STRENGTHENING THE LONG ARM OF THE LAW: HOW ARE FUGITIVES AVOIDING EXTRADITION, AND HOW CAN WE BRING THEM TO JUSTICE?

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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STRENGTHENING THE LONG ARM OF THE LAW: HOW ARE FUGITIVES AVOIDING EXTRADITION, AND HOW CAN WE BRING THEM TO JUSTICE?

WEDNESDAY, OCTOBER 1, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2154, Rayburn House Office Building, Hon. Mark E. Souder (chairman of the subcommittee) presiding.

Present: Representatives Souder, Deal, Ose, Carter, Clay, Sanchez, Ruppersberger, Norton and Bell.

Staff present: J. Marc Wheat, staff director and chief counsel; Nicholas Coleman, professional staff member and counsel; John Stanton, congressional fellow; Nicole Garrett, clerk; Tony Haywood, minority counsel; and Jean Gosa, minority assistant clerk.

Mr. SOUDER. The hearing will come to order. Good morning, and thank you for coming.

Today our subcommittee will address the status of the extradition process, an area of growing concern for lawmakers and law enforcement officials throughout the United States. The extradition process, which is governed by a series of bilateral treaties between the United States and various foreign countries, is intended to ensure that criminals cannot escape justice by fleeing from one country to another. Under an extradition treaty, the new host country will arrest the fugitive and return him to face trial. Recent developments have put strains on the extradition process, however, hindering or sometimes completely impeding the ability of law enforcement to bring criminal fugitives to justice.

The most significant problem with the extradition process today is the conditions imposed by foreign nations on extradition. This problem is not new. For many decades now certain nations that ban the death penalty within their own borders have refused to extradite any criminal who can face the death penalty in the United States. Other countries refuse to extradite any fugitive who is convicted in absentia. Prosecutors in the United States have generally dealt with this problem by agreeing to seek life imprisonment instead of the death penalty, or by agreeing to hold a retrial.

In October 2001, however, the Mexican Supreme Court issued a decision banning the extradition of anyone facing life imprisonment

without the possibility of parole on the grounds that the Mexican Constitution gives all criminals the right to be rehabilitated and reintegrated into society. Thus, no matter how heinous the crime or how dangerous the criminal, Mexico will refuse to extradite anyone facing life imprisonment, which in most of our States is the minimum punishment for first-degree murder. If Mexican authorities officially refuse an extradition request, they will then proceed to prosecute the fugitive under their own law, which often results in much lesser penalties. American prosecutors thus face a dilemma. They must either agree to charge a murderer with manslaughter or another lesser offense that does match the seriousness of the crime, or they must trust to the Mexican justice system. Many prosecutors have simply refused to request extradition under such conditions, preferring to hope that the fugitive will sneak back into the United States and be apprehended.

The case of Deputy Sheriff David March illustrates this problem. Deputy March, a 7-year veteran of the Los Angeles County Sheriff's Department, was murdered while making a routine traffic stop in April 2002. His suspected killer, Armando Garcia, a Mexican national and violent drug dealer who had been deported three times from the United States, immediately fled to Mexico. Mexican authorities have refused to extradite Garcia on the grounds that he faces, at a minimum, life imprisonment.

The case of Deputy March and others like it has spurred calls from the administration to put pressure on the Mexican Government to renegotiate its extradition treaty with the United States. Deputy March's widow Teri has actively campaigned for justice for her husband and similar victims of fugitive killers. This is indeed not an isolated case. The Los Angeles District Attorney's Office estimates that over 200 murder suspects in Los Angeles County alone have fled to Mexico. In response, several Members of Congress have offered legislation calling for changes to the existing extradition treaty.

Other issues surrounding the extradition process must also be examined by Congress. For example, in March 2002, the Justice Department Inspector General released a report criticizing the Criminal Division's Office of International Affairs, the main Justice Department agency responsible for extradition matters, for its management of extradition cases. Questions have also been raised about how vigorously other Federal agencies with potential influence are pursuing extradition cases.

This hearing will address all these difficult issues as well as legislative and other potential solutions. We are pleased to be joined by representatives of the two Federal agencies primarily responsible for managing the extradition process, the U.S. Department of Justice and U.S. Department of State. From the Justice Department we welcome Mr. Bruce Swartz, Deputy Assistant Attorney General at the Criminal Division; and from the State Department we welcome Mr. Samuel Witten, Deputy Legal Advisor at the Department's Legal Bureau.

Given the impact that extradition has on local law enforcement and victims of crime, it is especially important that we hear from local representatives. Representing local law enforcement officials, we are pleased to be joined by the Honorable James Fox, District

Attorney for San Mateo County, CA, representing the National District Attorney's Association; and the Honorable Daniel J. Porter, District Attorney of the Gwinnett Judicial Circuit in Georgia. We are also especially honored to be joined by Mrs. Teri March, the widow of Deputy Sheriff March, who has worked so tirelessly to raise the awareness of this issue and to get justice for her husband.

I thank everyone for taking the time to join us this morning, and I look forward to hearing your testimony.

[The prepared statement of Hon. Mark E. Souder follows:]

Opening Statement
Chairman Mark Souder

"Strengthening the Long Arm of the Law: How Are Fugitives Avoiding Extradition, and How Can We Bring Them to Justice?"

Subcommittee on Criminal Justice, Drug Policy, and Human Resources
Committee on Government Reform

October 1, 2003

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The most significant problem with the extradition process today is the conditions imposed by foreign nations on extradition. This problem is not new. For many decades now, certain nations that ban the death penalty within their own borders have refused to extradite any criminal who could face the death penalty in the U.S. Other countries refuse to extradite any fugitive who was convicted *in absentia*. Prosecutors in the U.S. have generally dealt with this problem by agreeing to seek life imprisonment instead of the death penalty, or by agreeing to hold a retrial.

In October 2001, however, the Mexican Supreme Court issued a decision banning the extradition of anyone facing life imprisonment without the possibility of parole, on the grounds that the Mexican constitution gives all criminals the right to be rehabilitated and reintegrated into society. Thus, no matter how heinous the crime or how dangerous the criminal, Mexico will refuse to extradite anyone facing life imprisonment – which in most of our states is the minimum punishment for first degree murder. If Mexican authorities officially refuse an

extradition request, they will then proceed to prosecute the fugitive under their own law – which often results in much lesser penalties. American prosecutors thus face a dilemma. They must either agree to charge a murderer with manslaughter or another lesser offense that does not match the seriousness of the crime; or they must trust to the Mexican justice system. Many prosecutors have simply refused to request extradition under such conditions, preferring to hope that the fugitive will sneak back into the U.S. and be apprehended.

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The case of Deputy March and others like it has spurred calls for the Administration to put pressure on the Mexican government to renegotiate its extradition treaty with the U.S. Deputy March's widow, Teri, has actively campaigned for justice for her husband and similar victims of fugitive killers. This is indeed not an isolated case; the Los Angeles district attorney's office estimates that over 200 murder suspects in Los Angeles County alone have fled to Mexico. In response, several Members of Congress have offered legislation calling for changes to the existing extradition treaty.

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This hearing will address all these difficult issues, as well as legislative and other potential solutions. We are pleased to be joined by representatives of the two federal agencies primarily responsible for managing the extradition process, the U.S. Department of Justice and the U.S. Department of State. From the Justice Department, we welcome Mr. Bruce Swartz, Deputy Assistant Attorney General at the Criminal Division; from the State Department, we welcome Mr. Samuel Witten, Deputy Legal Advisor at the Department's Legal Bureau.

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representing the National District Attorneys Association; and the Honorable Daniel J. Porter, District Attorney of the Gwinnett Judicial Circuit in Georgia. We are also especially honored to be joined by Ms. Teri March, the widow of Deputy Sheriff March, who has worked so tirelessly to raise the awareness of this issue and to get justice for her husband. I thank everyone for taking the time to join us this morning, and I look forward to hearing your testimony.

Mr. SOUDER. I will now yield to our Congresswoman Sanchez for an opening statement.

Ms. SANCHEZ. I don't have an opening statement.

Mr. SOUDER. Thank you.

Congressman Deal, our vice chairman of the committee, for an opening statement.

Mr. DEAL. Thank you, Mr. Chairman, for holding this hearing on one of the most serious problems facing law enforcement in this country. Our Nation is one that is built on the rule of law. Throughout our history, we have generally avoided vigilante justice, mob rule, and the overthrow of government that has plagued other nations because we've maintained a system of criminal justice that, despite its imperfections, has been sustained by the confidence of the American people that their government can maintain law and order and punish criminal conduct.

Today we will hear from witnesses who will document a serious flaw in our system. Although the problem of bringing criminals to justice within our country is an ongoing battle, today we will hear from prosecuting attorneys and the widow of a slain police officer about the even greater challenge of bringing a criminal to justice when they flee our borders and find refuge in another country, especially Mexico.

The problem of extradition is certainly one that involves many nations, but it is primarily a problem with Mexico, a nation that has millions of its citizens who are illegally in our country. While many of us are seriously concerned about Mexico's encouragement of actions that will foster more illegal immigration, today we will focus on the most serious failure of the Mexican Government, its uncooperative attitude and policies relating to the extradition of individuals who have committed murders, operated major drug activities and other felonious acts within the United States and have fled to Mexico for safe haven. These are not crimes committed on our citizens within the borders of Mexico; these are crimes committed in the United States and which should be prosecuted in the United States.

Today we will hear about restrictions on extradition relating to treaty agreements and judicial opinions of the Mexican Supreme Court, but we will also hear about the legal barriers that prevent the U.S. prosecutors from obtaining justice in some of the most serious criminal cases in our country. Unlike Colombia that expedites extradition of alleged criminals to the United States for prosecution, Mexico continues to resist such efforts. Colombia has recognized that extradition to the United States is one of the most effective deterrents it possesses in fighting organized drug activities. By taking the opposite position, Mexico is rapidly becoming a safe haven for organized crime.

Mexico's refusal to be a good neighbor in the prosecution of dangerous felons should be the first reason for the United States to resist expanded immigration rules and an open border policy. It is my opinion that any country that refuses to extradite a criminal who executes a police officer in the performance of his duties on American soil does not deserve to be given favorable trading status or any other position of preference in its dealings with the United States. In light of Mexico's change in position that will not allow

the extradition of anyone facing life in prison without parole, this administration should immediately renounce the existing extradition treaty and demand that anyone who enters our country and commits a serious felony will face the same punishment as our own citizens would face for the same crime. It is a double insult to the American people for someone to enter our country illegally, kill one of our citizens, then flee across the border and have his government refuse to allow him to be prosecuted using the excuse that our courts may impose too harsh a sentence.

Also, it is alarming to learn from the Justice Department's Inspector General's report of last year that the Criminal Division's Office of International Affairs has not been as vigilant as it should be in pursuing extradition cases. This must be corrected. I recognize that most nations, including the United States, have reservations about subjecting their citizens to extradition to other countries where the system of justice differs from nation to nation. However, there is a clear difference between a case of a citizen who enters another country in a legal status, where his native country consents to his leaving and the host country consents to his entry through a visa or other immigration program, and someone who enters the host country without its consent. Many of the cases that confront our prosecutors fall in the latter category.

I believe the United States should insist that all extradition treaties distinguish between these categories, and those who have entered another country without the consent of that country should always be extradited back to face criminal charges and should not receive the same protection as a citizen who entered legally. This should apply to citizens of the United States who enter other countries illegally as well as the citizens of other countries who enter the United States illegally. To do otherwise is to place the country of which the fugitive is a citizen in the position of ratifying the initial crime of illegal entry and aiding and abetting the alleged criminal in the subsequent crime that was committed in the host country by extending the accused the same protection as other citizens who travel to other countries in a legal status.

Once again, Mr. Chairman, I thank you for holding this hearing, and I look forward to the testimony and the proposed solutions to this intolerable state of affairs.

[The prepared statement of Hon. Nathan Deal follows:]

Opening Statement of Congressman Nathan Deal
October 1, 2003
Subcommittee on Criminal Justice, Drug Policy and Human Relations
Strengthening the Long Arm of the Law:
How Are Fugitives Avoiding Extradition, and
How Can We Bring Them to Justice?

Thank you, Mr. Chairman, for holding this hearing on one of the most serious problems facing law enforcement in this country.

Our nation is one that is built on the rule of law. Throughout our history we have generally avoided vigilante justice, mob rule, and the overthrow of government that has plagued other nations because we have maintained a system of civil and criminal justice that, despite its' imperfections, has been sustained by the confidence of the American people that their government can maintain law and order and punish criminal conduct. Today we will hear from witnesses who will document a serious flaw in our system. Although the problem of bringing criminals to justice within our country is an ongoing battle, today we will hear from prosecuting attorneys and the widow of a slain police officer about the even greater challenge of bringing a criminal to justice when they flee our borders and find refuge in Mexico.

The problem of extradition is certainly one that involves many nations, but it is primarily a problem with Mexico, a nation that has millions of its citizens who are illegally in our country. While many of us are seriously concerned about Mexico's encouragement of actions that will foster more illegal immigration, today we will focus on the most serious failure of the Mexican government, its uncooperative attitude and policies relating to the extradition of individuals who have committed murders, operated major drug activities and other felonious acts within the United States and have fled to Mexico for safe haven. These are not crimes committed on our citizens within the borders of Mexico; these are crimes committed in the United States and which should be prosecuted in the United States.

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Any country that refuses to extradite a criminal who executes a police officer in the performance of his duties on American soil does not deserve to be given favorable trading status on any other position of performance in its dealings with the United States. In light of Mexico's change in position that will not allow the extradition of anyone facing life in prison without parole, this Administration should immediately renounce the existing extradition treaty and demand that anyone who enters our country and commits a serious felony will face the same punishment as our own citizens would face for the same crime. It is a double insult to the American people for someone to enter our country illegally, kill one of our citizens, then flee across the border, and have his government refuse to allow him to be prosecuted using the excuse that our courts may impose too harsh a sentence.

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Once again, Mr. Chairman, I thank you for holding this hearing and I look forward to the testimony and proposed solutions to this intolerable state of affairs.

Mr. SOUDER. Congressman Ose, do you have an opening statement?

Congressman Carter, any opening comments?

Mr. CARTER. No.

Mr. SOUDER. I would like to ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record, and any answers to written questions provided by the witnesses also be included in the record. Without objection, it is so ordered.

I also ask unanimous consent that all exhibits, documents, and other materials referred to by Members and the witnesses may be included in the hearing record; that all Members be permitted to revise and extend their remarks. Without objection, it is so ordered.

Our first panel today is from the administration. We welcome Mr. Bruce Swartz of the Justice Department, Mr. Samuel Witten of the Department of State.

It is our standard practice to ask witnesses to testify under oath. If you will stand and raise your right hands, I will administer the oath to you.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that both witnesses responded in the affirmative.

Thank you both for coming today. And, Mr. Swartz, I think, if you will start, and you are recognized for 5 minutes.

Mr. SWARTZ. Mr. Chairman, with your permission, if Mr. Witten could begin by discussing the overall extradition program, and I will return to address the problem of Mexico in particular.

Mr. SOUDER. OK. We will recognize Mr. Witten first.

STATEMENTS OF SAMUEL WITTEN, DEPUTY LEGAL ADVISOR, LEGAL BUREAU, U.S. DEPARTMENT OF STATE; AND BRUCE SWARTZ, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. WITTEN. Thank you, Mr. Chairman. Mr. Chairman, and members of the committee, I am pleased to appear before you today to testify on the subject of strengthening the long arm of the law: How are fugitives avoiding extradition, and how can we bring them to justice? With your permission, I will submit my prepared testimony for the record and summarize the testimony here.

The Department of State appreciates this opportunity to discuss international extradition. The growth in transborder criminal activity, especially terrorism, violent crime, drug trafficking, and the laundering of proceeds of organized crime, has confirmed the need for increased international law enforcement cooperation, including the essential tool of extradition. In my testimony I will highlight our efforts to modernize our extradition treaty relationships and highlight the key problems we face internationally. Mr. Swartz will discuss in detail our recent interactions with Mexico, which I understand is of particular interest to the committee.

Although nations have no general obligation in international law to extradite, the practice, of course, has become widespread, and there now exist hundreds of treaties around the world relating to international extradition. Because of the many unique national legal systems around the world, no single set of rules governs the

process of international extradition, and the conditions under which extraditions are granted and may be granted vary among countries.

The international extradition process inherently involves the laws of two countries, as the opening statements have reflected, the country requesting extradition and the country where the fugitive is located. The process of extradition can be challenging, time-consuming, and sometimes frustrating. Most extraditions to and from the United States take place pursuant to bilateral extradition treaties. In recent years, the State and Justice Departments have made a concerted effort to expand and modernize our extradition treaties in order to make the extradition process work more efficiently and effectively. In many cases we've replaced older treaties with new, updated treaties, with improvements such as replacing the list of extraditable offenses with a more comprehensive regime of dual criminality. We have also entered into new extradition treaties with partners such as Philippines and South Korea.

Since 1990, we've negotiated and signed nearly 30 new extradition treaties that have improved this framework. Improvements include, where possible, providing for the extradition of nationals, smoothing the procedures for extradition, clarifying the standard of proof in extradition, specifying applicable statutes of limitations, and limiting the political offense exception to extradition, and addressing other issues.

At this point we have extradition relationships with well over 100 countries around the world. Pursuant to this network of treaties, our requests have resulted in return to the United States for trial and punishment of persons charged with or convicted of the widest variety of crimes, murder, terrorism, white collar crimes, narcotics trafficking, and others. Some of our recent extraditions have included the extradition from France of James Kopp, who murdered abortion doctor Bernard Slepian in Buffalo, NY, and was convicted of murder this year in New York; Ira Einhorn, who murdered his girlfriend in Philadelphia and was returned from France and convicted last year for murder in Philadelphia; and, from Guatemala, of Milton Napoleon Marin Castillo, who was charged with committing a double murder in Ann Arbor, MI.

While there have been successes, the existence of an extradition treaty, even a modern one, does not ensure that all will always go well. In fact, because of differences in legal systems, the extradition process is neither simple nor without frequent delays. Mr. Swartz will go into detail about the assurances question that the committee has raised; I will just mention briefly in the time allotted several issues that we are also working on. One is the issue of extradition of nationals.

The United States asks all of our treaty partners to extradite their nationals to the United States for crime—or for punishment as we would extradite our nationals in appropriate circumstances to other governments. This issue is a complicated one for many countries, and we have made some progress, but not as much as we would like. A number of our treaty partners in Europe and Latin America still cannot extradite nationals. Our major successes in the most recent years have been with South America. Our recent

treaties with Argentina, Bolivia, Paraguay, and Peru all provide for extradition of nationals.

We have made other gains in terms of working with foreign countries on their domestic laws, permitting them to extradite where the discretion is given to them. The Dominican Republic is one example. They have repealed their law prohibiting extradition of nationals, permitting extradition to the United States of Dominican nationals on such offenses as murder and narcotics trafficking. After many years of discussion, both Mexico and Colombia have been extraditing nationals to the United States, Mexico under the U.S./Mexico bilateral treaty, and Colombia under the authority of its domestic law.

And another continuing problem alluded to by the committee with which Mr. Swartz will deal with is death penalty and life imprisonment assurances. This has become of particular concern, as you noted, with Mexico. The Mexican Supreme Court ruling of October 2001 on life imprisonment has presented major challenges to the United States and also to Mexican officials. I can assure the committee that this is a major concern to the State Department at the highest levels. We continue to strongly believe and communicated firmly to the Mexican Government that the Mexican Supreme Court opinion should be revisited so that our extradition relationship is not subject to this additional burden. Both the State Department and the Justice Department, including the Attorney General and Secretary Powell, have engaged the Mexican Government on this issue. We continue to press for the Mexican Government to seek the reversal of this decision and, at a minimum, reduce its adverse impact for as long as it is in effect.

In summary, Mr. Chairman, we have had some successes in this area. We face many challenges. Needless to say, the system of international extradition would work more effectively for the United States if all nations had the same Constitution, laws and policies that we do. Of course, this is not the case, and because this is not the case, our task to which we are fully committed is to make the process work as smoothly and as efficiently as possible.

We appreciate the committee's interest in these important issues, and I will be happy to address any questions the committee may have. Thank you, sir.

Mr. SOUDER. Thank you for your testimony.

[The prepared statement of Mr. Witten follows:]

TESTIMONY OF

SAMUEL M. WITTEN

DEPUTY LEGAL ADVISER

U.S. DEPARTMENT OF STATE

BEFORE THE SUBCOMMITTEE ON

CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

OF THE COMMITTEE ON GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

October 1, 2003

Mr. Chairman and members of the Committee:

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The Department of State appreciates this opportunity to discuss international extradition. The growth in transborder criminal activity, especially terrorism, violent crime, drug trafficking, and the laundering of proceeds of organized crime, has confirmed the need for increased international law enforcement cooperation. Extradition is an essential tool in that effort. In my testimony I will address some of the key problems that we are facing in connection with international extradition and the steps that we are taking to address those problems.

