

TESTIMONY

OF

HONORABLE DANIEL J. PORTER
DISTRICT ATTORNEY
GWINNETT JUDICIAL CIRCUIT
LAWRENCEVILLE, GEORGIA

BEFORE A HEARING
OF THE
CRIMINAL JUSTICE, DRUG POLICY
AND
HUMAN RESOURCES SUBCOMMITTEE

ON

INTERNATIONAL EXTRADITION

OCTOBER 1, 2003

INTRODUCTION

My name is Danny Porter. I am the elected District Attorney for Gwinnett County, Georgia. I want to thank the Committee for inviting me here today to discuss international extradition issues.

Gwinnett County is a part of the Metropolitan Atlanta area. The population of my county has skyrocketed in the last twenty years from approximately 100,000 in 1980 to approximately 540,000 in 2000. Census figures show that Gwinnett County currently has the largest immigrant population in Georgia. The 2000 census revealed that approximately eleven percent of the population were self-identified as Hispanic or Latino.

I currently supervise a staff of seventy-three which includes twenty-eight prosecuting attorneys. We prosecute approximately 4000 adult felonies and 4000 juvenile cases annually.

I have had to deal with both the good and bad of international extradition but I must say that without fail, the efforts of the Federal Bureau of Investigation in locating international fugitives and of the State Department in preparing the case for extradition, have been nothing short of exemplary.

FACTUAL EXAMPLES OF INTERNATIONAL EXTRADITION FROM GEORGIA

I. Gwinnett County, Georgia

On January 2, 2001, Alejandro Pinon shot Gustavo Espinosa, fatally wounding him in an argument, apparently over drugs. Pinon fled to Mexico where he is currently in custody for rape in that country. The only options left to the State in this case are to reduce the murder charge and seek some sentence less than life in prison or decline extradition.

The State has declined extradition and will leave the current warrant outstanding since it is probable that Pinon will at some point re-enter this country illegally.

In general, it has been the experience of the Gwinnett County District Attorney's Office that dealing with foreign governments in the area of abductions by non-custodial parents has shown nothing but positive results. We have dealt with both the governments of Canada and of the Grand Cayman Islands. In each case, the foreign government moved quickly to insure that the child was returned to the custodial parent and that the offender was returned to the United States. The actions of these governments were instrumental in preventing the disappearance of abducted children.

II. Toombs County, Georgia

On July 23, 1995, an argument between four men at local restaurant in Toombs County, Georgia, turned violent after the four left. Two men, Horace Fowler and Tony

Fowler were found shot dead on a rural road in their pickup truck. Witnesses and forensic evidence led authorities to charge David Calvillo and two other men, all Mexican migrant workers, with the murder. All three fled to Mexico. Through the efforts of the FBI Legate at the United States Embassy in Mexico City, Mr. Calvillo was located in Mexico. Based on an extradition request by Georgia authorities, Mr. Calvillo was arrested by Mexican authorities in 1999. Even though the State of Georgia agreed not to seek the death penalty, Mexico refused to extradite Mr. Calvillo to the United States. Instead, Mexico offered to try Mr. Calvillo under Article 4 of the Mexican Criminal Code provided that Georgia authorities agreed to be bound by the decision of the Mexican courts.¹ Because of Mexico's refusal to extradite Mr. Calvillo, prosecutors were left with the choice of allowing Mr. Calvillo to go free or agreeing to the Article 4 trial. After consulting with the victim's families, the State agreed to be bound by the Article 4 trial. State authorities provided Mexican prosecutors with everything that they requested, spending several thousand dollars to have the witness statements and documentary evidence translated into Spanish for the Mexican court. None of the witnesses against Mr. Calvillo testified before the Mexican court. In 2002, Mr. Calvillo was acquitted.

¹ "Article 4 of the Mexican Federal Penal Code states: 'Crimes committed in a foreign country, by a Mexican citizen against Mexican citizens or against a foreign citizen, or by a foreign citizen against Mexican citizens, shall be punishable in the Republic, in accordance with the federal laws, if the following requirements are met: (1) That the defendant is found in the Republic; (2) The defendant must not have been definitively judged in the country where the crime was committed, and (3) The offense being charged must be a crime in the country in which it was committed and in the Republic of Mexico.' C.P.F. art. 4." Warner, *Bringing White-Collar Criminals To Justice -- Fugitive Apprehension And Return And Obtaining Evidence Abroad*, 11 U.S.-Mex. L.J. 171 (2003)

III. Echols County, Georgia.

In late 2000, Vincete Cantera, a Mexican national, killed Luis Guererrero, a co-worker, in Echols County, Georgia. He then fled to Mexico, where the U.S. Marshal's Service located him. Warrants were issued in Georgia for Mr. Cantera, charging him with murder. Under Georgia law, a person convicted of murder may be sentenced to life imprisonment or, in some cases, death. Mr. Cantera eventually was located by the U.S. Marshal's Service in custody in Mexico where he had been charged with killing his wife. State prosecutors initiated extradition proceedings in April 2002 seeking to have Mr. Cantera returned to Georgia.

