpus relief.

Because there is no direct appellate review and the issue of admissible evidence is so ill-defined, a great deal may depend on the magistrate judge's attitude toward the defendant or the extradition request. In order to prevail, practitioners must make solid legal arguments as well as appeal to the court's sense of justice. It may also be necessary to remind the court that advances made in global communications, including the availability of live satellite link testimony, should eliminate all but reliable and credible evidence from an extradition proceeding. No longer must courts defer to the exotic pronouncements of foreign prosecutors and tribunals when the issue is fundamental human rights.

This article discusses extradition defense basics, with an emphasis on rulings in recent cases, particularly those significant to the evolution of extradition jurisprudence.

Prehearing Detention and Release

The opportunity to exhaustively investigate the evidence presented by the foreign sovereign in support of extradition will inure to the benefit of the defendant. Securing the defendant's release will alleviate some of the time pressure on the investigation. Unfortunately, courts feel constrained to deny release prehearing absent "special circumstances," a judicially created concept from the early 1900s. *Wright v. Henkel* is still cited for the general proposition that prehearing release should be denied in extradition cases. In *Wright*, the U.S. Supreme Court stated:

> The demanding government, when it has done all that the treaty and the law require it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the surrender; an obligation which it might be impossible to fulfill if release on bail were permitted. The enforcement of the bond, if forfeited, would hardly meet the international demand; and the regaining of the custody of the accused obviously would be surrounded with serious embarrassment.[1]

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However, *Wright* also established that the court has authority to release a fugitive in those cases in which special circumstances might exist, stating:

> We are unwilling to hold that the circuit courts possess no power in respect of admitting to bail other than as specifically vested by statute, or that, while bail should not ordinarily be granted in cases of foreign extradition, those courts may not in any case, and whatever the special circumstances, extend that relief.[2]

Unfortunately, there is no statutory definition of "special circumstances" and courts generally discuss the concept in ruling that they do not exist. Courts must therefore be encouraged to take a more practical and just approach to prehearing release decisions. Arrest and detention might not be the answer in every case. For example, rather than order that she be arrested, a magistrate judge in Pennsylvania allowed Mary Beth Harshbarger to appear at her arraignment on an extradition complaint by way of summons. Harshbarger was an American citizen who shot and killed her husband while on a hunting trip in Canada.[3] She claimed that it was an accident, but Canadian authorities charged her with criminal negligent homicide. The magistrate judge later certified her extradition and ordered her to surrender.[4] In making this decision, the magistrate judge ruled that 18 U.S.C. § 3184 required the arrest of a "relator"[5] only after there has been a determination of probable cause at the extradition hearing.[6] At the prehearing stage, the decision is discretionary.[7]

Likewise, a magistrate judge in Texas granted bail to Dr. Priya Ramnath, even though she was a relatively recent immigrant to the United States, and there was evidence that she may have been a flight risk.[8] Ramnath was arrested as a result of a complaint for extradition to the United Kingdom. She had been charged with manslaughter for having injected a patient with a bolus of adrenaline over the objection of more senior physicians. The patient went into cardiac arrest and died. Ramnath later returned to the UK, where she was convicted and received a six-month suspended jail sentence.[9]

The magistrate applied the traditional two-part test in order to determine whether he should grant bail: first, whether Ramnath posed a flight risk or danger to the community, and second, whether there were any special circumstances existing that warranted release. The magistrate judge's ultimate decision, however, was markedly different from the norm. The magistrate judge noted that under certain circumstances the Bail Reform Act provides for release of a convicted defendant pending appeal.[10] Moreover, the magistrate judge reasoned that although the Bail Reform Act does not otherwise govern international extradition actions, the Act "articulates factors universally relevant to flight risk and dangerousness," and its "interpretive jurisprudence" is a resource for the court in determining whether special circumstances exist that might justify release on bail of a person facing extradition.[11] The court found that although Ramnath may have been counseled not to return voluntarily to the UK, there were conditions that would adequately regulate any risk of flight and reasonably assure her presence at the extradition hearing.