Extradition Process

As this Committee is aware, extradition is the process by which a person charged with or convicted of a crime under the law of one state is arrested in another state and returned for trial or punishment. Although nations have no general obligation in international law to extradite, the practice has become widespread, and there now exist hundreds of treaties around the world relating to international extradition. Because of the many unique national legal systems around the world, however, no single set of rules governs the process of international extradition and the conditions under which extradition may be granted vary widely. Because the international extradition process inherently involves the laws of two countries -- the country requesting

extradition and the country where a fugitive is located -- the process of extradition can be challenging and time-consuming for both countries involved.

I am pleased to join Mr. Swartz to discuss this process, including the difficulties we frequently encounter and the steps we are taking to try to overcome those difficulties.

Extradition Treaties

Under U.S. law, fugitives can only be extradited from the United States pursuant to authorization granted by statute or treaty. Most extraditions to and from the United States take place pursuant to bilateral extradition treaties. The Department of State, working closely with the Department of Justice, has aggressively expanded and modernized our extradition treaties in order to make the extradition process more efficient and effective. In many of our recent negotiations, the United States has replaced our older extradition treaties with new treaties. Very frequently, our negotiations replace our older treaties that included a list of extraditable offenses with new treaties based on dual criminality, that is, a regime where fugitives are extraditable if their conduct has been criminalized in both countries. The new treaties also include other improvements to make the process as efficient as possible. In other instances, we have negotiated and brought into force first-ever extradition treaties with important law enforcement partners, such as the Philippines and South Korea.

Since 1990, the United States has negotiated and signed nearly 30 new extradition treaties and protocols that have substantially improved the network of treaties pursuant to which we can make and receive requests for international extradition. Improvements have included updating

the offenses for which extradition is possible, providing for the extradition of nationals, smoothing the procedures for extradition, clarifying the standard of proof for extradition, specifying the applicable statutes of limitations, limiting the political offense exception to extradition, and addressing other issues.

At this point, the United States has extradition treaty relationships with over 100 countries throughout the world. Pursuant to this network of extradition treaties, our extradition requests in recent years have resulted in the return for trial and punishment of persons charged with or convicted of the widest variety of crimes, including murder, white-collar crimes, narcotics traffickers and terrorists. Some of our recent extraditions have included the extradition from France of James Kopp, who murdered abortion doctor Bernard Slepian in Buffalo, New York, and was convicted of second degree murder this year in New York, and of Ira Einhorn, who murdered his girlfriend in Philadelphia, was a fugitive from justice for over 20 years, and was convicted of murder in 2002. Earlier this year we obtained the extradition from Guatemala of Milton Napolean Marin Castillo, who has been charged with committing a double murder in Ann Arbor, Michigan.

Areas of Concern

While there have been many successes, the existence of an extradition treaty, even a modern one, does not ensure that all will always go well in our extradition requests to our partners. Because of the differences in legal systems around the world, the extradition process is neither simple nor without frequent delays. I will highlight for you today three major areas of

continuing concern for the Administration with respect to our international extradition relationships.

Nationality

One concern has been our ability to obtain the extradition of nationals of the requested state. As a matter of longstanding policy, the U.S. Government extradites U.S. nationals. Most of the treaties we have sent recently to the Senate similarly freely allow for the extradition of nationals. Some countries, however, are prohibited by their constitutions or other legal authority from extraditing their nationals. The U.S. Government has made it a high priority to convince states to agree to extradite their nationals, notwithstanding laws or traditions to the contrary. This is, however, a very sensitive and deep-seated issue, and we have not succeeded in obtaining unqualified approval in all circumstances. A number of our major treaty partners, such as France, Germany, and many countries of Central and South America, still cannot extradite nationals. We continue, however, to work to convince these and all other countries to remove constitutional and other legal restrictions on the extradition of nationals.

In this connection, we have achieved notable successes recently in the Western Hemisphere with respect to the issue of extradition of nationals. Our recent treaties with Argentina, Bolivia, Paraguay, and Peru all provide for extradition of nationals. They represent a watershed in our efforts to convince civil law countries in the Western Hemisphere to obligate themselves to extradite their nationals to the United States. In practical terms, these treaties should help the United States to bring to justice violent criminals and narcotics traffickers, regardless of nationality, who reside or may be found in these countries.

We also are able to make gains in the area of extradition of nationals in some cases by working directly with our treaty partners on modifications of their extradition policies, where their law permits extradition of nationals. For example, largely as a result of our efforts, the Dominican Republic repealed its law prohibiting the extradition of nationals, leading to the extradition to the United States of a number of Dominican nationals on murder and narcotics charges. After many years of discussion, Mexico and Colombia have been extraditing nationals to the United States in recent years, Mexico under the U.S.-Mexico bilateral extradition treaty and Colombia under the authority of its domestic extradition law.

Death Penalty and Life Assurances

Another continuing problem is many countries' concern about the penalties that may be imposed in the requesting state, such as the death penalty or even sentences of life imprisonment. Our modern treaties typically provide that if the offense for which surrender is sought is punishable by death under the laws in the country requesting extradition but not in the country holding the fugitive, extradition may be refused unless the requesting state provides assurances that the death penalty will not be imposed or carried out. In many cases, the United States is in a position to provide such assurances when requested to do so. Prosecuting authorities generally can take measures that rule out the death penalty, and often are prepared to forego the death penalty rather than allow the fugitive to escape U.S. justice. There have been cases, however, where U.S. federal or state prosecutors have not been in a position to provide assurances that they would not seek the death penalty for a particular fugitive, for example, where the crime is such that they would prefer not to give the assurance and instead take the

chance that the fugitive might be returned from a different jurisdiction or otherwise come into the United States.

Beyond death penalty assurances, one troubling development with respect to sentencing is that some of our extradition treaty partners have requested assurances regarding life imprisonment as a prerequisite to extraditing fugitives to the United States, despite an absence of treaty provisions for such assurances. The degree to which U.S. federal and state prosecuting officials can or are willing to comply with such requests varies.

This matter of assurances relating to life imprisonment has become a significant issue in the last two years with respect to Mexico, which I understand is of particular concern to the Committee. In October 2001, the Mexican Supreme Court held that life sentences were unconstitutional under the Mexican Constitution and that, in addition to such sentences being barred in Mexico, no fugitive in Mexico could be extradited to another country if that fugitive faces a life sentence in the state requesting his extradition. Following this judicial ruling, Mexico was obligated to seek assurances from the United States that fugitives who face extradition from Mexico will not be sentenced to life imprisonment if returned, tried, and convicted in the United States.

During the nearly two-year period that this ruling has been in effect, officials in the executive branches of both countries have worked to try to design assurances that will satisfy the Mexican judicial requirement but also will be acceptable, or at least workable, to U.S. prosecutors. At the same time, however, we continue to strongly believe, and have

communicated firmly to the Mexican Government, that the Mexican Supreme Court opinion should be revisited so that our extradition relationship is not subject to this additional burden. Both the State Department and the Justice Department, including the Attorney General and Secretary Powell, have engaged the Mexican Government on this issue. We have pressed, and will continue to press, for the Government of Mexico to seek the reversal of this decision, and at a minimum reduce its adverse impact for as long as it is in effect.

Dual Criminality

As criminal law evolves and different types of conduct are criminalized, such as computer crimes, money laundering, terrorism and terrorist financing, the United States has made concentrated efforts to ensure that our new treaties cover these crimes. The older U.S. treaties negotiated before the late 1970s include a list of covered offenses. For countries with which the United States still has such "list" treaties, a request for extradition for a crime not included in the list would be rejected. In newer treaties concluded in the last 30-35 years, however, this list approach has been replaced by the concept of "dual criminality," usually providing that offenses covered by the treaty include all those made punishable under the law of both states by imprisonment for more than a year, or a more severe penalty. As long as the offense is a crime punishable by a year or more in both states, it is included as an extraditable offense under the treaty. Dual criminality extradition treaties carry the advantage of reaching the broadest range of felony offense behavior, without requiring the repeated updating of the treaty as new forms of criminality emerge. We have, for example, recently updated our extradition treaties with important partners such as India, France, and South Africa, and have recently signed an updated extradition treaty with the United Kingdom. The recently-signed extradition agreement with the

European Union will make dual criminality the standard for all twenty-five countries that as of next year will be EU members.

Apart from updating the extraditable offenses in individual bilateral extradition treaties, the United States has been a leader in the recent successful series of multilateral negotiations on international narcotics trafficking, organized crime, corruption, and terrorism. Each of these multilateral conventions, such as the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 1997 UN Convention for the Suppression of Terrorist Bombings, and the 1999 UN Convention for the Suppression of Financing of Terrorism, and the 2000 UN Convention Against Transnational Organized Crime and its Protocols on Trafficking and Smuggling of Persons, include extradition provisions that have the specific effect of updating extradition list treaties between parties to the convention to add the offenses named in the convention. These provisions are a major negotiating goal of the United States because they facilitate the ability of our law enforcement community to obtain the extradition of fugitives from other countries for crimes addressed in those conventions. In this respect, I should note that in the framework of the Council of Europe the United States has recently negotiated and signed an international convention on computer crime that will add major computer crime offenses to the list of crimes in our extradition treaties for which extradition is possible.

Additional Impediments to Extradition

There are other reasons why fugitives sometimes are not returned expeditiously for trial, even where an extradition treaty is in place and a fugitive from one nation can be located and arrested in another nation. Sometimes, in the courts of the United States and the courts of our

treaty partners, there are lengthy judicial proceedings at which fugitives exercise their rights to challenge extradition in trial court and through appeals or other proceedings. In the United States judicial system, fugitives have the right to seek a writ of habeas corpus that reviews a judicial finding of extraditability. Many countries of Latin America have the *amparo* process, which permits challenges to orders of extradition. In some cases, fugitives in Europe have sought relief from the European Court of Human Rights after judicial proceedings are concluded in the country of extradition.

In addition to these procedural rights, evidentiary requirements for extradition differ among legal systems and the process of extradition can become quite complex. Although an extradition hearing is not a full-fledged trial on the merits, the evidentiary requirements vary from legal system to legal system and do not necessarily mirror the requirements of our own "probable cause" standard. Procedural differences can lead to frustrating delays in proceedings. We address these and similar problems through direct consultations with our treaty partners, by amending treaties in some cases, and by increasing our knowledge of relevant aspects of foreign legal systems and thereby enhancing our ability to work more effectively with our law enforcement partners.

The Return of Fugitives Other Than Pursuant to a Bilateral Treaty

Outside of the process of extradition pursuant to bilateral treaties, our law enforcement partners have frequently invoked other means available under their domestic law to assist the United States in obtaining the return of fugitives to our country for trial or punishment. In recent years, Colombia has been extremely helpful in returning dozens of fugitives to the

United States, particularly in narcotics related matters, pursuant to extradition procedures incorporated under its domestic laws. We have also obtained custody of many fugitives from other countries, including Canada and Mexico, through those countries' deportation or expulsion processes. Thus while extradition pursuant to treaty continues to be the most common means of returning fugitives, there are other possibilities that we have pursued and will continue to pursue.

Conclusion

I hope that this overview has been helpful. In summary, while we have had many successes in the area of international extradition, we also face many difficult challenges. Needless to say, the system of international extradition would work more effectively for the United States if all nations had the same constitution, laws and policies that we do. Because this is not the case, our task, to which we are fully committed, is to make the process work as smoothly and efficiently as possible.

We appreciate the Committee's interest in these important issues. I will be happy to address any questions the Committee may have.

Mr. SOUDER. Mr. Swartz.

Mr. SWARTZ. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, thank you for the opportunity to discuss with you today the important issue of the obstacles we face to our extradition practices in the United States.

Mr. WITTEN. Mr. Chairman, is his mic on?

Mr. SWARTZ. Thank you, Mr. Chairman. As I said at the outset, let me thank you again for the opportunity to discuss this important issue.

The Department of Justice, along with the Department of State is committed, fully committed to the return to the United States of every fugitive who has broken the laws of the United States. That is true regardless of whether or not the offense is a Federal offense, a State offense or a local offense. But, Mr. Chairman, as you and other members of the subcommittee have noted, and as my colleague from the State Department has also noted, we do face serious obstacles to extradition in many circumstances. Two of those obstacles were mentioned in the opening statements of the committee, the death penalty and life imprisonment.

As the subcommittee is aware, many nations throughout the world now forbid the death penalty. And, again, Mr. Chairman, as you pointed out, that is a matter that we have had to deal with for some period of time in our extradition practice. We have over time evolved a process for dealing with that issue. Our extradition treaties almost invariably in cases of countries that forbid the death penalty do not bar extradition in capital cases, but rather permit the country from which extradition is being sought to demand assurances that the death penalty will not be imposed, or, if it is imposed, will not be executed.

When the United States receives such a request for assurances, we coordinate closely with the prosecuting authorities, State or Federal, to determine whether they are willing to grant such assurances.

While this process is frustrating, it reflects not only the increasing trend among countries toward the abolition of the death penalty as a sanction under their domestic law, but the extent to which those abolitionist views have been extended either as a matter of law or of policy to refusing to take any action, including granting extradition that could still facilitate the imposition of the death penalty by another country.

The death penalty assurance regime thus for many years has provided a mechanism for reaching some accommodation of widely divergent national views on capital punishment, while permitting extradition and trial of accused murderers to proceed, albeit at the cost of sacrificing the maximum punishment for such crimes.

But while over the course of years we have been able to work with the regime of the death penalty, we now face a disturbing growth in demands for similar assurances with respect to life imprisonment or a maximum term of years of imprisonment. Some countries are now refusing to extradite fugitives absent assurances from the United States that they will not face life imprisonment or in some cases even some other maximum term of years deemed inappropriately lengthy. As has been discussed, Mexico, of course, re-

quires such an assurance as a result of a decision of the Supreme Court in Mexico.

But before turning to Mexico, I must note that there are other countries who have sought assurances as to sentences of imprisonment, although for a variety of reasons that we will discuss today, the problem in Mexico is a more severe one.

Colombia, which as has been noted already this morning is one of our best extradition partners, seeks an assurance as well regarding life sentences. But we have been able to arrange to give assurances that have proven workable in terms of the nature of the charges that are frequently presented in Colombia cases. Spain and Venezuela have also sought assurances as to nonimposition of life imprisonment. And Costa Rica has sought assurances that neither life nor a sentence in excess of 50 years will be imposed.

I should add parenthetically, it is not only with regard to the United States that such assurances have been requested. France, for instance, has received in the past requests for imprisonment guarantees from Portugal in a case involving a serious criminal.

These developments are of great concern to the Department of Justice as well as to the Department of State. We believe for international extradition to work, there must be a certain degree of deference to the criminal justice systems and the punishments of the country seeking return of a fugitive. From my perspective, to the extent that countries' due process guarantees are deemed insufficient, the solution is not to enter into an extradition treaty; rather than to try to interpret that treaty in a way that prohibits, in essence, the return of a fugitive.

But, as we have encountered with Mexico, in some circumstances the issue is presented not by our executive branch partner, but by the judiciary in other countries. As the subcommittee is aware, in October 2001, a decision of the Mexican Supreme Court concluded that life assurances would be requested—life imprisonment assurances would be requested with regard to extradition. This has to be seen, of course, in terms of our larger extradition relationship with Mexico, which has included increasing number of extraditions in the past years, including extraditions of nationals for some serious crimes. In addition, the total number of fugitives returned by Mexico to the United States well exceeds the total number of extraditions because, particularly in recent years, Mexico has frequently exercised its authority under its immigration laws to deport American citizen fugitives who are in Mexico illegally.

For example, the FBI and the U.S. Marshal Service at our embassy report a total of 57 fugitives deported to the United States to date in fiscal year 2003. Among those deported were Andrew Luster, the Max Factor perfume heir and convicted serial rapist; Ronald Samuels, who is alleged to have hired three separate killers to murder his ex-wife, leaving the victim a paraplegic; and William Edminston, wanted for a $25 million bankruptcy fraud.

Also on the positive side, our law enforcement agencies have been able to work more closely with their Mexican counterparts, including on fugitive cases. Indeed, our ability to track fugitives, which is the prerequisite for seeking any return, has been significantly increased thanks to the Congress's approval in February

2003 for the establishment of a field office for the U.S. Marshal Office in Mexico City.

But despite these positive developments, the fact remains that the Mexican Supreme Court's October 2001 decision barring extradition in life sentences cases has constituted a serious setback to our bilateral extradition treaty relationship. The court, notwithstanding the arguments of the Mexican Government to the contrary, ruled that extradition of a person from Mexico who faced life imprisonment would violate the Mexican Constitution's barring cruel and unusual punishment. The result has been severe. Since October 2001, extradition has been denied in 19 cases in whole or in part because of our inability to provide assurances. But the impact goes beyond the number of cases, since these are some of the most serious cases that we face.

Finally, even where prosecutors may believe that limiting the availability of a life sentence is worth the opportunity to bring a defendant to trial, providing guarantees may prove difficult in the context of life sentences in a way that is not the case in death penalty situations. As my colleague Mr. Witten has pointed out, both the State Department and the Justice Department up to and including the Attorney General and Secretary of State have repeatedly engaged the Mexican Government on this issue. We have made sustained and continuous efforts to have the Mexicans seek the reversal of this decision or, at a minimum, reverse its adverse effects. We understand that the Mexican Ministry of Foreign Relations and the Mexican Attorney General's Office have filed a petition with their Supreme Court seeking reconsideration of the October 2001 decision. We will continue to press on this issue.

At the same time, as we have noted already, this is not simply a question of political will on the part of the executive branch of the Mexican Government. Our extradition relationships, unlike the other aspects of our law enforcement relationships, are not simply executive to executive. Extradition, because in almost every case it involves judicial involvement, also involves an independent branch of government. This complicates tremendously our relations not only with Mexico on extradition, but other countries as well.

Notwithstanding this, we remain committed to push forward on this issue, to work with this committee, to work with Congress generally, and to attempt to find solutions for this. As my colleague Mr. Witten noted, Ira Einhorn was returned to the United States after 20 years of efforts on the part of the Office of International Affairs of the Department of Justice and our colleagues in law enforcement. It is exactly that commitment and dedication that we bring to every extradition case, and we will continue to do so.

Thank you again for your time. I look forward to answering any questions.

[The prepared statement of Mr. Swartz follows:]

Department of Justice

STATEMENT

OF

BRUCE C. SWARTZ
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE,
DRUG POLICY, AND HUMAN RESOURCES

COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

"STRENGTHENING THE LONG ARM OF THE LAW:
HOW ARE FUGITIVES AVOIDING EXTRADITION
AND HOW CAN WE BRING THEM TO JUSTICE?"

PRESENTED ON

OCTOBER 1, 2003

STATEMENT OF
BRUCE C. SWARTZ
DEPUTY ASSISTANT ATTORNEY GENERAL/CRIMINAL DIVISION

BEFORE THE
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COMMITTEE ON GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

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Introduction

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to present the views of the Department of Justice on how international fugitives are avoiding extradition to the United States and how we can address impediments to extradition. I understand that the Subcommittee is interested in both our overall international extradition program, and more specifically the problems we face in extraditing defendants who face capital punishment or life sentences from Mexico and other countries. I have structured my testimony accordingly.

Extradition in General

The Department of Justice is committed to securing the return to the United States of those who violate our country's laws and seek safe haven in foreign countries. We work hard to locate international fugitives, and we rely upon all available legal mechanisms to bring them back to this country in order to face prosecution and punishment for their crimes.

Moreover, we make no distinction in our efforts between federal, state or local fugitives. The U.S. Marshals Service, the FBI, and the U.S. National Central Bureau of Interpol assist state and local authorities as well as the federal law enforcement community in locating,

and working with foreign authorities to apprehend, fugitives abroad. The attorneys in the Justice Department's Office of International Affairs provide the same sort of advice and assistance to Assistant District Attorneys and Assistant State Attorneys as they do to Assistant United States Attorneys.

The problem of international fugitivity is a serious one. Not only can fugitives slip across our borders to Mexico and Canada, but ease of international transportation now facilitates fugitives' flight to countries far beyond our borders. Moreover, the nature of criminality has changed. Today, offenders commit serious crimes against the United States and its citizens without ever entering our territory, whether they are terrorists who attack our citizens and embassies in foreign countries, drug traffickers who import huge quantities of narcotics into the U.S., or fraud artists who operate abroad over the Internet or by telephone to victimize our citizens.

The number of international extraditions to the United States is significant. According to Justice Department case tracking records, in Fiscal Year 1999, when my colleague, Deputy Assistant Attorney General Mary Lee Warren testified before this Subcommittee in hearings devoted to extradition and our extradition relations with Mexico, 225 fugitives wanted for extradition were returned the to United States[1]. Last year, in 2002, the number of returned fugitives was 266[2].