Because of the 2001 decision of the Mexican Supreme Court that life imprisonment is an unusual punishment forbidden under Article 22 of the Mexican Constitution (because the accused is not given the opportunity for rehabilitation), officials at the Office of International Affairs at the Justice Department, recommended that State prosecutors not indict Mr. Cantera for murder. Based on the recommendation of OIA, prosecutors sought and obtained an indictment charging Mr. Cantera with voluntary manslaughter, possession of a firearm during the commission of a crime, aggravated assault and concealing the death of another. The maximum penalty for voluntary manslaughter is 20 years. Copies of the indictment, along with other documents requested by the U.S. Embassy in Mexico were transmitted to Mexico in 2002. To date, Mexico has not responded to the extradition request.

IV. Fulton County, Georgia.

In 1998, James Vincent Sullivan was indicted by a Fulton County Grand Jury on charges related to the 1987 murder of his estranged wife, Lita McClinton Sullivan. After making arrangements to turn himself in, Sullivan fled the country in April 1998, and an international fugitive search began. The Atlanta office of the FBI took out a UFAP warrant, and headed up the fugitive investigation.

After several months of surveillance, Sullivan was arrested outside Bangkok, Thailand, on July 2, 2002. Since that time, he has been held at Lard Yao Men's Prison in Bangkok. Sullivan has fought extradition at every step. In February 2003, a Thai court ordered Sullivan extradited. He has the right to appeal that decision to the Thai Supreme Court, and has done so. A decision on his appeal is currently pending.

Prosecutors in Fulton County have worked with the Office of International Affairs in Washington, a division of the DOJ, throughout the extradition process. We were instructed that all contact and efforts be coordinated through that office. The FBI has been very helpful in providing information and turning over evidence seized in the search of Sullivan's condo.

VI. Hall County, Georgia.

Angel Geuerrero Rivero committed a gang related drive by shooting in Hall County killing Maria Gonzalez on July 3, 1994. He fled to Mexico before he could be

apprehended. The FBI confirmed that he was working in Cuautla, Mexico as a police officer under the name of Carlos Alberto Martinez. He has yet to be apprehended.

Juan Bayona and Arturo Elizalde conducted a drive by shooting at the Burger King in Gainesville on February 16, 1997. They murdered Rigo Verduzco and warrants were taken for their arrest. The FBI assisted the Gainesville Police Department and got fugitive warrants for them as well when the investigation revealed that they had fled to Mexico to avoid prosecution. They remain at large.

Jose Luis Pacheco helped beat to death Jorge Campos Ortega. A hunter discovered Ortega's decomposing body in Hall County on September 26, 2000. Pacheco fled to Mexico along with his co defendants. He has yet to be apprehended, although his two codefendants reentered the U.S. and are presently in Federal custody.

Joaquin Saucedo Diaz was indicted for Rape and Burglary on February 8, 1999 in Hall County. Investigators learned that he fled to Mexico before he could be arrested.

CONCLUSION.

Georgia, like every state across the United States, is experiencing the effects of our rapidly shrinking world. As people move across national borders seeking to better their lives, criminals travel the same paths to avoid the consequences of their acts.

Georgia prosecutors stand together in their desire to assist the government of the United States to assure that the guilty are punished and innocent victims are protected. However, when we are dealing with other nations, we need the tools to do this.

As Mr. Fox has indicated, the language used in extradition treaties needs to be improved so that the signatory nations commit to give “full faith and credit” to the laws of their respective countries. While the Department of State’s and the Department of Justice’s efforts in this direction have been outstanding, there is a need for input from state and local prosecutors into the treaty drafting process. Re-establishment of the liaison positions within the Office of International Assistance would be a step in the right direction.

Secondly, the United States should, at every opportunity, seek to present its views on matters affecting extradition directly to the courts of foreign countries. Mexico, Germany and other countries routinely submit amicus briefs to state and federal courts in criminal cases affecting their nationals. The United States should do likewise.

Finally, additional training is needed for prosecutors at the state and local level, so that they will better understand the range of options, remedies and obligations that exist when criminals cross international borders. Too often, we must learn these by trial and error, further burdening and frustrating the victims of these criminals. Victims should not have to suffer while federal, state and local law enforcement and prosecutors try to get on the

same sheet of paper. Congress can help with this with funding and by establishing a clear mandate for interagency training and cooperation.

I want to thank the Subcommittee members for your interest in this issue and your willingness to explore possible solutions.