The magistrate judge also considered the UK's extraordinary delay in conducting a factual investigation (1 1/2 years), in bringing charges (5 years), and seeking extradition (9 years). The court inferred from the excessive delay that the case was weak. Also, it was impressed by the fact that the charges arose out of the defendant's work as an emergency room doctor. Because she had a defensible case, detention would result in an injustice. The court stated:

> When a patently unjust result stems from a stiff or mechanical application of a general rule, requirements of justice demand that a "true man of law" consider whether there is a permissible interpretation that promotes a higher welfare.[12]

The lesson to be learned from these cases is that a hearing on prehearing detention should not be considered a lost cause. Practitioners must weave the factual and procedural infirmities of the case into a showing of special circumstances. In all cases, it may be helpful to remind the court that imposing a rigid application of a presumption against release, with a near-impossible standard for special circumstances, may result in a substantial deprivation of individual liberty.

Extradition Hearing

Courts are conservative with regard to the scope of their judicial review in an extradition case. As such, it is extremely important for practitioners to study the language of the applicable treaty. Practitioners should also study case law interpreting specific provisions contained within the treaty, including those that address limitations on extradition (such as statutes of limitations, dual criminality, and prohibition against the extradition of nationals).

With that in mind, a court's determination will, at a minimum, require the court to decide the following issues:

- ❖ Is an extradition treaty in place?
- ❖ Is the person in custody the person being sought?[13]
- ❖ Has the defendant been charged with an offense that falls within the treaty?
- ❖ Is there dual criminality?
- ❖ Is there probable cause to believe that a crime was committed?

Extradition Treaty

The issue is not whether there was an extradition treaty in effect at the time of the alleged offense. Instead, the issue is whether there is currently an extradition treaty in effect. History majors and stamp collectors will enjoy the complexities involved when new nation states are established, but the result may be surprising. The courts have recognized a presumption that emerging nations inherit the treaty obligations of their predecessors.[14] For example, the courts have agreed to extradite defendants to the Federation of Bosnia-Herzegovina (BiH) based on a 1902 extradition treaty. BiH was formerly part of the Socialist Republic of Yugoslavia, which in turn, was only created after World War II. The 1902 extradition treaty clearly predates both of these events.

In the case of Mohammed Sacirbegovic,[15] the defendant had served from 1992 until late 2000 as BiH's permanent representative and ambassador to the United Nations, and had signature authority over the Mission's financial accounts and primary responsibility for the proper disbursement of its funds. He was accused of improperly withdrawing funds from the Mission's account and transferring them to a private bank account. The court reviewing his extradition discussed the state succession doctrine, and concluded that the conduct of both the United States and Bosnia-Herzegovina was sufficient to

show adoption of the 1902 extradition treaty by implication, thus binding the court to its terms.

Extraditable Offenses

The court must determine if the alleged offense is either "enumerated among the extraditable offenses or found according to the formula for ascertaining extraditability in the applicable treaty."[16] As an example, tax crimes were traditionally excluded from offenses that states made extraditable through either an explicit provision or by omission from the list of extraditable offenses.[17] In an ambiguous case, a more liberal construction of the treaty is likely to be accepted by the court.[18] For example, in Sacirbegovic's case the charged BiH offense of "Abuse of Office or Authority" was not an enumerated offense in the 1902 treaty. The magistrate judge, however, compared the elements of the two offenses, and was satisfied that the offense of "Abuse of Office or Authority" fell within the enumerated offense of embezzlement, and that any problem with overbreadth of the abuse of office statute could be handled by a limitation in the extradition order.[19]

Dual Criminality

Is the conduct criminal in both the United States and the requesting country? Dual criminality "refers to the characterization of the relator's criminal conduct insofar as it constitutes an offense under the laws of the two respective states."[20] The lack of dual criminality between the offense alleged by the requesting country and the laws of the United States should result in a denial of extradition.