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[1]This figure includes fugitives wanted for extradition who were formally extradited, who were arrested for extradition and then waived formal extradition, who were instead deported or expelled, or who returned to the United States voluntarily. It does not include fugitives who were deported to the United States in the absence of the opening of an extradition case file.

[2] This figure for calendar year 2002 is from the "Report on Extradition Policy and Practice" submitted by the State Department pursuant to the Foreign Relations Authorization

Yet even these extradition figures do not capture the extent of the international fugitive problem, for they reflect only those cases where we are in a position to request extradition – that is, where we have located a fugitive or have a solid lead on a fugitive's whereabouts overseas. The overall numbers of international fugitives is far higher, and by far our greatest problem is the practical difficulty of locating and identifying defendants who have fled overseas. And even when fugitives are apprehended for extradition, foreign extradition proceedings can be protracted, as can also be the case in the United States.

Fugitives are extradited to the United States for a wide spectrum of serious state and federal criminal offenses, and from countries in every region of the world. But extraditing even a single fugitive can require tremendous effort and persistence. By way of example, after a manhunt of 20 years, the notorious fugitive Ira Einhorn, wanted by the Philadelphia District Attorney's Office for the 1977 murder of his girlfriend Holly Maddox, was apprehended in France in 1997. After fighting his extradition through the French legal system and up to the European Court of Human Rights – all the while released on bail – he was finally surrendered to the United States in July of 2001. In October 2002, he was convicted and sentenced to life imprisonment. That case serves as an outstanding example of sustained, effective cooperation between state prosecutorial officials, the U.S. Department of Justice, and the State Department, and demonstrated our commitment to taking all possible measures to persuade foreign courts and governments to extradite those charged with serious crimes in the United States.

There are a variety of problems we face in extraditing fugitives. We have made progress on some, others persist, and some new problems seem to be emerging.

Act, Fiscal Year 2003, section 696 of P.L. 107-228.

Modernizing our network of extradition treaties

One area where we have made significant progress is in modernizing and expanding our network of extradition treaties and other law enforcement instruments. As you know, the primary legal tool for securing the rendition of international fugitives is the extradition treaty. Most countries, like the United States, do not extradite fugitives absent an extradition treaty. Currently, the United States enjoys bilateral extradition treaty relationships with more than 100 countries.

We continue to work closely with the Department of State to update and expand this network of treaties. In fact, in the past decade alone, the United States has negotiated, signed, and obtained Senate advice and consent to ratification for nearly 30 new extradition treaties. These new treaties contain a variety of provisions that strengthen our ability to obtain the successful extradition of fugitives to the United States.

First, they have significantly expanded the scope of offenses for which extradition is to be granted, by eliminating the traditional "list" approach to extraditable offenses, and replacing it with the "dual criminality" principle. No longer must a crime appear on a delineated list of offenses contained in the treaty – lists that are often limited and can become quickly outdated with developments in criminal law and the creation of new criminal offenses. Instead, these treaties require each country to extradite anyone wanted for an offense that is punishable under the laws of both countries by some agreed upon minimum penalty – most commonly imprisonment for more than one year. Moreover, the treaties provide that such crimes shall be extraditable whether or not the laws of the two countries place them in the same category of

offenses, or describe them by the same terminology. Thus, in a particular case, extradition will be available so long as the treaty partner criminalizes the same conduct for the minimum agreed upon penalty, and regardless of whether it designates the crime the same way.

Second, our modern treaties provide streamlined mechanisms for countries to request the immediate arrest of a fugitive pending the submission of the formal documents required for extradition, a process referred to as "provisional arrest." Whenever possible, we want the Department of Justice, and in particular, our Office of International Affairs, to be able to make these arrest requests directly to our counterparts in foreign Ministries of Justice or Attorney Generals' Offices, rather than through the sometimes slower diplomatic channels. Using the diplomatic channel is not so much a problem on our side, for the State Department is extremely efficient in making provisional arrest requests through our Embassies abroad; however, in many foreign countries, the foreign ministries can be much less efficient.

Third, in negotiating new treaties we seek whenever possible to close legal and procedural loopholes that had stymied extraditions. These include: dispensing with application of foreign statutes of limitations – which are often quite different from our own – as a potential bar to extradition; dispensing with or abbreviating formal extradition proceedings where the fugitive is willing to return voluntarily; limiting the "political offense" exception to extradition – an exception most commonly invoked by terrorists – so it cannot apply to the most serious crimes of violence; replacing requirements of *prima facie* evidence to support extradition – once the standard for common law treaty partners – to the much more manageable probable cause standard of U.S. law; and expanding the scope of treaties where possible to reach extraterritorial offenses, such as the terrorism, drug trafficking and fraud offenses I alluded to earlier.

Extradition of Nationals

Both in the treaty context, and as part of our diplomatic initiatives, we have also made progress in addressing what was traditionally one of the greatest obstacles to extradition: the refusal of many countries to extradite their nationals. The United States, as a matter of policy, extradites citizens and non-citizens alike, and indeed, this has long been a tradition among common law countries. However, other countries prohibit the extradition of their own nationals. In some places this prohibition is based upon public policy. In others it is a matter of domestic law, sometimes even constitutionally-based domestic law.

With the State Department, we are working hard to address this problem. When we negotiate a modern extradition treaty, we try whenever possible to include provisions requiring, or at least permitting, extradition of nationals, and we urge our treaty partner to change its law or policy in order to permit it do so.

In addition, in meetings with our foreign law enforcement counterparts – up to and including meetings of Attorney General Ashcroft with the Attorneys General or Ministers of Justice of other countries – we argue that the interests of justice are best served by laws and policies that permit a person to be prosecuted in the country whose laws have been violated. It is most often there that the witnesses and other best evidence exists, where the harm has been most directly felt, and where the retributive and deterrent benefits of punishment are most needed.

In the last decade, we have had some significant success, particularly in Latin America, in overcoming bars to the extradition of nationals. Our new extradition treaties with Argentina, Belize, Paraguay, and Peru all mandate the extradition of nationals – as does our treaty with

Lithuania -- and our new treaty with Bolivia requires extradition of nationals for a wide range of serious offenses. Moreover, even without new treaties, we have worked with countries to revise their laws or policies so as to permit extradition of their citizens. Of particular note are three countries where we have large numbers of fugitives: Mexico, which in 1996 began for the first time to exercise its discretion to extradite its citizens; the Dominican Republic, which in 1998 amended its domestic law to clarify its authority to extradite citizens; and Colombia, which in December 1997 amended its Constitution to remove a prohibition on extradition of nationals.

In no case is the significance of lifting barriers to extradition of nationals better illustrated than in the dramatic change in our extradition relationship with Colombia. In the early and mid-1990s -- when the Constitutional bar on extradition of nationals was in place -- we saw no more than a handful of extraditions. But since then, we have had 149 fugitives extradited from Colombia; of those, 124 were Colombian nationals, and among them were some of the most significant drug traffickers in the hemisphere. Today, 91 persons are in custody in Colombia, awaiting extradition to the United States. These extradition successes were possible because of the courage of Colombia in amending its constitution and the extraordinary investigative cooperation between our countries in building strong cases against the narcotraffickers and narco terrorists who violate both our countries' laws.

While these success are significant, there still exist many countries which simply will not extradite their own citizens, no matter how serious the crime. However, we will continue, whether in negotiating new treaties, or through diplomatic initiatives, to work toward the day when no fugitive may hide behind citizenship to avoid surrender for his or her crimes.

Absence of a treaty; use of deportation

Despite the improvements in our recently negotiated extradition treaties and our successes in overcoming barriers to extradition of nationals, significant challenges remain. A fundamental problem can be the lack of any extradition treaty at all with a foreign country in which a fugitive has taken refuge. There are over 60 countries with which the United States has no extradition treaty relationship. As mentioned previously, we are addressing this problem by working with the State Department to expand and update our network of modern extradition treaties. However, due to a variety of factors, including concerns over creating an obligation to surrender U.S. citizens to the legal, judicial, and penal systems of some foreign countries, or the lack of a demonstrable U.S. law enforcement need, there will remain places with which we will continue to lack extradition treaty coverage.

Yet even in the absence of a treaty, we do actively explore other legal options which may be available to bring fugitive criminals to justice. Although important and effective, formal extradition is not the only mechanism available for obtaining the international surrender of fugitives. For example, while the law or policy of some countries prohibit it, others may be willing and able to expel or deport fugitives to the United States. And we routinely accept, prosecute, and if convicted, punish such fugitives. Moreover, some countries with which we have extradition treaties will also often deport American citizen fugitives to us – a process which is often much more efficient than extradition. As I will discuss more fully later, Mexico is now one of those countries.

The death penalty

The death penalty can pose another challenge to extradition. Although under U.S. federal law and the laws of over two-thirds of our states capital punishment is a legally sanctioned penalty for the most serious criminal violations, many foreign countries, including those in Europe, Latin America, and some other regions have abolished that punishment altogether. Those countries are often unwilling or unable to extradite persons who could face execution for their crimes. On the other hand, some other foreign countries (e.g. in Asia and the Middle East) may have broader death penalty laws than those that exist in the United States. They may provide capital punishment for offenses beyond those our law makers and courts have deemed appropriate for this most severe sanction.

Limitations – or potential limitations – on extradition in capital cases are not a new phenomenon. Most U.S. extradition treaties, and virtually all modern treaties, contain a clause addressing the death penalty. These provisions do not flatly bar extradition in capital cases. Rather, they permit the country from which extradition is sought to demand assurances from the country seeking extradition that, if a person potentially punishable by death is extradited, the death penalty either will not imposed, or if imposed it will not be executed.

When the United States receives a request for such assurances, we coordinate closely with the prosecuting authorities – state or federal – to determine whether they are willing to grant them. If they are, they are then passed by the State Department to the other country as a binding obligation undertaken by the United States. In recent years, we have seen instances in which foreign governments or courts have questioned the validity of our death penalty assurances. With the strong support of the State Department, however, we have been able to overcome these

problems, with one exception: the Italian Constitutional Court has held that no assurance we provide will be adequate in any case in which the death penalty is among statutory punishments permitted for the offense charged.

In a minority of cases, the prosecuting authorities decline to provide death penalty assurances – perhaps because the prosecutor believes the crime is so heinous that precluding the possible sanction of capital punishment is not appropriate, even though it may mean, for the time being, that the defendant will avoid trial. In these cases, we refuse to provide the requested assurances, and it is then up to the foreign country whether they can and will surrender the fugitive in their absence. Most often, they cannot and will not.

While this process is frustrating, it reflects not only the increasing trend among foreign countries towards abolition of the death penalty as a sanction under their domestic law, but also the extent to which their abolitionist sentiments have been extended, either as a matter of policy or law, to refusing to taking any action, including granting extradition, that could facilitate the imposition of the death penalty by another country. Thus, the death penalty assurance regime has for many years provided a mechanism for reaching some accommodation of widely divergent national views on capital punishment, while permitting extradition and trial of the accused murderers to proceed, albeit at the cost of sacrificing the maximum punishment for such crimes.

Life sentences and extradition from Mexico

While over the course of many years, we have been able to work within a regime of death penalty assurance in many cases, we now face a disturbing growth in demands for similar assurances with respect to life imprisonment or maximum terms of years. Some countries are now refusing to extradite fugitives absent assurances from the United States that they will not

face life imprisonment, or even some other maximum term of years deemed inappropriately lengthy.

Mr. Chairman, as I believe you and other members of the Subcommittee are aware, Mexico now requires an assurance that a person to be extradited will not face life imprisonment. However, before addressing in situation with Mexico, I must note that there are other countries that have sought assurances as to sentences of imprisonment, although, for a variety of reasons, the impact of the problem is most severe with Mexico. Colombia, one of our best extradition partners, seeks an assurance regarding life sentences but accepts assurances that have proven workable in terms of the respective roles of our prosecutors and judges in sentencing. Costa Rica and Spain have also sought assurances as to non-imposition of life imprisonment. From our experience some countries will seek assurances that a sentence will not exceed a particular term of years: Costa Rica (50 years), Venezuela (30 years) and Portugal (20 years).

These developments are of great concern to the Department of Justice. We believe that for international extradition to work, there must be a certain degree of deference to the criminal justice systems and punishments of the country seeking the return of a fugitive. A country should not expect that another country's system will exactly mirror its own. From our perspective, if the due process or punishment schemes of a country are viewed as fundamentally at odds with core principles of human rights, then it may be preferable simply not to enter into an extradition treaty relationship with such a country. However, we believe it is inappropriate for mere disparities as to the length of sentences of imprisonment to rise to the level of being obstacles to extradition.

Extradition from Mexico

Our current difficulties with life sentence cases in seeking extradition from Mexico -- which arise from an October 2001 decision of the Mexican Supreme Court -- are serious, but they must also be considered in terms of our broader extradition relationship with Mexico, a relationship that has undergone significant developments in recent years, many of which are positive.

First, since 1996, when Mexico first began to exercise its discretion to extradite its citizens, the total number of extraditions to the United States has increased. In 1995, only four fugitives were extradited; in 1996, thirteen were extradited and the numbers have grown steadily since. In 2002, twenty-five fugitives were extradited, more than in any other year, and notwithstanding the fact that during the same period extradition was denied in several cases because of the life sentence issue. To date this year, twenty-three fugitives have been extradited. Mexico's decision to use its authority to extradite citizens, and the January 2001 decision of the Mexican Supreme Court upholding that authority, without question strengthened our extradition relationship.[3] Among those successfully extradited from Mexico have been fugitives wanted for homicide, rape, kidnapping, narcotics offenses, money laundering, and the sexual assault of children.

In addition, the total number of fugitives returned by Mexico to the United States well exceeds the number of extraditions because, particularly in most recent years, Mexico has

[3] In its decision, the Mexican Supreme Court upheld the discretionary authority of the Mexican Executive Branch to extradite Mexican nationals, and rejected a claim that Mexican law required, in lieu of extradition, the domestic prosecution of its citizens in Mexico for crimes committed in the United States (so called "Article 4" prosecutions under that article of the Mexican penal code).

frequently exercised authority under its immigration laws to deport American citizen fugitives who are in Mexico illegally. For example, our Embassy reports that as of the end of June, the FBI had escorted 26 fugitives deported to the U.S., and the U.S. Marshals Service indicates that to date in FY 2003, Mexico has deported 30 fugitives in its cases. Among those deported were Andrew Luster, the Max Factor perfume heir and convicted serial rapist (California), Ronald Samuels, who is alleged to have hired three separate killers to murder his ex-wife, leaving the victim a paraplegic (Florida), and William Edminston, wanted for a $25 million bankruptcy fraud (Western District of Texas).

Also on the positive side, our law enforcement agencies are able to work more closely and more effectively with their counterparts, including on fugitive cases. Indeed, our ability to track fugitives and have them apprehended in Mexico is being significantly strengthened thanks to the Congress's approval in February 2003 for the establishment of a field office for the U.S. Marshals Service in Mexico City. The Marshals can now work, along with the FBI, DEA and other federal law enforcement agencies represented at our Embassy in Mexico, directly with Mexican authorities in tracking down fugitives wanted in the United States.

Despite these positive developments, the fact remains that the Mexican Supreme Court's October 2001 decision barring extradition in life sentence cases has constituted a serious set-back to our bilateral extradition relationship. The Court, notwithstanding the arguments of the Mexican Government to the contrary, ruled that the extradition of a person from Mexico who faced life imprisonment would violate the Mexican Constitution's bar on cruel and unusual punishment. Thereafter, in order to comply with the Court's ruling, the Mexican Government began asking the United States for assurances that life imprisonment would not be imposed upon

persons extradited to this country, indicating that it must refuse extradition in the absence of such assurances.

The impact of the Supreme Court's decision has been severe. Since October 2001 extradition has been denied in 19 cases, in whole or in part because we either did not or could not provide an assurance that a life sentence would not be imposed, or because the Mexican courts found our assurances inadequate. But the impact goes far beyond the numbers of cases. The cases affected – and they are both state and federal cases – are by definition the most serious: murders, brutual attempted murder, and large-scale drug trafficking. Moreover, there are and will be cases – and we understand the murder of Deputy Sheriff March is one – where prosecutors are reluctant to seek extradition because of problem of having to provide an assurance that a sentence of life imprisonment will not be imposed.

Finally, even where prosecutors may believe limiting the availability of a life sentence is worth the opportunity to bring a defendant to trial, providing true guarantees – and this is what the Mexican courts demand – may be more difficult in the context of life sentences than in it is with respect to the death penalty. Where a life sentence is within the legal range of sentences for a particular offense, prosecutors, recognizing the prerogatives of the sentencing judge, may not be in a position to guarantee that a life sentence will not be imposed.

Both the State Department and the Justice Department, up to and including Attorney General Ashcroft and Secretary Powell, have repeatedly engaged the Mexican Government on this issue. We have made sustained and continuous efforts to have the Mexicans seek the reversal of this decision, or at a minimum reduce its adverse effects.

One positive development is that Mexican courts will now permit extradition for life

sentence cases, if there is a possibility of parole. Thus, at least for states that have parole, there may be some relief from the impact of the October 2001 decision. However, many states, like the federal government, no longer have parole.

Also, the Mexican Ministry of Foreign Relations (Secretaria de Relaciones Exteriores) – the SRE – has asserted its prerogatives about when assurances must be provided and the form they must take, thereby reducing considerably the problem of some Mexican courts reviewing the assurances we are able to give and deeming them untimely or inadequate. While there are still cases where assurances cannot be given, when we are in a position to do so, the approach now followed by the SRE gives us clearer guidance in formulating assurances and greater consistency in securing positive decisions on extradition.

In addition, we understand that the Mexican Ministry of Foreign Relations and the Mexican Attorney General's Office (Procuraduria General de la República, the PGR) have filed a petition with their Supreme Court, seeking reconsideration of the October 2001 decision.

We will continue to press Mexican authorities on this issue. In addition, we will continue to reach out to state and federal prosecutors in this country to engage them in our efforts to address this problem. And, until we and Mexico find a way to resolve the life sentence issue, we will continue to work closely with them in specific cases to explore every possible avenue for obtaining the return of wanted fugitives to face punishment as commensurate as possible with the very serious crimes they have committed.

Conclusion

I can assure you that the Department of Justice is committed to taking every possible measure to return to justice those who violate our laws. We have many successes, some

immediate and some that take years, but we also face many problems. We will continue to work to resolve those problems, to improve our extradition relations and to use other legally acceptable alternatives for obtaining the return of fugitives when extradition is not available or effective. We appreciate the interest of the Subcommittee in understanding the difficulties we face in extradition and our efforts to overcome them.

Thank you, and I will be pleased to respond at this time to any questions the Subcommittee may have.

Mr. SOUDER. I would like to ask just a couple of basic questions before we get into some of the meat of the questioning. One that I am a little confused about, I just want to clarify—it could be relatively short answers; either of you can respond. When you say life imprisonment, some of these countries were 50 years, 30 years, Venezuela was 30, Portugal 20. Is that first sentence, or is that combined? For example, aggregate.

Mr. SWARTZ. Mr. Chairman, as to some of those countries, that is the aggregate sentence. That is, that person cannot be sentenced beyond that term of years.

Mr. SOUDER. And do the extradition treaties vary by, for example, if it was a U.S. citizen hiding out there like Einhorn? And what if they had been hiding—first off, if it's a U.S. citizen that flees across the border—let me give you a couple examples. A citizen flees across the border; clearly, a U.S. citizen only. A U.S. citizen flees across the border, stays in, say, France for an extended period of time, gets citizenship there, becomes dual even though the reason they became dual is they fled the United States. A third would be an illegal resident in America who therefore is a national of another country who commits a crime here, say a murder, and flees back to, say, Mexico or Colombia. A fourth would be what many people are, are dual nationals; in other words, they could be a citizen in the United States and a citizen of Venezuela, of Colombia, of Mexico. Could you kind of go through a little bit how the extradition treaties vary in those different classes?

Mr. WITTEN. Mr. Chairman, our treaties typically don't distinguish between the responsibilities of the state with respect to extradition of nationals except insofar as some of our treaties do have language that permit the executive authority of the requested state—that is, the state where the fugitive is located—not to extradite its nationals. In some cases, the language varies, so it's more or less discretionary on the part of the request of state; in some cases it's more mandatory on the government than not.

Where the nationality does become very relevant would be, for example, Mr. Swartz mentioned some of the deportations. Extradition is obviously very important, and it's a way that we get lots of fugitives from countries around the world, but quite a few countries do have flexible immigration statutes. So Mexico, for example, was able to send Mr. Luster back over the last several months to the United States, not through a formal extradition process involving judicial challenges and appeals and so forth, but through their immigration process. That's one way that the treaties were distinguished.

You gave the example, Mr. Chairman, of a fugitive fleeing one country, becoming a national of the other. I think the extent to which that country would view that person as its national would probably vary. If you will remember, in the Scheinbein case—this is the famous case several years ago where the fugitive left Montgomery County, MD and went to Israel—there was extensive litigation within the Israeli judicial system about whether at the time the murder was committed Mr. Scheinbein was a national of Israel. And at our request, the Israeli Government litigated affirmatively that said that he was not entitled to the protection of Israel's nationality law. And in a split decision, the Israeli Supreme Court

ruled that there was sufficient contacts with Israel to permit the Israeli Government—or to require the Israeli Government to withhold extradition.

So it becomes a very case-by-case basis, depending on the national laws of the country involved and what other options might be available by way of working outside of the extradition process.

Mr. SOUDER. Mr. Swartz, did you want to comment?

Mr. SWARTZ. I would add simply that, Mr. Chairman, under some circumstances, regardless of the nationality of the fugitive sought, the country may require the same type of assurances before the individual is returned. Einhorn would be an example of an American citizen as to whom the death penalty assurances were sought.

Mr. SOUDER. From my visits in Central and South America, it seems to me, though, the intensity is a lot greater on nationals.

Mr. WITTEN. The issue of extradition of nationals, this hemisphere is split. In South America, there are several countries that have abandoned the protection of nationals that we have mentioned, Peru, in my testimony and some—Peru and Paraguay, for example. In some cases in Central America, typically nationals are not extradited under the domestic Constitutions or laws of the respective countries. Mexico, as we mentioned, does extradite its nationals. Dominican Republic does. In Europe, typically the countries—civil law countries do not extradite their nationals.

Mr. SOUDER. I'm going to yield, if it's OK, to Ms. Norton next, because she had a time problem.

Ms. NORTON. I want to thank Ms. Sanchez for allowing me to go out of turn. I'm ranking member of a committee that will be meeting shortly.

I have some questions particularly involving the complications here between international law and criminal law, and I understand the difficulties you have.

Victims here want justice. I am just amazed at the Einhorn case and how long it took to get the kind of justice, always relative in international terms, it seems to me you could have gotten 20 years ago.

Let me ask this question. Our criminal laws are particularly harsh when measured by other democratic countries. You say many countries don't have the death penalty. Most countries don't have the death penalty. I do understand that we are negotiating against a world consensus on issues like that. I'm puzzled by your notion, one of you talked about the, "inability to provide assurances." Revisit the Mexican Supreme Court decision, we would like them to revisit that decision. You know, I try to think we are dealing with sovereign nations. Hey, revisit the Supreme Court decision of the United States. I tell you one thing, there are a number of Supreme Court decisions of the United States I would like to see revisited. And when my country in response to another sovereign nation asks that, then I will understand how reciprocity works here, because I don't see reciprocity here.

We are dealing in other countries with things that are sacrosanct to us, their Constitution, where you know good and well there is no ability on the part of the Supreme Court or any other court to change what the law requires. We are not dealing with legislative changes. We are dealing with sovereign nations which have inde-

pendent judiciaries, which are something we prize more than we prize anything else in our Constitutional system. We are dealing with publics who feel as strongly about their sanctions as we do about ours; for example, about the death penalty, to take an example.

Now, let me ask you a question based on a real case. The Einhorn case, and the notion that we kept that family waiting almost a quarter of a century is outrageous. And why did we keep them waiting? Because in a case where it was as almost as clear as any case you have seen that this man was guilty, apparently we were unwilling to negotiate the question of the death penalty. What happened finally? We finally did negotiate that question; Einhorn came back here; he's convicted.

I don't know if these decisions are made by individual U.S. Attorneys, the main Justice gets into it, if there are negotiations between our State Department and our main Justice, but I would like some insight into the process you go through. I'd particularly like to know, if you are seeking justice for victims here, why you don't negotiate with sovereign nations knowing full well in many of these cases that there are not changes they can make any more than there are changes you can make in our own country; why we are insistent, for example, in death penalty cases that, I'm sorry even in the Einhorn case, we are going to keep you waiting for two decades. Why not simply negotiate, bring back, get some measure of justice for these victims? And what is the process you use, and why does it take so long, particularly when you fold, as you ultimately did in the Einhorn case?

Mr. SWARTZ. Thank you.

The issues that you have raised do go to the heart of the problems we face in this regard. As you note, we are dealing with sovereign nations, and frequently, as I noted in my opening statement, with the judicial systems of sovereign nations rather than the executive branch. Notwithstanding that, we have found over the years that by continuous discussion with the executive branch of other countries, Mexico being one, it is possible to present, not in a way that suggests that they have to adopt our system, but in a way that suggests that there are things to be learned from our system, approaches that we believe are appropriate, including, as an example that my colleague noted, the extradition of nationals, an issue that we have pressed repeatedly in our treaties, and in some cases we have led other countries to change their Constitutions.

Ms. NORTON. Did you really think in the Einhorn case that his open and notorious living in France that you were going to be able to get France to do something about the death penalty?

Mr. SWARTZ. No. In the Einhorn case, as you note, there was extensive delay. Part of that delay, of course, was simply locating Mr. Einhorn. He had been successfully—he fled apprehension and had evaded our detection. When he was located in France in 1997, the issue was not simply the one of the death penalty, but, as you recall, the trial in absentia. And as a result, there needed to be legislation in Pennsylvania that made it possible for him to be retried. That was the critical issue.

As to the broader question you raised, and a very serious one, as to how the decisions are made as to whether or not assurances

should be given, that is a matter that is primarily in the hands of the local prosecutors or the Federal prosecutors as the case may be to consider what the various options are.

Ms. NORTON. Is it the local U.S. Attorney or is it main Justice?

Mr. SWARTZ. Well, we certainly consult in the case of Federal cases with the U.S. Attorney as to the various options that are available, and we provide, again, the same advisory service for the local and State prosecutors that face this issue. In the final analysis, the decision has to be made, unless it's a case, of course, being prosecuted by the main Justice Department, as to a weighing up of these factors. Usually we are able to reach a common view. But, as you say, in some circumstances, certainly in the death penalty context, it is well recognized now that in most cases we will have to give a death penalty assurance if we hope to have the individual extradited. That does not rule out the possibility that we might be able to apprehend the individual in another country or have the individual deported. So there are factors to be weighed.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. SOUDER. And I think it's important to point out for the record here, we are not talking about changing the laws of other countries in their countries; we are talking about whether American law can be enforced—whether American citizens are going to be subject to different laws of the United States than those who have fled our country and noncitizens being—having the same laws applied to them. And it's a very difficult international question, but it's a question of whose sovereignty applies when it happens on your soil.

Judge Carter.

Mr. CARTER. Thank you, Mr. Chairman. I have a limited amount of experience with Mexican justice, having gone down in either 1978 or 1979 to try to get two U.S. citizens out of a Mexican jail in Puerto Vallarta, Mexico. The jail clothes that they wore in that jail were their underwear, the prison cell was a courtyard the size of this room with an open sewer in the middle, and the bath was a fire hose that was squirted on them once a day. And so I can understand why they would think that 50 years in prison would be cruel and unusual punishment. We really felt like 30 days in that jail was cruel and unusual punishment.

There is a difference. Mexico, for instance, does not have habeas corpus rules. You can be held indefinitely in Mexico prisons without the right of talking to counsel, nor without any right to bond.

So to compare American justice with Mexican justice is a strange comparison, in my opinion. And I personally experienced and witnessed that, and I can tell you that that's cruel and unusual punishment.

And as we negotiate, does anyone ever negotiate in light of our prison standards of our United States? When we talk to these folks about their policies on extradition, do we also present to them our prison standards? Because I'm fairly confident that our prison standards are at least better than any in the Central and South America, certainly equal to those that are in Europe. Is that ever any part of the negotiation process when we are looking at these things?

Mr. WITTEN. In the course of negotiating an extradition treaty, we would have a general discussion of all aspects of the legal, judicial, penal systems. The issue of the conditions of confinement in another country would come up in a particular context I should highlight for you.

We have noted that we have 100 and some extradition treaties at this point. There are a number of countries with which we don't have extradition treaties because these are reciprocal treaties, and they would require us to extradite into a foreign government's judicial and penal system. In some cases we haven't negotiated a treaty just because in the triage of things it's more important to update the U.K. Treaty or Canada treaty where there is lots and lots of fugitive traffic. The conditions of confinement could certainly be a factor and have been a factor in some cases where we have considered whether we are comfortable entering into an extradition treaty with a foreign country.

When we enter into an extradition treaty with a country that has prison conditions that aren't as up to the U.S. standards, which as you indicate would be common, the treaty itself wouldn't contain language on that because it's not a framework to dictate within the context of the treaty what the judicial system, the penal system would be, but certainly it's a part of the general discussion. And in cases where we have worked affirmatively with other countries to upgrade their legal-judicial-penal systems, it certainly would be a part of the bigger picture.

Mr. SWARTZ. If I might add as well, in this particular case involving Mexico and the Supreme Court's decision, the Mexicans' report relied not on our prison conditions, but rather on the notion that a life sentence was impermissible in any set of circumstances since it allegedly did not recognize the possibility of rehabilitation. For that reason, we have been able, working with the Mexican Government, to establish that in cases where we can establish that parole is a possibility even under life sentence circumstances, we have been able to secure extradition. But I should stress that our Mexican executive branch counterparts have not suggested that this has anything to do with our prison conditions and, indeed, argued strongly against the decision of the Mexican Supreme Court.

Mr. CARTER. And it is the—only the life without parole situation you are talking about. For instance, in Texas a life sentence or any amount of sentence above 60 years is 60 years for the basis of parole. And so the ploy of the prosecutors is, don't give him life, give them 60 years, which is life. It's a lack of parole that's the issue.

Mr. SWARTZ. And, in fact, we have been able under some circumstances such as that to have been able to secure extradition, formalistic as it may sound. Even lengthy terms of 60 years, we believe, are permissible and would be a basis for extradition. The problem we face is that the sentencing structure of many States in particular require either life imprisonment or death as the punishment for particularly serious crimes. So with that structure in place, and without a parole system in place, and the Federal Government no longer has a parole system as well, we don't have the flexibility that might be in place in Texas or other States.

Mr. CARTER. I know my time has expired, but may I ask one more question, Mr. Chairman?

Mr. SOUDER. Yes. Go ahead.

Mr. CARTER. Do you request that they be held by Mexico, for instance, until the process of extradition is completed; in other words, be incarcerated until they have completed the extradition process? Is that request routinely made?

Mr. WITTEN. Yes, sir.

Mr. CARTER. Then it would be cruel and unusual punishment just to spread out the hearing, I promise you. Thank you.

Mr. SOUDER. Mr. Ruppersberger.

Mr. RUPPERSBERGER. First, a couple things. The issue really, the biggest problem we have, I think, basically from the testimony is with Mexico. And it seems to me that it's the issue of their Supreme Court, and their Supreme Court is overriding anything that is being done in the legislative or with the administration. Are we doing anything—maybe more from a State Department point of view. What are we doing to try to overcome that? Are we getting anywhere? What tactics are we using? Do we have any leverage at all with respect to that issue?

Mr. WITTEN. Mr. Swartz will supplement, but the United States is working in closely with the executive branch. The executive branch of the Government of Mexico would like to see this decision reconsidered. As we understand it, the equivalent of the Justice Department of Mexico has filed with the Supreme Court a formal request that this decision, which was an interpretation of the Constitution, be revisited. So, yes, we are working closely with them. And the State Department and Secretary Powell has raised this issue. Our Ambassador to Mexico, Ambassador Garza, has raised it repeatedly. And Mr. Swartz will indicate that the Justice Department is not only raising it at the Attorney General level, but actually working hand in hand with the Mexicans in connection with revisiting this.

Mr. SWARTZ. And in that regard, thanks again to the funding that Congress has provided, we do have a Federal prosecutor that works out of the U.S. Embassy in Mexico City that has been working on this issue. In addition to seeking rehearing, we, as I noted, have tried to think of ways in which we can deal with this issue insofar as the Court opinion remains as it now stands, including dealing with the issue of parole, making that point that parole is a sufficient basis even where a life sentence is imposed, and working with their foreign ministry which controls the extradition process in certain respects to ensure that courts, lower Mexican courts, do not invoke this principle in inappropriate cases.

Mr. RUPPERSBERGER. What's the history of that Supreme Court? Is it just traditionalist? Has it any ties to unfavorable individuals? What's the background? And we can talk about this all the time. Are the courts pretty strong in their positions? Where are we with respect to that? Or do you not want to get into that, probably?

Mr. WITTEN. Mr. Ruppersberger, we don't have that kind of detailed information about the makeup of the individual judges on the Supreme Court. We do know that this decision was not anticipated by the Mexican Government when it was reached. We know that they are working closely with us to try to have it revisited, but we don't have any basis to make any further judgments about the particular judges involved and so forth.

Mr. SWARTZ. I should add as well that the Mexican Supreme Court, in a decision favorable to the United States in January 2001, shortly before the decision we've talked about here, made clear that nationals, citizens of Mexico, could be extradited to the United States, clarifying an issue that had blocked some of our prior extraditions. So it has been a mixed series of results from the Mexican Supreme Court.

Mr. RUPPERSBERGER. Other than Mexico, what other countries do we have issues with? Are there any other countries that have this same requirement as far as life imprisonment or death penalty?

Mr. WITTEN. Yes. Mr. Ruppersberger, there have been quite a few cases, particularly in Europe, France, Germany, in other countries that have abolished the death penalty domestically. But also, their judiciaries or other appropriate authorities have interpreted their Constitutions or other fundamental law as precluding the ability of their executive branches to extradite to a system where capital punishment is possible.

Mr. RUPPERSBERGER. We are in a new era; and not only do we have a lot of issues with respect to drugs, but also with respect to terrorists. So it seems to me that there is going to be a lot of activity in this regard. What about some of the countries where we might have issues with respect to terrorism? Are there any countries now that are out there where we might have some problems you could address?

Mr. SWARTZ. In terms of the death penalty, that issue will remain even with terrorism cases. We have certainly seen in occasions that we will be required to give death penalty assurances even in terrorism cases. So that is a continuing issue.

With regard to life imprisonment assurances, while we have seen that, not simply from Mexico, but, as I noted in my opening statement—but from other countries such as Colombia, Venezuela, Spain, the issue has not come to the fore so much in those countries simply because of the volume of Mexican cases and the proximity to the border between the United States and Mexico.

Mr. RUPPERSBERGER. OK.

Mr. SOUDER. Will you provide the committee with a list of countries and number of pending cases that are stalled, not pending cases that are moving through, so we can get some kind of scale of which countries?

And then you said in Colombia, I believe, that they are looking at making some changes in their Constitution?

Mr. WITTEN. I can't hear you.

Mr. SOUDER. That in the case of Colombia, you said they are looking at a Constitutional change there, so you could note that. But if you could give us like with Mexico, Spain, Venezuela, how many cases of extradition are stalled, not how many do you have out there that are working their way through a normal process.

Mr. SWARTZ. Mr. Chairman, certainly——

Mr. SOUDER. And you can submit that for the written record.

Mr. SWARTZ. Yes. It was with particular focus on countries in which there have been assurances requested with regard to life imprisonment, or in terms of years?

Mr. SOUDER. Extradition requests that are stalled. In other words, if they are in the process, and they are moving through on

a normal basis, we don't need to know how many extradition requests we have outstanding. And then we can zero in on how much of this is Mexico, how much of it is other places, what other countries there are. You have hit the high ones here today, I assume.

Mr. SWARTZ. Certainly. We will certainly attempt to do that.

One of the issues, of course, in terms of stalling is, as the subcommittee is well aware—is that the judicial process themselves oftentimes permit a defendant in many countries, and sadly to say in the United States as well, to delay his or her execution.

Mr. SOUDER. By stall, I should say policy stalling as opposed to—in other words, not something that is playing out its normal course as anything would play.

Mr. Deal.

Mr. DEAL. Thank you, Mr. Chairman.

I would like to ask at the outset, in the 100 or so treaties that we have negotiated with other countries, does the United States put a reservation in those treaties that we will not extradite U.S. citizens back to another country under any—or do we put any conditions on that?

Mr. WITTEN. The United States has, as a matter of policy through its history, extradited U.S. nationals to other governments, and our treaties come in several varieties on the extradition of national points. One of them would be that the executive branch of the requested state may in its discretion deny extradition if required by its laws to do so, and that would be a typical European-type framework.

Mr. DEAL. No. I'm talking about from the U.S.' point of view. Do we not, in fact, make our citizens subject to extradition back to these countries under almost—with almost no conditions attached, whereas they put conditions on the extradition back to our country?

Mr. WITTEN. The United States does extradite its nationals under these treaties, and we advocate that all countries do so.

Mr. SWARTZ. Mr. Congressman, it is the case, however, that in some circumstances the United States has reserved the right to seek death penalty assurances itself with regard to extradition of citizens or others from the United States.

Mr. DEAL. But that would only be in cases where their law provides a death penalty and ours would not for the same circumstances. That's traditionally been the Far Eastern countries; has it not?

Mr. SWARTZ. That is correct.

Mr. DEAL. Where their sentences are harsher than ours.

Mr. SWARTZ. That is correct. But, yes.

Mr. DEAL. So, let me give you a hypothetical that would hopefully never, ever happen, and forbid it to happen. A Mexican national comes illegally across the border of the United States, assassinates the President of the United States, and retreats to Mexico. Am I to understand that, under the current state of affairs with Mexico, that individual could not be extradited back to the United States to face a capital felony punishment, nor could he be extradited back unless we would give assurances that he would face a sentence of less than life without parole? Am I correct?

Mr. SWARTZ. Yes, Mr. Congressman. Unfortunately, under that hypothetical he would not be extradited without a death penalty

guarantee, which would be true in many circumstances in many countries across the world, with the added problem that there would also be a life imprisonment assurance requested.

Mr. DEAL. What has happened with Mexico, then, is that the original treaty between the United States and Mexico has now in part been abrogated by this Supreme Court decision of the Supreme Court of Mexico by placing these additional conditions on it; is that correct?

Mr. SWARTZ. Mr. Chairman, as has unfortunately been the case in other countries where judicial decisions have been rendered, the treaty has, to this extent, been altered. That is, the United States now has to find, if it wants to extradite these individuals, some means of providing assurances that are now, according to the Mexican Supreme Court, required by the Mexican Constitution.

Mr. DEAL. In a few minutes we will hear from the widow of Officer March, who was literally executed by a career criminal, illegally in our country, who retreated back across to Mexico and has been refused to be extradited back to the United States.

Now I would like to hear publicly the explanation from our State Department and the Department of Justice as to why the state of affairs, which in my opinion is intolerable, has been allowed to continue and what your proposed solutions are.

Mr. WITTEN. Mr. Congressman, as our testimony reflects and as my comments reflected, the State Department and the Justice Department share your view that this situation must be corrected. Because it is a judicial matter, we are working with the Mexican executive branch to see if this decision will be revisited. There is currently at our request and at the request of the senior officials of the Government of Mexico, a petition to reopen this issue. It was an interpretation in October 2001 of a Constitutional provision of the Mexican Constitution. And we totally agree that this decision should be reversed.

Mr. DEAL. Is the man being incarcerated while these decisions are being reviewed, or is he running free?

Mr. SWARTZ. My colleagues note that there is not yet a request for extradition that has been made in this case.

Mr. DEAL. So there is no process whereby, short of asking for extradition, that we could request that the individual be arrested and held pending that decision; is that correct?

Mr. SWARTZ. Provisional arrest is usually preceding to an extradition request. I should add, if I may, Mr. Congressman, that we fully recognize the human dimension of this and the tragedy involved and we would like to extend our condolences, if I may, to the widow of Deputy Sheriff March. The reason that we pursue these cases, I want to make clear, is not simply because it's our job but, we recognize, bringing these people back to justice. Your frustration is our frustration in this regard and it is a frustration shared by our colleagues in the executive branch of the Mexican Government as well. We are trying to think through what kind of solutions we can have here, assuming the decision is not reversed on the hearing.

Mr. DEAL. Well, I think as both of you recognize, we can talk about the Ira Einhorn cases all we want to. Those are the rare cases that get the publicity. We're going to hear from witnesses in

just a few minutes of—in my small county in north Georgia—of some four separate murder cases, including a driveby shooting at the local Burger King where they fled back across the border.

The problem is the magnitude of the number of cases coming out of Mexico. And as you probably will know and these prosecutors will tell you, they don't have the resources to pursue these cases by way of extradition. And what is the process, the Article 4 trial process, whereby everything has to be transcribed and shipped to Mexico and they will have a trial? And is that a preliminary to even deciding to extradite? Do you have to go through that first?

Mr. SWARTZ. No. That is the alternative.

Mr. DEAL. That is the alternative, where they don't prosecute if we were to decide to let them prosecute. And if we let them prosecute, we are bound under double jeopardy provisions from ever retrying that individual, even if they come back in our country; is that generally true?