In determining whether the extradition request satisfies this requirement, the court must compare the conduct criminalized by the law of the requesting country with its own laws that purport to accomplish the same result.[21] In other words, the court should conduct a mirror image analysis: if the conduct occurred in the United States, would it be a crime? With respect to determining whether an act is considered "criminal" in the United States for dual criminality purposes, the current consensus is whether the conduct is considered criminal under federal law. In the absence of a federal crime, the court will look to the law of the forum state or the preponderance of American states.[22]

An excellent example of this analysis is demonstrated in the recent case involving George David Exoo, a minister who was charged in Ireland with the crime of assisting a suicide.[23] Exoo's Compassionate Chaplaincy Foundation (CCF) provided spiritual counseling and assistance to terminally ill individuals who wished to end their own lives. The magistrate judge found that the extradition failed because there was no dual criminality between the Irish offense and U.S. law.

Rosemary Toole, a resident of Ireland, suffered from Cushing's Syndrome, a disease that causes mental, emotional, and cardiac problems. She had been battling her health problems for years and had already attempted suicide once before. She contacted Exoo through CCF and paid $2,500 to cover his and a friend's travel and lodging expenses. Exoo advised Toole on how to accomplish a suicide, but Toole obtained the pills and helium herself. On January 25, 2002, with Exoo and a colleague present, Toole ingested several pills with a glass of alcohol. She then smoked a cigarette and pulled over her head a plastic bag that was connected through a hose to a helium tank. She died sometime thereafter. Exoo and his friend left Toole without notifying the police.

The U.S. government conceded that there was no federal or West Virginia state statute comparable to the crime of assisting a suicide. The court, however, accepted the government's argument that dual criminality could be satisfied if the majority of states had criminal statutes that were substantially analogous. Citing *Factor v. Laubenheimer,*[24] the court noted that "dual criminality exists when the offense charged in the country seeking extradition is generally recognized as criminal in both countries."[25]

After a meticulous examination of the statutes in all 50 states, the court found that there were a total of 25 state statutes that criminalized aiding, abetting, or assisting suicide including indirect, secondary participation. The court concluded, however, that there were 11 states that had no statutes criminalizing aiding, abetting, assisting, or counseling suicide. Furthermore, there were 14 other state statutes that were not substantially analogous because they required more direct and primary involvement in the suicide act and did not criminalize passive presence. The even split resulted in a failure to find that the majority of states criminalize assisting a suicide:

> The court finds that the conduct with which relator is charged in Ireland is not made felonious under the law of the preponderance of states and concludes that dual criminality therefore does not exist.[26]

Practitioners should be particularly alert to the issue of dual criminality in a case where there is a weak nexus with the requesting country. An older, but impressive, case on this issue is *France v. Moghadam.*[27] During a stopover in France en route from Bombay to San Francisco, the French government had arrested one of Matin Moghadam's alleged co-conspirators while in possession of narcotics. The court considered that: (1) the defendant's only contact with France was via an alleged co-conspirator who passed through France merely as an "in-transit passenger"; (2) the defendant had no intent to cause a detrimental effect in France; and (3) the conspiracy was not based in France, nor did any overt act occur there. The district court judge ruled that there was no dual criminality on the basis that under analogous facts, the defendant would not be subject to prosecution in the United States.

The recent case of *United States v. Lopez-Vanegas,*[28] though not an extradition case, further demonstrates this principle. The defendants in *Lopez-Vanegas* had been accused of conspiring to ship cocaine from Colombia to Saudi Arabia (via Venezuela) for distribution in Europe. Following their convictions, the Eleventh Circuit ruled that the conspiracy alleged was not a crime against the United States, at least pursuant to the charged offenses. The court of appeals found that criminal statutes are presumed to apply only domestically, unless the language of the statute suggests otherwise,[29] stating:

> Congress has not stated its intent to reach discussions held in the United States in furtherance of a conspiracy to *possess* controlled substances *outside* the territorial jurisdiction of the United States, with intent to *distribute* those controlled substances *outside* of the territorial jurisdiction of the United States.[30]

The court did find dual criminality in *Melia v. United States*[31] and certified the defendant's extradition to Canada. Vincenzo Melia, an Italian national residing in the United States, was accused of conspiring with individuals in Canada to commit a murder in the

United States. Canada sought his extradition to face prosecution for conspiracy to commit murder. Melia had called one of the co-conspirators in Canada in furtherance of the conspiracy. The court held that the defendant was extraditable to Canada since conspiring with persons in Canada was a sufficient nexus to support Canadian jurisdiction. In its analysis, the court determined that the United States would have jurisdiction under similar circumstances, both because the mere presence of a conspiracy within a country has a detrimental effect and because Melia had performed acts within Canada (the telephone calls) that furthered the conspiracy.[32]

According to extradition law expert Bruce Zagaris, there is substantial authority for the proposition that when a requesting country brings charges based upon a jurisdictional assertion not recognized by the requested country, the latter may decline extradition.[33] In fact, some post-1960 U.S. extradition treaties give the requested country the discretion to deny extradition when the requested offense is committed, at least in part, within its territorial jurisdiction. If such a provision does not exist, a requested state still has the authority to prosecute the offense itself, thereby precluding subsequent extradition to the requesting state because of the prohibition against double jeopardy, otherwise known as *non bis in idem*.[34]

Probable Cause

The issue of probable cause is likely to be the primary focus of defense counsel's challenge to a defendant's extradition. Extradition hearings under 18 U.S.C. § 3184 are similar to a preliminary hearing in federal law, where the magistrate judge need only determine if there is probable cause justifying the holding of the accused to answer to the charge.[35] The "only evidentiary function of the extradition court is to determine whether there is sufficient evidence to justify holding a person for trial in another place."[36] The probable cause standard is generally defined by federal law[37] and requires "evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief in the accused's guilt."[38] In some cases, the treaty language might require the application of the law of the forum state.[39] In any event, the magistrate judge is not required to find sufficient evidence to justify a conviction.[40]

There is no uniform rule on how much or what types of evidence the court should hear in order to make a probable cause determination.[41] In addition, an accused person's right to challenge the foreign sovereign's evidence is limited.[42]

The Supreme Court in *Collins v. Loisel* defined admissible evidence as that "which might have explained ambiguities or doubtful elements in the prima facie case," and excludable evidence as that relating strictly to the defense.[43] The rule that has been developed is that the accused has the right to introduce evidence that is "explanatory" of the demanding country's proof, but does not have the right to introduce evidence that merely contradicts the demanding country's proof or poses conflicts of credibility.[44] In admitting explanatory evidence only, "the intention is to afford an accused person the opportunity to present reasonably clear-cut proof, which would be of limited scope and have some reasonable chance of negating a showing of probable cause."[45]

This distinction between "contradictory evidence" and "explanatory evidence" is difficult to articulate. As explained by extradition attorney Jacques Semmelman,[46] this distinction is problematic:

> Explanatory evidence, then, is taken to mean evidence that provides an innocent explanation for the matters which the government contends point toward guilt. Yet, to the extent that the government relies upon circumstantial evidence, the accused is generally permitted to introduce evidence that helps explain it away. To be sure, the division between what is admissible evidence in the extradition context and that which is not admissible is difficult to perceive in a wide range of possible evidentiary scenarios.[47]

Courts have emphasized that an extradition hearing should not turn into a full trial on the merits.[48] The magistrate judge should permit evidence that "tends to obliterate probable cause … but not what merely contradicts it. The improbability or the vagueness of testi-

mony may destroy the probability of guilt, but the tendering of a witness who testifies to an opposite version of the facts does not."[49]

Extradition courts may consider the reliability of evidence as a factor and accord potentially unreliable evidence less weight.[50] "[T]he probable cause standard does not require that the government make its showing by a preponderance of the evidence. But neither is it toothless. All evidence does not have the same importance even if it is authentic and admissible."[51] Thus, evidence that cast doubts on the reliability of the evidence supporting the extradition request is arguably admissible in probable cause inquiries.