Mr. SWARTZ. Only California has the prohibition against retrial, but our view would be aside from that situation, as different sovereigns we could retry the matter.

Mr. DEAL. It is my understanding that Mexico is requiring as a condition for proceeding with the Article 4 trial that we agree, regardless of what the state law might be in the jurisdiction where the crime was committed, that we agree as a condition for that going forward that there would be no retrial; is that incorrect?

Mr. SWARTZ. We would have to check on that.

Mr. DEAL. I am very concerned that the magnitude of this problem is such that most local jurisdictions can never handle it on their own. Has there been any suggestion that the Department of Justice be beefed up in a greater magnitude to assist these local jurisdictions who are the primary prosecutors in most of these cases, to assist them in facilitating extradition requests? A small county would be bankrupted. If we were to pursue extradition in just one of the four cases, we're going to hear from one of the witnesses in my county, it literally would jeopardize the possibility of bankrupting my county's treasury to pay for that. Has there been any suggestion that Congress needs to do something to assist the Justice Department in that regard?

Mr. SWARTZ. I am pleased to say that Congress has acted in this regard to increase funding for our Office of International Affairs which is the critical component in this regard. You noted in your opening statement there had been criticism in a prior Inspector General's report. I am pleased to say that report has now been closed, with the acknowledgment that we have made significant changes. And it is largely to my colleagues here, the Director of the Office of International Affairs, Molly Wurlow, and Mary Rodriguez who handles the Mexico account—and I can say handles it really tirelessly—to try and push this forward.

Certainly we are there not simply for Federal cases but for State and local cases. As a result of our experience, we have tried to think through additional ways in which we can be of service to State and local offices and try to expand that relationship. As you know, in the past, we have had on occasion State and local prosecutors at the Office of International Affairs. Funding issues precluded that program from continuing. We do have training programs that

are open and that we have tried to extend to State and local prosecutors. And we are now thinking through how we can create a network in the jurisdictions that have these cases that communicate with our office regularly, where we can keep them updated on these issues.

Mr. DEAL. Thank you, Mr. Chairman.

Mr. SOUDER. Ms. Sanchez.

Ms. SANCHEZ. Thank you, Mr. Chairman.

Obviously the problem that we have been presented with today is complex and it again stems from the idea of sovereign nations and their proper constitutions and their judicial interpretations of those constitutions. And it is a problem, clearly, in a number of very serious cases. I just wanted to ask for clarification. I am correct in saying that extradition in this particular case, the March case, there has been no request for extradition? Is that correct?

Mr. SWARTZ. That is correct, because we have to work through these various issues.

Ms. SANCHEZ. So there has not been an official request for extradition to the United States for him to stand trial. Short of extraditing folks for crimes that carry the maximum penalties in the United States, is there a mechanism for perhaps extraditing folks to stand trial for crimes that may carry a term—consecutive terms of years? Might that not be one, albeit not perfect solution, but way to try to increase the number of folks that are extradited back to the United States?

Mr. SWARTZ. Yes, Ms. Sanchez. That has been the process—we have been able to succeed with regard to Colombia which requires life assurances. We have been imposing lengthy terms of years. But again, the problem is in large part driven by the nature of the crimes and where State and local governments, or even the Federal Government, have no option but to charge a death penalty or life imprisonment, it becomes much more complicated.

That suggests that there may be legislative fixes. There are sometimes circumstances in which prosecutors can think creatively about a different charging scheme. And as I mentioned, in States that have parole, there is also an option to say—even with an extremely lengthy sentence, which in essence a life sentence—as long as there is the possibility of parole, extradition may be possible.

Ms. SANCHEZ. So that avenue is available, sort of a creative solution to the problem. In terms of our executive branch and our President who has the power to negotiate these treaties, to your knowledge, is there anything being done by our executive branch in the form of President Bush in terms of discussions or work through diplomatic means or the Justice Department to try to work through this problem with the Mexican department?

Mr. WITTEN. Secretary Powell and Attorney General Ashcroft have discussed this and corresponded about this repeatedly with counterparts in Mexico. And Ambassador Garza, as its representative to Mexico, has discussed this, as I understand it, with everybody from President Fox to the Cabinet officials that are the counterparts to our State and Justice Departments.

Ms. SANCHEZ. So those discussions are ongoing?

Mr. WITTEN. Yes.

Ms. SANCHEZ. There has not been an acceptable resolution to the problem. Thank you. I yield back the remainder of my time.

Mr. SOUDER. Did you say that in Mexico they have the ability to do consecutive sentences like Colombia, or they do not?

Mr. SWARTZ. My understanding is that in Mexico a sentence even up to 60 years may be a permissible sentence simply because it is not in terms a life sentence.

Mr. SOUDER. Can you have multiple sentences?

Mr. SWARTZ. I would have to check on that, Mr. Chairman.

Mr. SOUDER. Mr. Bell.

Mr. BELL. Thank you, Mr. Chairman, and thank you all for your testimony. Representative Deal was talking about the magnitude of the problem. I wanted to get a little firmer handle on just what the magnitude is. Actually I was not here, I think you all may have talked about the number of cases that we face right now. Do you all have that number?

Mr. SWARTZ. In Mexico, Mr. Congressman, we have had 25 fugitives extradited this year—in 2002—which was a record. To date we have had 23 extradited. But critically we have had 19 refusals on the life assurance issue either because we couldn't provide the assurance or because the assurance was found to be inadequate.

And as I mentioned in our opening statement, those numbers don't totally capture the problem because while the number of people extradited has been important and these are important cases, some of our most serious cases are among the 19.

Mr. BELL. And those are just the numbers with Mexico, correct?

Mr. SWARTZ. Correct.

Mr. BELL. As far as with other countries, France or Germany, much smaller numbers?

Mr. SWARTZ. That's correct. Overall I believe it has been 266 fugitives in the last year returned to the United States.

Mr. BELL. And if you were trying to look at a growth pattern for this particular problem, has it gotten worse in recent years, more people fleeing, or is it staying fairly consistent over the last 5 to 10 years?

Mr. WITTEN. The problem—I mean over the years, the problem has grown with the growth of transnational crime. With Mexico these issues have become blockbuster issues. The extradition of multinationals was a huge bilateral issue into the late nineties and into this year. And we have had few successes in the mid-nineties, for example, in terms of returns of Mexican nationals. The January 2001 Supreme Court decision facilitated that so we had a bump up in extraditions from Mexico.

In terms of absolute numbers, in terms of over the years, we could certainly put together numbers dating back several years at least on the growth of our extradition request. I think there has been some growth over each of the last several years.

Mr. SWARTZ. And as my colleague points out, it is certainly the case that as crime is increasingly transnational and as crimes can be committed remotely, without entering the United States, we fully expect this to be a problem that increases rather than decreases.

Mr. BELL. How long have we been engaged in negotiations with the Mexican authorities to try to change their extradition policy?

Mr. WITTEN. Well, it's a continuous process with such a busy relationship. As I mentioned, in the nineties—that was before this life imprisonment decision came down in January 2001—a huge amount of our dialog with Mexico dealt with Mexican nationals, because they typically would not extradite their nationals absent extraordinary circumstances. The Mexican Supreme Court liberalized that in January 2001. And the executive branch of Mexico now has much greater flexibility than it did before that ruling. So now that issue is somewhat better and now we have a new, harder issue in a way—not harder, but different issue, and that is life imprisonment without parole. And it's continuous.

Mr. SWARTZ. We have worked with Mexico since the date of that decision in October 2001 to try and see what can be done about it.

Mr. BELL. In terms of trying to change the policy, is it your opinion that we're on the right track or can greater pressure be brought to bear on the Mexican authorities?

Mr. WITTEN. Well, the posture now is we can be—it's hard to say how optimistic it's realistic to be. We know their executive branch is trying to get this October 2001 decision revisited. They disagreed with it at the time it came down. They argued against it in the pleadings.

It's hard to tell, Congressman, because as was noted by several members of the committee and by us, the Mexican Supreme Court is independent of the executive branch. They interpret the Constitution. It's not merely a matter of interpreting an act of their legislature. They interpret the Constitution in a way that is not favorable to extradition of life imprisonment without parole. So our hope is that the Supreme Court accepts the executive branch's ruling. And right now we're in a wait-and-see period. And in the meantime, Mr. Swartz and his many colleagues at Justice are working with Federal and State prosecutors to cope and do the best we can until the situation is clarified.

Mr. SWARTZ. Even if the decision at the Supreme Court proves to be unfavorable, as Mr. Witten noted, we will try and find alternatives. But we recognize in the context of extradition of nationals that it's an issue that we will continue to push. Even in countries—with all due respect to their sovereignty—that have Constitutional bars on extraditing of nationals, we continue to present in a manner we believe respects their system, the importance of moving forward on that, and we will continue to press the importance of this issue.

Mr. BELL. Basically since it's a court decision in Mexico and not a political decision in Mexico, it's very difficult to bring pressure to bear and get them to change the decision. They're going to have to work it through their court system; is that correct?

Mr. SWARTZ. That's correct.

Mr. SOUDER. It's important for the record to point out that the 19 cases, while very severe, is nothing. In other words, the Los Angeles—as I pointed out, the Los Angeles District Attorney's Office says he has 200 murder suspects that have fled to Mexico. Doesn't mean that they are pending extradition, but it does mean, in fact, people are increasingly realizing that the lack of extradition means that it is relatively safe to kill policemen in the United States and relatively safe if they can get across the border.

This committee has held multiple hearings on the southern border. Congressman Deal and I spent 3½ days on the Texas border. And we could see all kinds of groups moving back and forth, the water littered with inner tubes where people had stacked up as people moving back and forth across the border. When we did a hearing in southern Arizona, you could see multiple groups, totally unintimidated by the Border Patrol, walking back and forth across the border. One guy had done it two times a year for 8 years, probably walking to a job in Indiana, because we really haven't worked out our legal residency type things. But our borders are extremely porous. And if indeed people can figure out that they aren't going to be held accountable and even put in prison in these other countries if no request has been made, that we have a gigantic problem.

Furthermore, this committee has been told by multiple prosecutors, in addition to the Los Angeles District Attorney, that they don't bring it up anymore, because as Congressman Deal pointed out, in Georgia that case probably isn't showing up as an extradition case because they know nothing is going to happen.

Then we have this double standard that if an American citizen kills a policeman, if an American citizen does something, they have a totally different legal standard in America, that if you can somehow get to Mexico afterwards—which is unfair to those who actually try to become legal residents in the United States, become American citizens, it means their liability is different than somebody else.

And this is a huge dilemma. Because if in fact these nations don't change some of these extradition policies, what it means is we have to watch our border going both directions, because we will have no choice down by Los Angeles or in other parts but to look at the people going back the other direction to make sure they aren't fleeing crimes in the United States. And if they're not on a watch list in the United States, then we have a double border problem, because we can take action here in the United States if in fact we can't work it out with other countries, but it would cripple our economy to do so.

And both of us need to understand, the United States and Mexico, that we have an incentive to try to work these policies out whether or not it's in the Constitution or whether or not some judge decided something, because our nations are so interactive right now, particularly along in the border. But in Indiana or Georgia, we wouldn't have our industries functioning if we didn't have some kind of flexible border.

But to the degree that people think they can commit terrorist acts in the United States and kill American citizens and somehow get off just because of this lack of an extradition treaty, we have a huge problem. This isn't just a little problem; because, as we are increasingly finding, some of the terrorist risk people are also moving through the Bahamas, Mexico, and other places where we don't have as much Border Patrol as we have at our airports or other things like that.

Mr. SWARTZ. Mr. Chairman, I couldn't agree more. This is a tremendous problem. And as you say, the 19 doesn't fully capture in terms of the number of cases, many of which have not been brought. We have more than 300 extradition cases. But beyond

that, as you note, in many circumstances the decision has been made that it does not make any sense to try to seek extradition at this time. Perhaps we will locate the individual back in the United States or there will be some other means of obtaining the defendant.

But we have, exactly along the lines you suggested, pressed with Mexico that they do not themselves want to become a safe haven for these individuals because these people will be committing crimes in Mexico as well. I think our executive branch counterparts recognize that. But as we've discussed earlier, it's one of the issues we'll continue to press, no matter how the Supreme Court decides this issue in Mexico.

Mr. SOUDER. Any other questions or comments? Mr. Deal, do you have any?

Mr. DEAL. Yes, Mr. Chairman. I did not want us to leave the impression that the response to Mr. Bell's question of the 25 that were extradited is anywhere close to the number. And I believe you indicated just a minute ago you had some 300 extradition requests. You obviously have made significant progress because the IG report of 2002 indicated there were 2,500 outstanding extradition cases. Am I to understand that you have now eliminated that 2,500 number down significantly?

Mr. SWARTZ. One of the things we have done in terms of responding to the Inspector General's report was to go through the various outstanding cases, not just for Mexico but for all of our countries, to try and eliminate cases that no longer seemed to be in any way a request for extradition or in which we no longer had reason to believe the individual was even in the country. This is our best estimate of now pending live extradition cases with Mexico, 303—2,500 for the entire world; 300 with Mexico.

Mr. DEAL. Does any other country come close to having the number of 300?

Mr. SWARTZ. Colombia is the only other country that comes close.

Mr. DEAL. But they are more cooperative.

Mr. SWARTZ. They are cooperative in large part because so far, at least with one or two current issues, we have been able to structure the sentences in a manner that meets their request for life assurances.

Mr. DEAL. Now, it would seem to me that since the Department of State has the jurisdiction in dealing with other countries, do we give any consideration in negotiating any other agreements with other countries as to whether or not their extradition treaties are favorable or unfavorable to us? For example, with regard to establishing quotas for a number of their citizens that are allowed into our country, is the fact that they are cooperative or uncooperative a factor in those determinations?

Mr. WITTEN. I think there are a couple of parts to that question. One is the direct link between extradition and other aspects of the relationship. The other is—let me start with a different part of it, sir. Extradition is one part, as Mr. Swartz has mentioned, of the overall relationship with Mexico. We have cooperation that is hampered, hopefully just for the time being, with Mexico. They are cooperating in other matters, investigations, prosecutions and information sharing on other matters.

So one aspect of the question would be is extradition—and the problem that we're currently having on life imprisonment, does that so taint the entire law enforcement relationship that we would say that the law enforcement relationship is so crippled that you take it to the next step: Would the law enforcement relationship relate to other issues, be they economic issues trade matters, other immigration matters? And I don't think we are at that point.

We have clearly a serious problem in this part of our relationship. We're working on that problem in the way there are other issues in the Mexican relationship that are beyond my personal ability to discuss with you in any depth, that we are also working on. It's a complicated relationship. It's a long border. We have a lot of issues that need to be sorted out.

Mr. DEAL. On a somewhat related issue, have there ever been discussions about requiring nations to compensate each other for the incarceration of their own nationals within the prison system of another country? I think all of us know that on our domestic side, a huge number of those who are in our Federal prison system as well as in our State prison systems are citizens of other countries, and they consume a huge amount of revenue to keep them in our prison systems. Do we have any system whereby we ask for reimbursement from other countries based on the number of their citizens that are incarcerated in our prison systems?

Mr. WITTEN. Sir, as you probably know, we have prisoner transfer treaties with Mexico and a few other countries. There are a dozen relationships like this around the world where if the two countries agree, the person can serve the sentence in their country of nationality. And we do have Americans returned pursuant to these treaties. We sent nationals of foreign countries back to their homes in appropriate cases.

Mr. DEAL. If you could furnish us with information as to the number of those cases and the countries involved in that.

Mr. WITTEN. That shouldn't be a problem. The criminal division of the Justice Department administers the program, but certainly we will give you information on the network of treaties and how they work.

Mr. DEAL. That's simply a matter of once they have been convicted in the country, transferring them back to their native country.

Mr. WITTEN. That is a part of your question. It's sort of the quantity of people from other countries in our prison systems. In terms of compensation, there's no international agreement scheme for that, and I am not aware that we pay compensation or receive compensation for the costs associated with the custody of fugitives.

Mr. DEAL. It is one of the largest unfunded mandates faced by States and local governments for the failure of the Federal Government to enforce its immigration laws. That is a huge cost factor to local and State governments.

Mr. SWARTZ. To the extent we can work with any State or local government in that regard, we do, as Mr. Witten suggested, have an international prisoner transfer unit in the Department of Justice that deals with these issues to try to make sure that countries bear the cost of their own criminals and to secure the return of U.S. citizens to serve their sentences here.

Ms. SANCHEZ. I have a few followup questions and I will try to be brief. Aside from extraditing suspects to the United States or using the creative charging process in prosecuting these individuals, what other remedies are available for trying to bring these individuals to justice? And I am referring specifically to efforts within the countries to which they fled to perhaps try them and convict them and get them to serve a term of years in those countries.

Mr. SWARTZ. Congresswoman, as many countries do have a system in place that allows the possibility of trial of the individuals in that country under some circumstances—Mexico has such a system—the results have varied in terms of whether or not they have been considered to be successful or not. It's usually a difficult task to secure convictions in those cases. It involves the Federal, State or local prosecutor in presenting evidence in a remote location, oftentimes under different rules.

So wherever possible, our argument has been—and it's been key to extradition—that the individual should be tried and sentenced in the jurisdiction in which the crime has been committed. There are other alternatives, though, as you suggest. We certainly sought deportation whenever possible, and some countries have been willing to work with the United States, in the absence of extradition treaties or in the absence of deportation circumstances, to return or to make individuals available to us. So we try to consider every alternative in every case.

Ms. SANCHEZ. But that definitely is one of the options.

Mr. SWARTZ. That is one of the alternatives that is considered.

Ms. SANCHEZ. And I want to clarify yet again. Obviously, there have been discussions among our government and the executive branch of the Mexico Government, who it appears to me—and I want your confirmation of this—seem to be motivated to try and address this problem.

My question is do you sense a reluctance on the part of the executive branch who seems to be hampered by the independent judicial interpretation of the constitution? Would you characterize it as a reluctance on Mexico's part to try to address this problem? Because I want to make sure that we're clear with what efforts are being made on the Mexican Government's part.

Mr. SWARTZ. The executive branch argued against this decision before it was rendered and in fact, I believe, thought that we would prevail on this issue. From the Department of Justice point of view, we have not seen a reluctance to raise this issue. I think that Mexico, on the executive side, recognizes the importance of this issue to the United States and recognizes the danger it poses to the people of Mexico by having these fugitives consider Mexico to be a safe haven. Regardless of their recognition, it remains a serious problem for the United States.

Mr. WITTEN. Our embassy is working closely with the Mexican executive branch. And I just want to echo Mr. Swartz's comments that we do see a high level of motivation and cooperation, and we're hoping this works out in a correct way.

Ms. SANCHEZ. Thank you.

Mr. SOUDER. Is the Mexican executive branch at all—have you been able to pursue, or is there any legal ability to pursue if an

extradition request is made but is held up for some reason, like through the courts, that they would put the person in their prison?

Mr. SWARTZ. In some circumstances we request provisional arrest of the individual pending extradition. We would hope in the normal set of circumstances that individual would be held pending extradition, but that doesn't always take place.

Mr. SOUDER. Wouldn't the executive branch have the ability to impose an up-to-60-year sentence if it would be the equivalent in the United States? Are there options for the executive branch to work around in their domestic side if we can't resolve in the court?

Mr. SWARTZ. That would involve a prosecution internally within Mexico under Article 4 or otherwise, which might present other issues. But there are certainly alternatives if we in the United States are willing to go that route.

Mr. SOUDER. If their court blocks us, we have a big problem. We either have to do something at the border or have a legislative solution.

Mr. SWARTZ. I fully agree. If the court blocks us, we need to think of some robust solution to this issue that allows us to deal with it, not only case by case, but pass a plan to deal with it.

Mr. SOUDER. One last question before we move to the next panel. On the Colombia question, this committee—because of narcotics focus, obviously, in addition to the many cases in Mexico but particularly with Colombia—we want to make sure we are kept informed on the extradition cases.

Last night when we met with President Uribe in bipartisan leadership, there was a lot of consternation about the immense difficulty when they are trying to negotiate peace treaties with narco terrorists and particularly some of the paramilitary leaders who are wanted on various serious charges in the United States, can they in fact forgive those if they lay down their arms? And this is another type of a realm, because in fact our death penalty and penalties here has been one of the biggest leverages we have in the battle in Colombia, because they are so afraid of coming to the American judicial system.

On the other hand, we have to continue to make it clear to Colombia that it does not mean all of a sudden we are going to waive our American justice system because they have made a guess at best that this person is going to cooperate for awhile. And I think that President Uribe got that message last night. And everybody listened to his dilemma that he's facing in his country, but there is not a lot of patience when people have been major narcotics dealers that have resulted in thousands of deaths in the United States and around the world that suddenly this is going to be waived. And I hope you will continue to take that message back.

Mr. SWARTZ. Thank you. We will take that message back.

Mr. SOUDER. Thank you for being with us. We will probably have additional written questions that we will send over in the next few days. Thank you.

The second panel would now come forward and remain standing. The Honorable James Fox, District Attorney, San Mateo County California, representing the National District Attorneys Association; the Honorable Daniel J. Porter, District Attorney, Gwinnett

Judicial Circuit, Georgia; Ms. Teri March, widow of Los Angeles County California Deputy Sheriff David March.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that each witness responded in the affirmative, and appreciate you coming today and sharing your testimony with this committee and being willing to be subjected to our questioning.

We are going to start with Mr. Fox. You are recognized for your opening statement.

STATEMENTS OF JAMES FOX, DISTRICT ATTORNEY, SAN MATEO COUNTY, CA, REPRESENTING THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION; DANIEL J. PORTER, DISTRICT ATTORNEY, GWINNETT JUDICIAL CIRCUIT, GEORGIA; AND TERI MARCH, WIDOW OF LOS ANGELES COUNTY, CA DEPUTY SHERIFF DAVID MARCH

Mr. FOX. Thank you, Mr. Chairman and members of the committee. My name is Jim Fox. I am the elected prosecutor for the county of San Mateo in California, a position I have held for the past 21 years. I am vice president of the National District Attorneys Association. And on behalf of that Association, I would like to express our gratitude for being invited to share our comments with you today.

Up until the end of the last century, international issues really were not of much concern with local prosecutors. Obviously our country and our world have changed. My county alone, I have three international airports within 25 miles of my office. San Francisco International Airport is located within my county. And so obviously the ability to travel internationally has been tremendously increased. We are no longer relegated to traveling by ship, and people can commit crimes and be out of the country before the tape is even up around the crime scene.

We have also, obviously, lengthy international borders with both Mexico and Canada and people are relatively free to cross those. So these are areas of concern.

The idea of citizenship has changed also. As you have heard, there is a concept of dual citizenship. I myself am a first generation American. Our youngest son has dual citizenship with Ireland. That is something that is expanding. In fact just this past week, the Philippine Government has reestablished dual citizenship and is readmitting to citizenship some of their former citizens who had become U.S. citizens. Our country is incredibly diverse and we have one of the largest Philippine communities in our county outside the Philippines. Daly City is approximately 50 percent Filipino.

We try to protect our citizens and the concept of justice obviously varies from country to country. You have heard extensive comments already. What I would like to talk about is what has occurred specifically in our county as a result, perhaps, or maybe it was unrelated to the October 2001 decision of the Mexican Supreme Court. In January, 3 months after that decision, two Mexican citizens and two U.S. citizens participated in a quadruple homicide in our county. It was drug related. They basically executed four Mexican citizens. The two citizens of the United States have been apprehended. One was 17 years of age. He is being pros-

ecuted as an adult. The other was 21 years of age. They are both facing life without the possibility of parole for a multiple homicide.

The two people who fled to Mexico, including the ring leader, the one who orchestrated the whole thing, have basically acquired immunity now. The ring leader was apprehended in Sinaloa in April of this year and we were informed only if we were willing to waive the sentence that is provided for by California law would we ever be able to see this individual back to receive justice in California. Well, frankly, I think that's a serious question of equal protection. Why should U.S. citizens who have been apprehended in our country face a more severe penalty, life without the possibility of parole, than the ring leader who orchestrated the whole thing to receive a determinant sentence? I don't think that's fair. So we chose not to pursue extradition and in fact that individual is now living free in Senaloa. And if the Mexican Government wishes to allow people to flee there, I guess that's something over which we really don't have too much control.

But the concern that I have is that Mexico does allow extradition for a determinant sentence. And what I am suggesting to you is that every peace officer in the United States is at significant risk because of that policy. If an individual in our county committed an armed robbery and used a firearm, they would be facing a determinant sentence of up to 15 years. If they got to Mexico, Mexico could and would extradite for the robbery. If, however, they were fleeing to Mexico and an officer stopped them, that person has every incentive to execute the police officer, because he will then have immunity once he arrives in Mexico. So I think that it's an intolerable situation.

I would suggest that there are some things that could be considered, including in any future extradition agreements, inclusion of a full faith and credit provision. Obviously, for those countries that do not believe or do not recognize the death penalty, that is certainly something that could be conditioned as a waiver of the extradition, or pursuing the extradition, that we would not seek the death penalty. But frankly, I don't think it's fair to our citizens to have to negotiate and say that we will give you a 30-year term so you can come back. Whereas our citizens are facing life without the possibility of parole.

I know there had been a position within the Department of Justice, a liaison position, and we encourage that to be reestablished because it does provide assistance. And we are hoping there would be some efforts to provide training for local prosecutors in these issues because they are significant and they are complex.

On behalf of the local prosecutors of the United States, I would like to thank you very much for allowing us to share our comments. And we look forward to working with you, the State Department, and the Department of Justice.

Mr. SOUDER. Thank you and your full statement will be in the record and any additional materials you want to submit from your Association.

[The prepared statement of Mr. Fox follows:]

TESTIMONY

OF

HONORABLE JAMES P. FOX
DISTRICT ATTORNEY
SAN MATEO COUNTY, CALIFORNIA

AND

VICE PRESIDENT
NATIONAL DISTRICT ATTORNEYS ASSOCIATION

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

ON

INTERNATIONAL EXTRADITION

OCTOBER 1, 2003

Perhaps in a more international vein they might wire ahead to the police in England to meet the ocean liner and apprehend the fleeing jewel thief or murderer. If they ever really existed those were truly the "good old days."

Until late in the last century the notion of international issues and the criminal justice system were alien to most of us unless we were one of the major population centers. Perhaps New York or Los Angeles might have cases dealing with "foreign" criminals but the problems associated with bringing back criminals from other countries wasn't something that most of us ever had to deal with - that has changed as our county and the world have changed. A number of things have contributed to this and increased the complexity bringing fugitives to justice.

PROXIMITY OF INTERNATIONAL BORDERS: The availability of international travel has expanded dramatically. There are very few places within the United States from which international flights are not readily available to those that seek them. Most of us can be at an airport with international connections within an hour or two drive. There are 3 international airports within 25 miles of my office. I suspect that with a little planning a criminal could be easily winging his or her way out of the country before the police tape is up at a crime scene.

Additionally we have lengthy international borders with Mexico and Canada that are relatively accessible for many who want to flee and are also relatively easy to cross given both the nature of our relationship with these neighbors and the thousands of miles of minimally controlled borders.

DEMOGRAPHIC CHANGES: The second observation I would offer is the demographic shift in where our immigrant population resides. Where once our immigrant communities were in our largest cities now they can be found in even our smallest counties as they seek the very same things in life that we all seek. From the local law enforcement perspective this growing cultural diversity presents new challenges in providing safety to these new residents.

I do not mean to imply that the presence of these new residents increases criminal activity -only that this added international dimension to almost every community in the nation also creates new issues of international law that many local prosecutors and police have not faced before. Reading consular rights under the Vienna Convention; understanding cultural differences in dealing with conflict and violence; and trying to get witnesses, evidence and suspects from other countries is a growing problem for many of us.

CHANGING MEANING OF CITIZENSHIP: Next I must mention the changes that have occurred to the idea of "citizenship" - changes at least from the perspective of our nation. In the United States we view citizenship in a very "black-and-white" manner that is not necessarily viewed in the same concrete fashion by many other nations. I think we view our citizenship - whether by birth or having earned it through immigration - as a singular honor that renounces all other ties and heritage. A growing number of nations have

You can steal from banks in St Petersburg, Russia, and St Petersburg, Florida, and never physically be in either Russia or the United States; you can send child porn anywhere in the world but stay in a county that does not recognize its danger; you can defraud elder citizens of their life savings with the push of a computer key or phone button. The idea of extraditing an individual based on their "electronic' presence in committing a criminal act will be a very challenging growth to the traditional notion of jurisdiction.

To illustrate some of these problems I would like to provide details on some cases of notoriety to the Committee.

DIFFERING IDEAS ON CITIZENSHIP

On February 25, 1999, the Supreme Court of Israel ruled that it would not extradite Samuel Sheinbein to Maryland to face murder charges. This culminated a two-year effort to have him returned to Maryland to be held accountable for his criminal acts. As a minor at the time of the offense he was not eligible for a sentence of death and faced, at the maximum, a life sentence

He had fled to Israel on Sept. 21, 1997, two days after the mutilated and burned body of an acquaintance, Alfredo Tello Jr., was discovered in the garage of a house in Montgomery County, Maryland.

The United States had requested that he be returned to stand trial based on an extradition agreement between the two countries. The agreement does not protect citizens of either country from being extradited to the other. A subsequent amendment to the Israeli Extradition Law, approved after the agreement with Washington was signed, prevented the extradition of Israeli citizens to other countries, including the United States.

In addition to the formal request the Attorney General of the United States and the Secretary of State, as well as numerous members of the Congress supported the request with personal pleas.

The rationale for the decision of the Israeli Supreme Court was that because his father was born in Israel (before it even became a nation) it qualified Sheinbein for Israeli citizenship. This determination triggered the Israeli law forbidding the extradition of its citizens, in turn leading to the high court's decision to not send Sheinbein back to stand trial.

It must be noted that Samuel Sheinbein was born in the United States and, prior to his flight, had, apparently, never expressed any intent in being a citizen of Israel.

Tried by an Israeli court he was eventually sentenced to 24 years in prison.

A similar fact pattern comes out of a case from California. On August 29, 1998, 12-year-old Steven Morales was playing baseball out in front of his home when he was caught in the crossfire of gang warfare and shot in the head. His mother witnessed the murder. As

In 1993, Ira Einhorn was tried in absentia in Philadelphia – a perfectly acceptable practice after an initial appearance... The trial was held as a normal murder trial, with a judge, a full jury, witnesses, evidence and a legal team -- but without the suspect or a defense counsel. At its conclusion, Einhorn was convicted and given the death sentence for the murder of Holly Maddux,

In 1997, U.S. authorities discovered Einhorn was living in France but bringing him to justice would prove to be more difficult than could be imagined.

French authorities balked at extraditing Einhorn, saying they could not hand over a man who had been convicted without the chance to defend himself. According to established rules of the European Convention on Human Rights, no alleged criminal was ever to be tried in absentia, that is, without his or her actual presence in court. French officials found such a process unconscionable. Additionally, the imposition of a death sentence without legal representation was considered inhumane; particularly since France opposes capital punishment.

In setting the terms to return Einhorn, France required both that he be retried for the murder offense and that he not face a death sentence.

A major problem in obtaining Einhorn's return was that none of the judicial authorities in Pennsylvania, who might normally ask for a new trial, had the legal authority to do so since he had already been convicted.

"They couldn't do it through the legal system," says James Beasley, a Philadelphia lawyer who represented the Maddux family in a 1999 wrongful death suit against Einhorn. "A court couldn't do it. A district attorney couldn't do it. He got a conviction, he can't file for a new trial — that would be absurd. The only possible way to satisfy the French was through the legislature."

In 1998, the Pennsylvania legislature responded by passing a new and controversial law granting fugitives in Einhorn's situation the option of a new trial if they request one.

In fighting his extradition, Einhorn argued that the statute was unconstitutional because it violated a separation of powers between the judicial and legislative branches of Pennsylvania's government. Einhorn insisted that the law had been rigged, solely to ensure his extradition back to the U.S.

THE HOBBESIAN CHOICE

I recently had to make a decision that more and more prosecutors are, unfortunately, having to make. When four people were killed in San Mateo over an apparent drug debt, our police arrested two of four suspects. The other two, including the man we believed was the main instigator, fled to Mexico.

"**WHEREAS,** prosecutors make no more difficult or important decision than to seek, if appropriate, the death penalty; and

WHEREAS, the decision to seek the death penalty is based upon legal standards and factual circumstances unique to each case and to each defendant; and

WHEREAS, request for extradition from another country, in capital cases, will contain variable facts and legal principles that cannot be addressed unilaterally; and

WHEREAS, prosecutors, in any case, must make decisions in the best interest of the people that he or she represents;

THEREFORE, BE IT RESOLVED, THAT the National District Attorneys Association strongly opposes any attempt by the Department of State, on behalf of the United States, to enter into any extradition treaty that unilaterally waives the right of the local prosecutor from seeking the death penalty in any or all cases."

To the best of our knowledge the State Department has adhered to our position.

For several years there was, within the Department of Justice, a liaison position (funded by the Department, but staffed by local prosecutors and state attorneys general) that was to coordinate extradition efforts by local prosecutors. The concept had been developed by the international law division within the department and was a very valuable effort. Unfortunately, it ran afoul of budget cuts and was discontinued several years ago.

WHAT CAN WE DO ABOUT INTERNATIONAL EXTRADITION

Recognizing that many of the nations with whom we have issues arising over extradition live under the Rule of Law we must be cognizant of, and respect, their sovereignty. But getting changes to these systems is not impossible and we must make every effort to accomplish this.

It is my understanding that after the Sheinbein case Israel, at least in part based on United State efforts, changed its laws to require a declaration of citizenship *before* the commission of a criminal offense and not after seeking a haven.

We have also just seen in Belgium the application of diplomacy to change laws in regard to international war criminals and the lessons learned from that effort must be examined and applied, as appropriate, to the problem of international extradition.

Here at home there are a number of things that we – both the Congress and the justice community – can accomplish to help in this effort.

First, the Departments of State and Justice can continue to make every effort to have extradition laws and agreements changed to reflect "full faith and credit" to the legal systems of other nations. They can also have the United States represented, as

Mr. SOUDER. Mr. Porter.

Mr. PORTER. My name is Danny Porter. Normally I don't need a mic, given my voice, but I am the district attorney of Gwinnett County, GA, which is a suburban county on the northeast side of Atlanta. I think the reason that I'm here is that I was asked to be—given the nature of my county in the year 2000, our immigrant population was really not even countable on the census, or, excuse me, the 1990 census.

In the 10 years since 1990, Gwinnett County holds the distinction of having the largest immigrant population in Georgia which is one of the fastest States in population growth of the immigrant population. We are also the adjoining county to Congressman Deal's county of Hall County.

I am here to echo the things that Mr. Fox has said. I don't normally have the luxury of looking at things from the international scope. I am usually too busy dealing with victims of violent crime and explaining to them the intricacies of international extradition and why we cannot bring the person who executed their loved one or hurt their loved one back to this country to face justice. That is not to say we haven't had successes. There are countries that have like minds and systems that will work with the United States to prevent injustices, and I think it's important that we put some of those examples on the record and make this just not a hearing of condemnation.

A year ago, a minister on Grand Cayman Island, a music minister, applied at a church and gave a false application. One of the church members looked and became suspicious of the person—of the minister—and looked on the Internet and found local articles from a Gwinnett County newspaper where that person was charged with child abduction, where he had left with the mother of the child stealing those children from the custodial parent and fled and was being searched for. That was identified as the prospective music minister. The Cayman Island authorities moved swiftly to secure the safety of those children, to secure hearings. And with the cooperation of the State Department and the work of the State Department, my office was able to bring those children back and reunite them with their custodial parent. I am confident without the efforts of the Government of the Cayman Islands, those children would have disappeared again and we would have had another year-long or 2-year-long search for those children.

So there are successes. Canada, for instance, is one of those countries that will move swiftly in child custody issues and return children to their custodial parents, but Canada won't extradite telemarketers. So the international field of extradition is a mine field for local prosecutors. I think one of the growing problems is the problem that has been addressed in this hearing, and that is the problem of our relationship with Mexico. And I think one of the things that the committee has to realize is that part of that problem is, for instance, in the examples that are given in my written testimony. I would like to throw those out just a little bit.

It somehow is very difficult for a local prosecutor to accept that in the Toombs County murder where that defendant killed two persons, was tried and acquitted in an Article 4 hearing, he is now a booking officer in a Mexican prison. It is somehow difficult to ac-

cept that a person who would commit murder in our country is now part of the judicial system in Mexico. It is difficult to accept that a person that I have to make a decision where my defendant clearly murdered in front of four eye witnesses another Mexican citizen, fled to Mexico, and I have had to make the decision I am more likely to catch him in Gwinnett County than I am to get him out of Mexico in the judicial process.

It is very difficult as a local prosecutor to accept that people are doing driveby shootings in neighboring counties, in Congressman Deal's county, fleeing; and we as prosecutors simply have to make the decision we are more likely to catch them in the United States and bring them to justice than to successfully bring them back from Mexico.

Even though there are clearly countries where we have a cooperative relationship, where international extradition can be a success, the problem with Mexico is growing. The problem with Mexico is presenting a burden on the local level. And we as prosecutors have to bring that not only to your attention, but we have to ask for your help in training. I can tell you the first time you ever have to do as a local prosecutor—the first time you ever have to fill out the paperwork it begins, and your education begins, and I don't think prosecutors should have to fall in holes to learn. They should be taught. We should have more input into decisions that are made at the State Department level that have to do with our local cases and our local concerns, and I think those are things Congress can do something about.

Thank you on behalf of the working prosecutors, not that Mr. Fox is not, but I am here to represent the nonorganizational prosecutor. Thank you.

[The prepared statement of Mr. Porter follows:]

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.

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[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.

Mr. SOUDER. Ms. March. We appreciate you have come today and we extend our sympathy to you. Your husband died, like many other police officers around the country, trying to protect the rest of us, and we appreciate your willingness as a spouse to go through the sacrifices day to day, in addition to the ultimate sacrifice, so American citizens can be safe. You are going to get a national forum which in his memory raises some of the concerns that you have been expressing over time.

Mrs. MARCH. Thank you very much for giving me the privilege to come here today. I think it is very important that we remember that I am a real person. David's job and the oath that he took was real. Armando Garcia and his evil acts are real, and the safety of our community and the threat of it is real.

Imagine hearing that your husband was shot and killed. You have to now plan your life for a future that wasn't in the plans when you decided to get married. And then to hear that there's not a lot that can be done. I heard that his killer fled. I said OK. I know the great honors that I saw when they buried my husband, everything from folding a flag to a fly over. So I thought everybody was on my side to see this man pay. They said that he had fled, and I thought we were going to turn every rock over and find him. I later found out on the day Dave was buried, we knew where Armando Garcia was. And then I was introduced to words I never heard of, "treaties," "Article 4s," "corruption," "bounty hunters." I didn't understand. All I knew is that I had a dead husband and a daughter to raise by myself.

When I learned of his criminal activity prior to my husband's killing, I can understand why this guy did this, and I feel like our system let him do it. He was deported three different times for various drugs, concealing a weapon, and other various things. This perpetrator has been doing crime since youth. Prior to my husband's murder this gentleman, for lack of better words, tried to kill two other people, and our system just sent him back. They deport him. No punishment is given, and he gets a little more brazen when he comes back.

My husband made a traffic stop at 10:30 a.m., this man didn't want to have his freedom taken away. In a split second he took my husband's life. He shot him in the chest, started to walk away, and came back and executed him in order to finish the job. That man is free. This man can kill again. This man has said, I have killed one and I will kill more. I know that our Sheriff's Department has gone to great lengths trying to lure, trying to trick and trying to bring him back. Yes, we have not filed for extradition. Would you trust Mexico? Would you trust that they would do the right thing? I don't speak the language. I don't get to testify. The witnesses don't get to testify except on paper.

I want to see the eyes of the man that did this. I want to see if he has any ounce of remorse. I want to know why. I deserve to know why. You can put him away now. It is very frustrating. Mexico has tried to work with me and wanting me to go with an Article 4. Article 4 means he gets prosecuted down there, and I cross my fingers that justice will prevail.

However, I have heard of horror stories. I have heard of weekends in jail. I have heard of the injustice. I think Mexico's com-

pletely jeopardizing and compromising our justice system. If we give into Mexico and say OK, Mexico, do us right, and they let us down, what are we saying to our law enforcement? They are putting their lives on the line for us. They take that badge and that oath so seriously, just as you do. It is such an injustice what's happened, and it's a slap in the face to me, it's a slap in the face to what my husband stood for, and it's a slap in the face to law enforcement.

Our law enforcement need to know that we stand behind them 110 percent. We don't want this country to get more corrupt because we don't stand behind our men and women who take the oath to protect us. I feel it's only fair that justice is here. This individual chose to leave Mexico, reside here in California and take a life in California. He took my personal hero, and I want to see him pay. I want him to be able to make a phone call and see that he's in jail. I personally don't know how to feel about the death penalty or life in prison. I just know I don't want him to kill anymore, and his freedom allows that right now.

We do have a petition in place that is organized by the COPS organization, Concerns Of Police Survivors, pleading with the Bush administration to acknowledge this problem that we have. I have 6,000 signatures currently, and I know there's going to be more to come. We don't want to see our police officers die and then go unpunished by giving them a reward for going to Mexico. We want to tell all criminals that you will pay and we will go to the fullest length of the law to see that justice will be done.

I thank you very much. I am going to stay strong and I'm going to keep going out there and keep telling people what's wrong with our system. In the meantime the only thing is that I have advertised how to get away with murder. Please help me change that, because I won't stop talking.