For example, a confession obtained by duress is inherently unreliable and should be given little weight, even if the confession were authenticated.[52] Some courts have admitted evidence that a key government witness has recanted testimony.[53] According to the Fifth Circuit, "If the only evidence of probable cause were the confessions, and if sufficiently recanted, then the existence of probable cause would be negated."[54]

There is no consensus on whether alibi evidence is admissible. Evidence of an alibi defense may be admissible if it absolutely negates or obliterates probable cause.[55] However, some courts will consider that evidence of alibi, or of facts merely contradicting the demanding country's proof, or even a defense such as insanity, as properly excluded from the magistrate judge's hearing.[56]

The predisposition of courts to find probable cause is apparent in the statement of the magistrate judge in the case of Edward Mazur, a dual national accused of conspiracy to commit murder in Poland. The magistrate judge acknowledged that he had never previously denied an extradition request in 12 1/2 years on the bench. However, in declining to find probable cause for the extradition of Mazur, he made it clear that an American court must not rubber stamp extradition requests:

> This court is not charged with determining guilt or innocence; nor is this court permitted to simply hand over a United States citizen on the word of a prosecutor, coupled with conclusory allegations and unsubstantiated, unreliable evidence.[57]

The court affirmed that a foreign sovereign must be held to the same standard as that of an American prosecutor, stating:

> If presented at a preliminary hearing in this country, Mr. Zirajewski's contradictory, self-serving statements and his suspect identification of Mr. Mazur would be deemed unreliable and the case would he thrown out. *The court does not see why a different result should obtain simply because a foreign government is presenting the evidence*; certainly, it is hard to imagine that Mr. Mazur, a United States citizen, should be penalized in terms of his rights, because of that.
>
> This court is mindful of the deference to which the decisions of a foreign government are entitled in extradition matters. … In our system of justice, each case must be decided based on the particular evidence presented therein. And, in this case, the evidence presented fell short of the mark.[58]

As the world economy is fractured by business failures, there will likely be an increase in criminal prosecution alleging fraud in the context of international business deals that go sour. The case of Joseph Ben-Dak is a good example of the need for a court's careful review of the evidence supporting an extradition request in order to discern whether the extradition request is supported by reliable evidence.

Ben-Dak was an Israeli businessman charged with conspiring to defraud the government of Trinidad by rigging a contract bidding process for a new desalination plant. The court carefully scrutinized the proffered evidence, and found the case against Ben-Dak insufficient:

> With the unsourced, vague, and conclusory matters excised, … the description of what occurred … is so disjointed as to add little to the potential existence of probable cause. While the sourced statements make reference to an "illegal" scheme … the affidavits give no competent evidence of what the scheme actually was.[59]

In the end, the court must view the evidence as a "reasonable and prudent" person and ask whether it has a "reasonable ground for belief of guilt."[60]

Another remarkable case is that of Shlomo Ben-Tov, also known as Sam Goodson, an American businessman whose extradition case was ultimately dismissed.[61] Ben-Tov was a Hyundai distributor in the Dominican Republic who was accused of bribing government officials to accept Hyundai Corporation's bid to sell automobiles and buses to the government. He left the Dominican Republic prior to the inception of his trial. The magistrate certified the extradition, but later reopened the proceedings after the defense submitted new evidence.

The defense ultimately convinced the court that the evidence proffered by the Dominican government contained false information, including a government customs declaration that contained a material alteration.[62] The magistrate judge treated the defendant's new evidence as "explanatory," and as such, admissible. He concluded that this new evidence cast such serious and substantial doubt upon the validity of the allegations that it obliterated probable cause. He reminded the government, which had opposed reopening the proceedings, that the purpose of judicial proceedings is to "ascertain the truth."[63]

Conclusion

A defense attorney should embrace the ambiguity of the distinction between explanatory and contradictory evidence by offering a broad range of evidence to help undermine a finding of probable cause.[64] Counsel's goal should be to raise enough doubt in the mind of a conscientious magistrate judge so that the magistrate will decline to certify the matter for extradition.