Mr. SOUDER. Thank you for putting a human face directly on the problem.

[The prepared statement of Mrs. March follows:]

Testimony of

Teri March

Presented before the
Committee on Government Reform

Subcommittee on Criminal Justice, Drug
Policy and Human Resources
Chairman Mark Souder

October 1, 2003

On April 29th, 2002, my day started like any other day. My husband, Deputy Dave March, got up at 4:30 am, to start work at 6:00am. He kissed me goodbye, and left for work. It was a beautiful spring day. I tried to call my husband around 10:15 am. I only got his voice mail. I knew he listened to the message, but I never was able to talk to him again.

Dave pulled over a vehicle around 10:40 a.m., in Irwindale, California. Unknown to my husband, the driver of the car, Armando "Chato" Garcia, had a 9mm handgun in his possession. During an attempt to pat down the driver, Dave was shot close range in the chest, in a gap where the vest did not provide protection. Before leaving the scene Armando Garcia turned and shot Dave point blank in the head. Garcia then fled the scene. Dave most likely died instantly. A Good Samaritan used Dave's radio to call for help.

Dave was rushed to Huntington Memorial Hospital. With all possible medical efforts, they were not able to save Dave. Dave went to be with the Lord- something he never feared. He often assured me of his conviction and love for God.

At the time of the incident, I was at work. My personal friend, also a Deputy, came to be my support. I was not aware of the severity of the situation as of yet. The Sheriff's Department was searching for my place of employment. I had just started this new job, in January. I was to hear the news that changed my life as I knew it....forever. I was told that he had been shot. I prayed and tried to stay positive, however, I knew in my heart, that it couldn't be good. I keep saying out loud, for Dave to "Fight honey, we need you, you're my partner, and I can't do this without you."

We arrived at the hospital and the expression on their faces told it all. I saw the sorrow in their eyes. I began to panic. The Los Angeles County Sheriff, Lee Baca, gave me the worst news I ever feared hearing. I had lost my hero.

I learned that the suspected killer had already fled to Mexico. I also learned that he had an extensive criminal history. He had been deported by the Immigration and Naturalization Service on three prior occasions for drug charges in California and was wanted for two other attempted murders. Armando Garcia should have been serving jail time the day my husband was killed.

Then the most devastating news, our detectives had a good idea where he might be in Mexico. But unfortunately, Mexico has a treaty with the United States that prevents the extradition of a murderer facing first-degree murder charges. The courts of Mexico are against life in prison or the death penalty. Because he fled to Mexico, he would be protected by this treaty. How outrageous! Armando Garcia committed the murder here, in the United States. This criminal chose to leave Mexico, and reside here in California. Why would Mexico push their views of justice on our county and on our family?

My husband lost his life protecting the residents of Los Angeles County. Dave was, for lack of other words, "sucker punched" by Armando Garcia. This evil man took my

husband's life – instead of leaving him wounded – to avoid prosecution. He shouldn't be rewarded with a lesser jail time just because he fled to a country (Mexico) that does not fully or properly punish murderers.

I feel it is only fair, that if you commit a crime in ANY country, you are accountable to their laws. I haven't met any person yet who disagrees with that sentiment.

Our ongoing efforts to plead our case to our elected officials, has accomplished little. Armando Garcia is still a free man in Mexico on "vacation", while our family is mourning the loss of wonderful and loving husband, father, son, brother and friend. We have made efforts to write to Congress, and to the President but our fight for justice has been very long and frustrating. This frustration is compounded daily by the knowledge that my husband's killer enjoys a life of freedom.

Thankfully, our District Attorney, Steve Cooley and his staff, have done everything in their power to secure justice. It has been a broken system, for many years, with little or no improvement. It might take years to fix, but in the meantime Mexico has not guaranteed our family any fairness or justice. It's uncertain what kind of punishment Garcia would receive. It is not uncommon for criminals to buy out their acquittals, or receive minimal jail time. He would then be free to return to the US and could possibly kill again.

In the meantime, I have gotten involved in fighting for justice. This man killed my husband, but I refuse to let him take my life away from me too. I am confident that in some way justice will prevail in this case. I will continue to expose my personal and private life so others will know how terribly broken our justice system is.

I would hate to think that this crime is going to be forgotten. I know I will never forget. I took my vows very seriously. I promised to honor and love my husband. I feel his contributions and his life stood for so much. His life made an impact on so many others. He was an honest, loving, fair, and a beautiful man. He had a smile that lit up a room. If I could be as lucky to touch lives like he did, in his brief 33 years, that would make me proud.

The only way I feel I can go on, is to know that Armando Garcia can not hurt another family. I know my husband was willing to die for his job. But, I know he did not take that risk so a killer could get away with cold blooded murder. Armando Garcia needs to be punished under the laws of the United States. This is the only resolution that is acceptable to my family and to me.

I am not the first victim that has endured this injustice. It is estimated that over 300 families in California alone are facing the same problems that I have with no closure or solution in sight. Many of these families have been waiting several years and many have given up. I do not want that to be me. I want to see justice for my husband's killer and will work diligently until it is achieved.

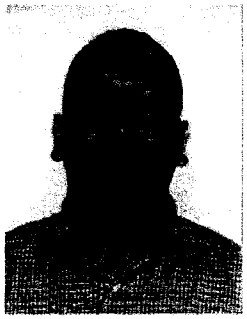
I have waited patiently for too long, writing letters, appealing to the media in order to educate the public about my story. I have spent the past year and a half doing whatever it takes to increase awareness. Today I am appealing to you for your help. You have the power to make a difference.

It is time for you, the leaders of our country, to step up! We need your involvement, and your efforts. Something needs to be done before the problems facing our nation's criminal justice system get even further out of control. I would hope that "votes and trade", would not get in the way of protecting our county. Our Federal Government and President Bush need fight for extradition, and punish those who commit heinous crimes on the soil of the United States. Please, don't let Mexico continue to be a safe haven for criminals. Our tax payers deserve much better.

City of Rialto
Police Department
Committed to our Community

Rialto Police Department Most Wanted

WANTED for Murder
Suspect Armed and Dangerous



GARCIA, Armando
DOB: 11-03-76
HT: 5-7 to 5-9
WT: 195 to 230
short black hair combed back, dark complexion, mustache and chin whiskers

AKA: Daniel Garcia & "CHATO"
TT's: Back Shoulder "Garcia"

5019 Heleo St., Temple City; 1832 Park Rose Ave., Duarte

Suspect GARCIA is wanted for the murder of Deputy David March on April 29, 2002, at 242 E. Live Oak Avenue in Irwindale. Suspect Garcia is also wanted by the Baldwin Park Police Department in connection with two attempted murders that occurred in their city on or about November 18, 2001 and February 16, 2002. Suspect Garcia is also wanted by the El Monte Police Department for weapons charges. If you have any information concerning this case or this suspect, contact Rialto Police Department at (909) 820-2550.

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TELEFAX

Procuraduría General de la República
Agregaduría Regional
Los Angeles, California

Attorney General's Office of Mexico
Regional Attaché
Consulate General of Mexico

Irene Zepeda

De: **Lic. Jorge Ricardo García Villalobos Haddad**	Para : **Mr. Steve Cooley**
Dependencia: PGR Agregaduría Regional	Dependencia: Los Angeles County District Attorney
Tel: (213) 386 1757	Tel: (213) 974 3501
Fax: (213) 386 5249	Fax: (213) 687 8525

Fax 0018 Fecha: 10 de Enero de 2003	Hora: 12:32 P.M.	Página 1 de 1	(incluyendo ésta cubierta)

Re: **JORGE ARROYO GARCIA a.k.a. "JORGE RUBIO", a.k.a. "JORGE ARROYO GARCIA ARROYO", a.k.a. "GARCIA ARMANDO CHATO".**

Dear Steve:

The purpose of this official letter is to let you know that the Federal Agency Investigation (AFI) Federal Police under the jurisdiction of the Mexican Attorney General's Office had continue with the investigation to locate the above mentioned fugitive.

At this time, we have located the fugitive and is under surveillance, but unfortunately we can't make an arrest because we don't have a warrant of arrest against him for his probable responsibility on Deputy March Davi's murder.

Please be so kind to file a request for his extradition or complain under article 4° of the Mexican Federal Criminal Court for the domestic prosecution, if you feel to do it we can't arrest him.

With my best regards,
Federal of Investigation Agent
Provisional Agent in Charge of the Regional Legal Attaché
from the Mexican Attorney's General Office
In Los Angeles, California
Fundament on fax 2417 dated December 18, 2002

Mario Sierra Villanueva

c.c.p. Sgto Alfredo Castro. Los Angeles County Sheriff's Department. Homicide Unit. For your concern.
c.c.p. Minuta 2002/0179
JRGVH/MSV*cib

CRIMES AGAINST LAW ENFORCEMENT OFFICERS BY ILLEGAL ALIENS

Deputy Don Willmon, Angelina County Texas Sheriff's Department Murdered May 13, 1979

On May 13, 1979, Deputy Willmon approached Alvaro Rodarte and began questioning him about a burglary that had taken place in the area. During the encounter, a struggle ensued and Rodarte stabbed Deputy Willmon numerous times. Rodarte then fled to Mexico where he remained a fugitive for 24 years.

On August 29, 2003, Rodarte was arrested in Zacatecas, Mexico. He will be prosecuted for the murder of Deputy Willmon in Mexico under Article IV of the Mexican Federal Penal Code. If convicted, he could be sentenced to prison for 2-60 years..

Officer Kenneth Collins, 33, Phoenix Police Department Murdered May 27, 1988

Officer Collins was shot and killed in an off duty incident as he attempted to thwart a robbery while working as a security guard at Valley National Bank in Phoenix, Arizona. Ismael Conde was arrested, convicted and sentenced to 280 years in prison.

Co-defendant, Rudy Romero fled to Mexico where he remained at large for 12 years before being shot by arrested on the outstanding murder warrant. Mexico refused to extradite unless Texas waived the death penalty. The paperwork was begun but before the extradition request was approved, The Mexican Supreme Court ruled that any life sentence was unconstitutional and the SRE refused to extradite unless additional assurances of a determinate term were given.

On November 1, 2002, thirteen years after the murder of Officer Collins, Romero was extradited from Mexico. He has since been convicted and sentenced to 98 years in prison. Both the death penalty and life sentences had to be waived in order to secure extradition. Romero is eligible for parole.

Officer Lawrence Cadena, 43, Dallas Police Department
Murdered December 13, 1988

Officer Cadena was shot eight times at close range during an undercover drug sting operation. After the shooting a co-defendant reached over Cadena's body and ripped open his shirt and pants, presumably looking for the drug money. Officer Cadena's murder was memorialized in the 1990 TV movie "In the Line of Duty".

The shooter, Javier Suarez Medina was a Mexican national who had lived in the United States since he was three years old. In May of 1989, Medina was convicted and sentenced to death. On August 15, 2002, after 13 years on death row, Medina was executed. Among his last words spoken was the phrase "Viva Mexico". Medina was given a hero's sendoff at his funeral in Mexico which was attended by 6,000 people.

The Mexican government actively fought the conviction and proposed execution arguing that Medina had not been advised of his rights under the Vienna Convention – an issue Medina raised for the first time one week before his execution. Mexican President Vicente Fox canceled a planned trip to meet with President Bush in Crawford, Texas in protest of the execution.

Officer Cadena, was an American citizen of Mexican ancestry. In a letter to President Fox, Cadena's son Lawrence Rudy Cadena, also a police officer complained "Why is Mexico, the country of my children, defending a man who killed their grandfather?" No one from the Mexican government has ever contacted the Cadena family.

Trooper Robert Clodfelter, 34, Oregon State Police, Klammath Falls
Murdered, September 30, 1992

On September 30, 1992, Trooper Clodfelter arrested Francisco Manzo Hernandez for driving under the influence. Rather than leave Manzo's passengers stranded on the highway, Clodfelter agreed to transport them to their nearby residence. All three men were placed in the back of his patrol car. When the dispatcher could not get an answer on the radio, a car was sent to investigate. Trooper Clodfelter was found seated in his patrol car about four blocks from the scene of the arrest with four bullets to the back of his head.

Manzo-Hernandez was an illegal alien with a long violent history of assault and drug use.

On October 2nd, after one of the largest manhunts undertaken in Oregon history and the offer of a large reward, Hernandez was captured while hiding in a barn on the same street he had shot Clodfelter. Hernandez was tried, convicted, and sentenced to life imprisonment without the possibility of parole. If Hernandez had made it back to Mexico, and extradition sought today, he could not have been extradited unless assurances of a determinate were given.

A year after Trooper Clodfelter's death, his wife of one month, unable to overcome her great grief, chose to end her life. Rene was a fellow law enforcement officer.

Agent Richard Fass, 37, United States Drug Enforcement Agency
Murdered June 30, 1994

On In his last day as an undercover officer, after attending a transfer party in his honor, Agent Fass went to a strip mall in Glendale, Arizona to complete a narcotics transaction. The drug dealers had planned a robbery and execution and immediately engaged Fass in a gun battle. Fass fired back, wounding one man, but was then hit by a fusillade of bullets. He was shot six times in the head at point blank range with a .45 caliber handgun. The two shooters were quickly arrested, prosecuted, convicted and sentenced to life without the possibility of parole plus 55 years. The mastermind of the plot to kill Agent Fass, Augustin Vasquez Mendoza, fled to Mexico.

An intense manhunt was begun. Police began interrogating members of Vasquez family and death threats began flowing. Nine Mexican police officers throughout the area were assassinated, including five who had worked directly on this investigation. During the course of the investigation, DEA agents and local police uncovered the lucrative drug trade of the Sinaloan Cowboys from Michoacan. Drug runners through out the United States were apprehended.

After more than six years of searching and rewards totaling $2.2 million dollars, Vasquez was arrested in Puebla on July 10, 2000.

In January, 2002, after a year and a half of negotiating, a judge ruled that the recent Mexican Supreme Court decision barred his extradition. The US argued that under the law as it existed in 1994, a life sentence meant 25 years in prison. With all charges stacked, the maximum sentence would be 53 years. In October, 2002, the PGR approved extradition and DEA agents went to the prison where Vasquez-Mendoza was being housed only to be turned away at the jail door. Vazquez-Mendoza had filed an Amparo related to a pending drug charge arguing that he couldn't have been the subject wanted in the drug case because at that time he was on the run for the murder of Agent Fass. Prison authorities refuse to honor the extradition order and release Vazquez-Mendoza to U.S. authorities until the Mexican drug charges were resolved. As of the date of this report, more than nine years after the murder of Agent Fass, Mexico continues to refuse to release Vazquez-Mendoza to the United States. There is some question as to whether or not the extradition process will have to begin anew.

Officer Marc Atkinson, 28 Phoenix Police Department
Murdered March 28, 1999

Officer Atkinson was working a drug suppression detail, surveilling a white Lincoln Continental when his partners got called away on another detail. Shortly thereafter, three men emerged from the location and entered the vehicle. Officer Atkinson began tailing the vehicle but temporarily lost visual contact. As he turned north in search of the vehicle, 17 year old Felipe Petrona-Cabana emerged from the driver's side and began filing his .357 caliber revolver. Atkinson was struck twice in the head and died the next day. A security guard on his way home from work observed the shooting and opened fire injuring Petrona-Cabana, who was taken into custody. Petrona Cabana was an illegal alien who came to the United States seven months earlier from a small farming community near Acapulco in the State of Guerrero. A pound of cocaine was ultimately recovered from the vehicle.

All three suspects were illegal aliens from the same small town and were sentenced to natural life. The shooter, Petron-Cabana, was represented in part, by an attorney hired by Mexico who successfully argued against the death penalty. Had they made it back across the border, Mexico would have demanded a determinate sentence before extraditing.

Detective Hugo Arango, 24, Doroville Police Department
Murdered May 13, 2000

Detective Arango was shot and killed after having been flagged down by a club patron who indicated that some men had been breaking into cars outside of a nightclub. Detective Arango located three suspect s and detained them. As he searched for weapons, illegal alien Bautista Ramirez shot Arango four times. The first shot took off one of his fingers, the second through his thigh. As Arango lay on the ground helpless, Ramirez intentionally fired one round through his badge and then executed Arango with a shot to his head which severed his brain stem.

Unfortunately for Ramirez, he had left his wallet on the top of the patrol car and was quickly apprehended. The trial was delayed while his defense attorney appealed to the Georgia Supreme Court, arguing that Hispanics were under-represented by the grand jury that indicted him. On June 25, 2003, Ramirez was convicted of the murder and sentenced to life plus twenty years.

Officer Michael Dunman, Salt Lake City Police Department
Killed July 17, 2000

Officer Dunman was on routine bike patrol in the downtown area when he was struck and killed instantly by an illegal alien. The fugitive was arrested and charged, then released on bail after the Hispanic community claimed discrimination. The defendant fled to Mexico where he is believed to be hiding today.

Deputy Michael Schapp, Los Angeles County Sheriffs' Department
Shot and injured September 25, 2000

On September 25, 2000, while on routine patrol, Deputy Schapp and his partner initiated a traffic stop on a full size van. Before either deputy was able to exit the patrol car, the sliding door of the van flew open and illegal alien Emigdio Preiado began firing an assault weapon at the patrol vehicle, striking Deputy Schapp in the forehead. Twenty-one 7.62 shell casings were recovered at the scene.

Preciado remains at large today and is believed to be in Mexico. The three passengers

in the van have pled guilty to assault on a police officer.

Deputy Schapp has returned to very limited duty, currently in a training unit giving "sensitivity" training.

Deputy Sheriff David March, 33, Los Angeles County Sheriff
Murdered April 29, 2002

Deputy March was executed by Armando Garcia during a routine traffic stop. Prior to the murder, Garcia had been voluntarily returned once and formally deported to Mexico twice, He was a convicted narcotics dealer and weapons offender and at the time of the murder he was wanted on two counts of attempted murder. He is believed to have fled to Mexico within eight hours. Garcia has indicated that he plans to kill more cops..

In order to secure the extradition of Armando Garcia, under the current Mexican Supreme Court decision, California authorities would have to eliminate the special circumstance which requires a mandatory sentence of life imprisonment without the possibility of parole or the death penalty and "down charge" the murder to a manslaughter or assault with a deadly weapon, etc. in order to guarantee a determinate term..

Ranger Kriss Eggle, 28, National Park Service
Murdered, August 9, 2002

On August 9, 2002, Ranger Eggle and three U.S. Border Patrol officers responded after Mexican Police reported that two armed fugitives had fled across the border into the United States at Organ Pipe Cactus National Monument. A border patrol helicopter gave chase and directed Eggle and the other officers to the location where three suspects had ditched their vehicle. The American officers pursued the fugitives on foot as they ran into nearby bushes. One of the Mexican nationals was caught, and during the attempt to apprehend the other two, Eggle was ambushed and shot by one of the suspects with an AK-47. Eggle was hit below his bullet-proof vest and died at the scene before the emergency helicopter arrives.

The shooter, Panfilio Murillo Aguila, was shot to death by Mexican officers standing on

the Mexican side of the border.

Officer, Enrique Hernandez, 27, Las Vegas Police Department
Shot and critically injured on December 12, 2002

Officer Hernandez was conducting a routine traffic stop when the fugitive Saul Garcia-Morales, aka Javier Durate Chavez fled the scene on foot. Officer Hernandez chased him into a nearby apartment where Garcia opened fire hitting Hernandez six times. Officer Hernandez spent five days in critical condition and after three surgeries, is recuperating at home.

Garcia, who had been convicted of auto burglary in 1997 and deported sometime between 1998 and 2002, was killed by Las Vegas police in the ensuing gun battle.

Officer, Robert Sitek, Phoenix Police Department
Shot and critically injured, April 12, 2003

On April 12, 2003, Officer Sitek and his partner attempted a traffic stop on the driver of a red truck who cut off the patrol vehicle. The driver had just committed an armed car jacking. When the officers stopped, the driver began shooting, hitting Officer Sitek four times in his abdomen, leg and hand. Officer Sitek was in cardiac arrest when responding paramedics arrived. He was revived, rushed to the hospital for emergency surgery and coded in the emergency room. Officer Sitek was brought back to live and as of June 3, 2003 had pulled out of his three week coma, is breathing on his own and has been transferred to a rehabilitation hospital. He is still unable to walk.

The shooter, Francisco A. Gallardo was a Mexican citizen who had recently completed a seven-year prison term for aggravated assault. He had been deported after his release but had returned. Gallardo was shot and killed by Officer Sitek's partner as he attempted to escape.

Officer Tony Zeppetella, 27, Oceanside Police Department
Murdered June 13, 2003

On June 13, 2003, Officer Zepetella stopped Adrien George Camacho for a traffic

violation. Camacho pulled out a gun and shot Zeppetella. Camacho then pistol-whipped the injured officer before shooting him again and killing him with the officer's own gun. Camacho was a documented illegal alien and gang member with a criminal history which included four previous felony convictions. He had been deported several times.