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Notes

1. *Wright v. Henkel*, 190 U.S. 40, 62 (1903).
2. *Wright*, 190 U.S. at 63.
3. *In re Extradition of Harshbarger*, 592 F. Supp. 2d 770 (M.D. Pa. 2009).
4. *In re Extradition of Harshbarger,* 600 F. Supp. 2d 636 (M.D. Pa. 2009).
5. A defendant in an extradition case is

frequently referred to as a "relator."

6. *Harshbarger,* 592 F. Supp. 2d at 774.

7. *Id.* at 774-775.

8. *United States v. Ramnath*, 533 F. Supp. 2d 662 (E.D. Tex. 2008).

9. http://www.guardian.co.uk/uk/2009/feb/06/doctor-patient-manslaughter-guilty.

10. 18 U.S.C. § 3143 (b).

11. *Ramnath,* 533 F. Supp. 2d at 667.

12. *Id.* at 684.

13. This article does not discuss the defense of mistaken identity.

14. *In re Extradition of Sacirbegovic*, 2005 WL 107094 (S.D. N.Y. Jan. 19, 2005).

15. *Id.* Mr. Sacirbegovic is also referred to in various cases as Mr. Sacirbey.

16. *See* M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 501 (5th ed. 2002).

17. Bruce Zagaris, *U.S. Efforts to Extradite Persons for Tax Offenses*, 25 LOY. L.A. INT'L & COMP. L. REV. 653 (2003).

18. *Factor v. Laubenheimer*, 290 U.S. 276, 293-94, 78 L. Ed. 315, 54 S. Ct. 191 (1933).

19. *Sacirbegovic*, 2005 WL 107094, at *15.

20. *See* M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 465-66 (4th ed. 2002).

21. *See Collins v. Loisel*, 259 U.S. 309, 314-15 (1922); *Saccoccia v. United States*, 58 F.3d 754, 766 (1st Cir. 1995); *United States v. Levy*, 905 F.2d 326, 328 (10th Cir. 1990).

22. *See, e.g., Theron v. United States Marshal*, 832 F.2d 492, 496 (9th Cir. 1987) (In assessing dual criminality, courts examine "similar [criminal] provisions of federal law or, if none, the law of the place where the fugitive is found or, if none, the law of the preponderance of states."); *Brauch v. Raiche*, 618 F.2d 843, 851 (1st Cir. 1980); *Freedman v. United States*, 437 F. Supp. 1252, 1262 (N.D. Ga. 1977).

23. *In re Exoo,* 522 F. Supp. 2d 766 (S.D. W.Va. 2007).

24. *Factor v. Laubenheimer*, 290 U.S. 276 (1933).

25. *Exoo,* 522 F. Supp. 2d at 776.

26. Linda Friedman Ramirez & Nicole Mariani, *U.S. Magistrate Denies Extradition to Ireland for Role in Assisted Suicide,* 24 INT'L ENFORCEMENT L. REP. (2008).

27. 617 F. Supp. 777, 781 (N.D. Cal. 1985).

28. *United States v. Lopez-Vanegas,* 493 F.3d 1305 (11th Cir. 2007).

29. Compare, for example, 18 U.S.C. § 2423(c): Engaging in Illicit Sexual Conduct in Foreign Places. — Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

30. *Lopez-Vanegas,* 493 F.3d at 1313 (emphasis in original).

31. *Melia v. United States,* 667 F.2d 300 (2d Cir. 1981).

32. *Melia,* 667 F.2d at 303-04. *See also Bozlilov v. Seifert*, 983 F.2d 140 (9th Cir. 1992). Dual criminality was satisfied, although defendant had never been to Germany and no drugs were delivered there. Germany established existence of drug conspiracy that took place in part in Germany. Defendant could have been charged with conspiracy in the United States if the two countries' positions were reversed.

33. Bruce Zagaris is a partner in the Washington, D.C., law firm of Berliner, Corcoran & Rowe. He is the editor of the *International Enforcement Law Reporter* (IELR.com).

34. *See, e.g.*, MICHAEL ABBELL, EXTRADITION TO AND FROM THE UNITED STATES, Sec. 3-2 (19-22) (2007).

35. *Id.* at 781; *see also Charlton v. Kelly*, 229 U.S. 447, 460 (1913).

36. *Demjanjuk v. Petrovsky*, 776 F.2d 571, 576 (6th Cir. 1985).

37. *See Sindona v. Grant*, 619 F.2d 167, 175 (2d Cir. 1980); *Moghadam*, 617 F. Supp. 777, 782 (N.D. Cal. 1985).

38. *Coleman v. Burnett*, 477 F.2d 1187, 1202 (D.C. Cir. 1973); *see also Sidali v. INS*, 107 F.3d 191, 199 (3d Cir. 1997); *United States v. Wiebe*, 733 F.2d 549, 553 (8th Cir. 1984).

39. *Matter of Williams*, 496 F. Supp. 16 (D.C.N.Y. 1979).

40. *See Collins, supra* note 21.

41. *See Charlton v. Kelly*, 229 U.S. 447, 461 (1913); *Republic of France v. Moghadam*, 617 F. Supp. 777, 781 (N.D. Cal. 1985).

42. *See Sindona, supra* note 37.

43. *See Collins,* 259 U.S. at 315-16.

44. *See Sindona, supra* note 37.

45. *Id.*

46. Jacques Semmelman is a partner in the New York City law firm of Curtis, Mallet-Prevost, Colt and Mosle, LLP. He writes extensively on the topic of international extradition.

47. *In re Cervantes-Valle*, 268 F. Supp. 2d 758, 770 (S.D. Texas 2003) citing Jacques Semmelmann, *The Rule of Noncontradiction in International Extradition Proceedings: A Proposed Approach to the Admission of Exculpatory Evidence*, 23 FORDHAM INT'L L.J. 1295, 1296 (2000).

48. *See Sindona, supra* note 37.

49. *Shapiro v. Ferrandina*, 355 F. Supp. 563, 572 (S.D.N.Y. 1978).

50. *See United States v. Liu Kin-Hong*, 110 F.3d 103 (1st Cir. 1997).

51. *Liu,* 110 F.3d at 120-121.

52. *See Gill v. Imundi*, 747 F. Supp. 1028, 1042-47 (S.D.N.Y. 1990).

53. *See Moghadam*, 617 F. Supp. at 783 (The recantation evidence here is critical and must be given substantial consideration for it goes to more than just the credibility of a witness, it negates the only evidence of probable cause. *In re D'Amico*, 185 F. Supp. 925, 930 (S.D.N.Y. 1976). *Cf. Hoxha v. Levi* 465 F.3d 554 (3d Cir. 2006) (recantation did not negate probable cause); *Atuar v. United States*, 156 Fed. Appx. 555 (4th Cir. 2005) (introduction of coerced testimony at extradition hearing did not violate due process where the magistrate judge correctly considered evidence of the retraction of the coerced testimony, but explained in finding of probable cause that he found the original testimony more reliable than the later retraction)).

54. 800 F. Supp. 1462 (S.D. Texas 1992).

55. *Mainero v. Gregg*, 164 F.3d 1199, 1207 (9th Cir. 1999); *In re Extradition of Gonzalez*, 52 F. Supp. 2d 725 (W.D. La. 1999).

56. *Shapiro v. Ferrandina*, 478 F.2d 894, 901 (2d Cir. 1973).

57. *In re Extradition of Edward Mazur*, 2007 WL 2122401, at *27 (N.D. Ill. July 20, 2007).

58. *Id.* (emphasis added).

59. *In re Extradition of Joseph Ben-Dak*, 2008 WL 1307816, at *16 (S.D.N.Y. April 11, 2008).

60. *Id.*

61. *In re Extradition of Shlomo Ben-Tov*, 05-22201-CIV-Garber (S.D. Fla. February 22, 2006).

62. *In re Extradition of Shlomo Ben-Tov,* at *11.

63. *Id.* at *18.

64. Tracy L. Gonos & Jill Basinger, *Pretrial Motions*, *in* CULTURAL ISSUES IN CRIMINAL DEFENSE (1st ed. 2000). ■

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