After a four hour standoff with SWAT officers, Camacho surrendered. He has pleaded not guilty and awaits trial.

(Researched by: Jan Maurizi, Director, Los Angeles County District Attorney, 8-29-03)

COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION
SELECT COMMITTEE ON INTELLIGENCE

United States Senate
WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

July 29, 2003

The Honorable Vicente Fox
C. Presidente de la Republica Mexicana
Residencia Oficial Los Pinos Puerta #1
Col. San Miguel Chapultepec
Mexico DF 11850

Dear Presidente Fox:

I write to request your assistance in resolving a huge problem facing both the United States and Mexico: the fact that Mexico's recent interpretation of the U.S.-Mexico Extradition Treaty has effectively eliminated our ability to extradite persons charged with serious crimes who flee to Mexico to avoid prosecution in the United States. This interpretation has jeopardized the safety of both American and Mexican citizens, denied basic rights and closure to crime victims, and allowed hard-core criminals to escape just punishment. It has also had a particularly deleterious effect on California, the State I represent in the United States Senate. While it has been difficult to determine the full scope of the problem, I am informed by prosecutors in California that, as a result of Mexico's interpretation of the Extradition Treaty, many individuals who have committed murder and other serious crimes in California have either not been extradited or have been effectively rendered non-extraditable, thus allowing them to escape appropriate prosecution and punishment under California law.

The U.S.-Mexico Extradition Treaty–which went into effect in 1980–provides that neither country is bound to deliver up its nationals for extradition. It further provides that where the offense for which extradition is sought is punishable by death, a country may refuse to extradite unless the country seeking extradition assures that it will not impose the death penalty. Under the Treaty, the death penalty is the sole punishment for which assurances may be required. For decades, Mexico has extradited suspects to California and other states without inordinate problems.

In October 2001, the Mexican Supreme Court ruled that life imprisonment violates the Constitution of Mexico. Mexico then extended this interpretation to the Extradition Treaty, deciding that it would no longer extradite a fugitive who is subject to life

imprisonment with or without the possibility of parole, unless assurances are given that guarantee a determinate term of years.

Mexico's interpretation of the Extradition Treaty is unsupported by and inconsistent with the Treaty's language, purpose, structure, and history. It is also conflicts with the Vienna Convention on the Law of Treaties, which states that a treaty shall be interpreted "in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose." As the U.S. State Department has made clear in a Protest Note to the Mexican Government,

> [R]equiring assurances for a punishment other than the death penalty is unsupported by the Treaty, which provides the substantive extradition requirement.... *To give [the Treaty] the reading Mexico has given it eviscerates the Treaty*, for such a reading would disregard the substantive exceptions found in Articles 5 through 9, and would permit each Party to refuse each other's extradition requests based on its domestic law on sentencing, which could be changed unilaterally at any time, even if that change rendered the law inconsistent with the Treaty.

Moreover, Mexico's interpretation of the Treaty has made it effectively impossible to extradite from Mexico individuals who commit murder or other serious crimes in California and many other States. In California, for example, over 40 different crimes are punishable by possible life sentences and neither a judge nor a prosecutor can give assurances of a determinate term for these crimes. As a result, Mexico's policy encourages people committing serious crimes in California to flee to Mexico and escape just punishment. Indeed, individuals in the United States with a criminal history have a perverse incentive to kill an arresting police officer and head for Mexico rather than face possible prosecution and imprisonment in the United States.

Given Mexico's interpretation of the Treaty, the only way to extradite a Mexican national charged with a "life" crime is to seek extradition on reduced charges punishable by a determinate sentence. But this would mean treating more harshly those who commit a crime and remain in California than those who commit the same crime and flee to Mexico. Moreover, it is unclear exactly what assurances will suffice. In at least one federal major narcotics trafficking case, a Mexican court determined that a twenty-year sentence was "cruel and unusual" and thus unconstitutional. And some Mexican courts have ruled that only a judge can give sufficient assurances–a legal impossibility under California's judicial system.

I would like to tell you about four specific criminal cases. In every case, the perpetrator of a heinous crime has escaped appropriate punishment because of Mexico's interpretation of the U.S.-Mexico Extradition Treaty. I would respectfully request your help not only in ensuring that Mexico carries out its obligations under the Treaty but also to request your assistance in bringing the perpetrators of these terrible crimes to justice.

People vs Armando Garcia (Pending Filing/Los Angeles County)

On April 29, 2002, Armando Garcia, a Mexican national, allegedly shot and killed, execution-style, 33-year old Los Angeles County Deputy Sheriff David March during a routine traffic stop in Irwindale, California. Garcia apparently fled to Mexico. Garcia has previously been charged in an unrelated case involving two counts of attempted murder, and a warrant has been issued for his arrest in that case. If convicted of Deputy March's murder in the United States, Garcia could face life without possibility of parole or, if it is not waived, the death penalty. Los Angeles District Attorney Steve Cooley has told me that he has declined to seek extradition in this case because of Mexico's interpretation of the October 2000 Mexican Supreme Court decision.

People v. Daniel Perez (Case No. VA035691/Los Angeles County & San Bernardino County)

In August of 1999, Daniel Perez, a Mexican national, was convicted *in absentia* in Los Angeles County by a jury for the crimes of attempted first degree murder, use of a firearm, spousal battery, kidnapping, false imprisonment and stalking his estranged wife.

Perez and the 21-year-old victim, Anabella Vera, were separated. They met at a pizza place. After kidnapping her at gunpoint and terrorizing her for two hours, Anabella finally convinced Perez that she would return home with him. Perez then drove Anabella to her car. After Anabella tried to drive away from him, Perez chased her in his car, ramming her vehicle and forcing her to run red lights. Ultimately, Anabella became stuck in traffic and, in a desperate bid to save her life, abandoned her car and tried to flee. Perez then caught Anabella at a gas station and shot her in the head. Miraculously, she survived.

During the trial and while out on bail, Perez drove to Fontana, California to the home of Anabella's father, who had been a key witness against Perez. In front of Anabella's siblings, Perez shot and killed Anabella's father. Perez then allegedly fled to Mexico, where he is still at large.

Perez was sentenced *in absentia* in Los Angeles County for attempted murder to a term of 33 years to life, plus an additional life term. In addition, the San Bernardino County District Attorney's Office has charged Perez with the murder of the victim's father and the special circumstances of killing a witness. These charges carry a potential punishment of life in prison without the possibility of parole or, if it is not waived, the death penalty. Because Mexico does not recognize convictions *in absentia*, my understanding is that Mexico will neither extradite Perez for attempted murder nor prosecute him under Article IV of the Mexican Federal Penal Code.

People v. Alvaro Luna Jara (Case No. BA174264/Los Angeles County)

Alvaro Luna Jara has been charged with the special circumstances murder of 12-year-old Steven Morales and the attempted murder of three others.

On August 29, 1998, Steven was playing with several other children in front of their apartment, near three members of a local street gang. As Jara drove by, he and the three gang members exchanged hand gestures. Jara then extended his arm out of the car window and fired three rounds into the crowd, killing Steven with a gunshot to the head. Jara then fled to Mexico.

If convicted in the United States, Jara could face life without possibility of parole or, if it is not waived, the death penalty. However, while Jara is not a Mexican national, the Mexican government has refused to deport him because *his parents* are Mexican nationals. After this refusal, Los Angeles District Attorney Cooley began formal extradition proceedings. However, because of Mexico's interpretation of the October 2000 Mexican Supreme Court decision, Cooley never submitted the formal request.

People v. Riviera (Case No. A967075/Los Angeles County)

On May 7, 1988, Father Nicholas Aguilar Rivera, a Catholic priest, was charged with 19 counts of child molestation. The day after he was charged, Father Rivera fled to Mexico. Although the case was supposed to be prosecuted promptly under Article IV, Mexican prosecutors failed to submit the case for prosecution until 1995. The Mexican court dismissed the matter as untimely and entered an acquittal. Now, both countries are barred from further prosecution.

In my view, the United States must retain discretion to prosecute and punish its most dangerous and violent offenders who commit crimes in the United States according

The Honorable Vicente Fox
July 29, 2003
Page 5

to U.S. laws. A number of United States criminals have fled to Mexico and remain at large there, free to commit additional crimes. A grave danger exists that Mexico will become a safe haven for serious criminals. Moreover, others face only Article IV prosecution, not extradition to the United States. Article IV prosecution ignores United States laws of crime and punishment, does not provide victims' rights consistent with U.S. law , and results in sentences–often reduced on appeal–that bear little resemblance to those authorized by U.S. sentencing laws.

Presidente Fox, I implore you to act now to try to resolve this problem. Thank you for your attention and, in advance, for your assistance.

Sincerely,

Dianne Feinstein
United States Senator

Mr. President,

Thank you for your consideration and help.

Warm Regards,

Dianne

Mr. SOUDER. We hear stories, and one of the things that's frustrating as a Congressman, you feel like Mr. Porter said, not necessarily focused a lot on the international problems. Sometimes it feels like we are trying to deal with international problems in the big picture and miss the human side of the cases that you deal with every day. And I think one of the things that is important is to try to marry those two things so we don't forget the human side. And also we realize these things are incredibly complicated and difficult to work through.

One question I had for Mr. Fox and Mr. Porter. Have you had any successful cases of working with Mexico in an extradition that you know of?

Mr. FOX. Mr. Chairman, there had been a few cases where we did pursue the Article 4, but frankly those were cases that were problematic at best in terms of the witnesses and whether or not we felt that we would really be able to pursue it. There were cases where Mexican citizens had been killed by Mexicans in our county and they were interested in doing the Article 4 and we acquiesced. But frankly, that is a rarity because I do not have that much confidence that even if there were to be a conviction that there would be a sentence anywhere near what California law provides for.

I would also like to expand a little bit—I know Congresswoman Sanchez asked about the determinant sentencing. In California we have indeterminate sentencing for second degree murder, first degree murder; and then for first degree murder with special circumstances, that is life without the possibility of parole. Second degree murder is a sentence of 15 years to life. There is no way for us to get a murder conviction. We can call it a manslaughter but the maximum penalty for manslaughter is 11 years. So there are significant issues in terms of trying to formulate a solution to the problem so we can come up with a determinant sentence.

Mr. SOUDER. And 11 years could be parole.

Mr. FOX. Eleven years is the maximum term. They would get out after having served 85 percent of that. They then would be paroled but could only return for a year. It depends on how the manslaughter was accomplished. If they used a firearm, then there would be additional enhancements imposed.

Mr. SOUDER. Mr. Porter, do you have any experiences of any successful cases; and another way to say that would be if you did have any experiences—Ms. March raised a very difficult question. And that is if, in fact, they are even convicted, do they get not only a reduced sentence but dramatically reduced sentences?

Mr. PORTER. I never had a case successfully extradited from Mexico to the United States to face charges. I had one case prior to the October decision in which—prior to the life sentence question, where Mexican authorities refused to extradite a woman who was a party to a gang murder that occurred in October 2000 in Gwinnett County, or 1999, basically refused to extradite. We went through the process but they would not extradite her. They said she was not significantly involved in the murder. They essentially made a guilt/innocence decision in the extradition hearing and would not bring her back.

The most recent case that I have mentioned is the Pinion case. That defendant is currently in jail for rape in Mexico and they are

moving forward with their charges, although the legal office in Mexico City say they expect those charges to be dropped. The Mexicans are willing to do an Article 4 hearing on him but will not extradite him. And I made the decision that I am not going to pay the $10,000 to translate my case to go through the Article 4 hearing. So I guess being a lawyer, I answered that in more words than I had to, but the answer is I never had a successful extradition.

Mr. SOUDER. When you talk about you had one case that didn't go well and you made another decision, what kind of network, through your Association and others, does this spread through district attorneys through the country that don't waste the time or $10,000? Is there a pretty avid network?

Mr. PORTER. Mr. Fox is vice president of the national organization. He could probably address the national network. I can tell you that Georgia district attorneys meet four times a year as a group. We trade examples that are basically outlined in my testimony that are all from Georgia. And I can tell you that I got six pending murder warrants against Mexican citizens, that I have no idea where those people are. The best information we have is they fled back to Mexico, and I have no expectations of being able to successfully bring them out of Mexico. My best hope is they will be captured in the United States. At this point I can tell you—our best information is they fled to Mexico.

Mr. SOUDER. You are hoping they return.

Mr. PORTER. I am hoping they return.

Mr. FOX. I am active in our State association. California is fortunate is that we do adjoin Mexico. The Attorney General's Office in our State does have full-time people who liaison with the Mexican justice people. What you have heard today, the biggest problem was not created by the executive branch but by the judicial branch.

The National District Attorneys Association has discussed this at some length because it is a matter of concern for all prosecutors across the country. It is not unique just to California or to the border States.

Mr. SOUDER. Ms. Sanchez.

Ms. SANCHEZ. Just a couple of comments on some brief questions.

Mr. Fox, I don't disagree with you on the determinate sentences; I am very well aware of that. It's frustrating for me as a Member of Congress to sit here and understand that our system is failing us, that there are these problems with extradition. It's very clear from the testimony of Mrs. March what the real human cost is. And there is not a person up here that disagrees that you deserve to see justice served in this case. I want you to know that. The problem is we are looking at a flawed system, albeit something that we have very little control over, and trying to think of creative ways to work around that.

So my question with respect to trying to extradite instead of—for crimes that serve the maximum penalty, which would be the death penalty or life in prison, trying to find creative ways that we can at least bring those individuals to some type of justice, albeit imperfect justice, in the United States so that they do serve their time.

And Mrs. March, I just really want to thank for your presence and your courage here today, because you help highlight, obviously,

what is becoming an increasing problem, again not just among the border States but among all of the States, the United States. Your testimony here is invaluable because it will help further highlight that problem and hopefully bring about some type of discussion that can prove to be fruitful in the future.

And, again, I just want to reemphasize this, because I don't want people to get the misperception that the Mexican Government, because of a lack of will on their part, is allowing this to happen. It appears to me that they are trying to work with law enforcement, they are trying to do the right thing, but they again are hampered by an independent judiciary branch that has made a Constitutional interpretation that pretty much ties their hands. And I just want to reemphasize the point that it appears that they are trying to be as cooperative as they are, and as imperfect as it is, you know, hopefully there may be something that can be done, either through revisiting of their judicial interpretation or through other means, to try to make sure that folks like Mrs. March have their day in court and have the right to see the accused answer for their actions and serve time for their crimes.

So I just want to thank all of you for being here this morning and providing your testimony.

Mr. PORTER. Congresswoman, if I might in response to your statement, is I think that makes it more important that this Congress act to fund those positions within the State Department and within the Justice Department so that American interests can be represented in these courts of foreign countries in similar-type legal proceedings as the amicus brief that's filed by different organizations in different cases. It is not unusual for foreign governments, particularly in death penalty cases, to file pleadings in those hearings. We should be doing the same. We should be in Mexican courts fighting for the decisions that we want on an amicus basis. And I think Mr. Fox agrees with that.

Mr. FOX. Absolutely.

Mr. PORTER. And we can only do that through the Justice Department and the State Department.

Ms. SANCHEZ. Your point is well taken.

Mr. SOUDER. I wanted to tell Mrs. March, too, that we will submit your full statement and supporting records in the record, because you have detailed in addition multiple cases that I asked earlier, dating back, by the way, to 19—it looks like 79—in the one group of cases, and Senator Feinstein's letter also has cases that go back into the eighties. And while the court has certainly complicated matters for the new administration in Mexico, which has made—President Zedillo's and President Fox's administration's made more progress in the judicial system than many, many decades before that. Nevertheless, all the regional corruption that is around it in different parts, and they have—intimidation that has occurred to their attorney generals over the years, it is not just a new problem, it's been systemic.

But we also have to recognize that, like Congresswoman Sanchez is saying, that this particular government is making progress; it's just really slow now that the court has set them back again, and we have to figure out where we can bring the maximum amount

of pressure to bear. And your testimony today is really helping to do that.

I want to thank Mr. Deal, who really brought this committee's attention, as vice chairman of the committee. This is one of the issues he wanted to focus on, and I will now yield to him for some additional questions.

Mr. DEAL. Thank you, Mr. Chairman. And I too want to thank this panel for your attendance. And Ms. March, I thank you personally because I know this is difficult for you to have to relive this situation. Unfortunately, it is bad cases such as yours that sometimes call the American people's attention to a problem, and that it is of a magnitude that requires that the problem be addressed. And that's the purpose of this hearing today. And I thank you.

And I also want to thank the COPS organization that you referred to for their efforts. I think that is the only way that we educate the American public to the magnitude and the degree of severity that this problem presents to our citizens.

And to Mr. Fox and to Mr. Porter, thank you both not only for being here but for what you do every day and trying to uphold the laws of our country and of our States. You do a tremendous job. And Mr. Porter is a neighbor of mine, and I do have a portion of the county that he serves in now. And he does work with my son, who is the district attorney in our home county, and so I get firsthand information as to the degree of these problems.

And I think it's important that we point out that from a prosecutor's standpoint, there are several options that they choose, and extradition is probably the very last option that they choose. Unfortunately, the option that many of them choose, and unfortunately it is in the most severe cases, it is that alluded to by Mr. Porter: We will take our chances that we will catch him back in the United States, get him on our home territory.

Now, the other option, one of them, has also been alluded to, is that they will defer prosecution in lieu of deportation. Unfortunately, as in the case of the perpetrator in the March case, deportation is not a permanent solution. Our borders are so porous, we do such a poor job in being able to apprehend those who come across illegally, that deportation simply means in some of those cases a way to avoid punishment in the United States, to go home temporarily and then to return immediately back to our soil. None of those are good solutions. And it all goes back to the fact that we are in a situation where, in Mr. Fox's testimony directly and in the March case in particular, we have created and Mexico has created an incentive to kill police officers, an incentive to not just burglarize the home, but if they show up while you are there, kill them because you might get sent back if all you are guilty of is burglary; but if you kill them, your chances of getting sent back and charged in the United States are almost nothing. Now, nothing could be a worse signal to our neighbor to the south nor to the world for us to allow that condition to continue.

As you heard in my opening statement, I made reference to a suggestion that I think we should seriously pursue—and I know that this is going to require decisionmaking at a level far above that of this subcommittee. But I think there is a reason to make a distinction when we relate country to country to those citizens

who have left our country legally and gone to another country that has screened them and said, yes, we will let you in, and vice versa. Here the tragedy is that in most of the cases of which I am personally familiar, the individual has already committed a crime, because they are not legally in our country. And to make no distinction in the issue of extradition between somebody who came into a country illegally, where the country had no opportunity to screen them, versus a decision where they did come in legally and the host country did screen them, background check, criminal records, all of the like, the perpetrator in the March case would never have passed that kind of scrutiny to be legally admitted into our country. So when we don't enforce our immigration laws, we invite that multiplicity of criminal conduct.

And I just for one, think that if the Mexican Government—and I do not wish to condemn them unduly. I think they are trying to make progress. I commend them in the areas where they have made progress. But, quite frankly, if they would spend as much time and effort trying to get their extradition situation and their cooperation and criminal prosecution straightened out as they have spent trying to convince the banking and financial communities in the United States to accept the Matricular Consular cards, we would be much closer to a solution here.

So I don't want to condemn their efforts, but I want to say I don't think they are making nearly enough. And they are our neighbor to the south. As the old poem said, fences make good neighbors. We can't build the kind of fences that we need. We have already found out that we can't do that. But good neighbors cooperate in the enforcement of basic criminal laws and the administration of justice. And I think Mexico has a long way to go in that regard.

I didn't ask you any questions. I do appreciate your testimony. I think that hopefully this is the first step in making not only this Congress but also the people of this country more aware of the significance of this problem. And the truth of the matter is, we are not really at the crest of that hill. That hill gets bigger every day. The number of cases like we are talking about here are going to get larger every year. And if we really had true records, it wouldn't be 25 cases or even 300 cases of extradition from Mexico, because most prosecutors are realists. They know what their work demands are, they know what their budgets are, and they are just not going to spend time and effort and money where there is not going to be a successful result in the long run. They can't justify that.

Now, that is not to say the problem is not there. It's to say the problem is there, and the problem has no good solution. And I think it's up to this Congress to do what we can to try to solve that problem. And it's only through the testimony and the willingness of people like you who will step out, tell the American people the truth, tell them the realities that we sometimes don't want to listen to, that we have a chance to begin to make progress.

So I do thank all of you personally and very much for your testimony and your presence here today. And, Mr. Chairman, I especially want to thank you and the staff of this subcommittee for making this issue a matter of attention to the subcommittee. It would be a whole lot easier sometimes just to ignore these kinds

of things and pretend that they are not a problem and they don't exist.

I continue to have the feeling that this is the No. 1 time bomb waiting to explode in this country. And in my part of the world, as Mr. Porter's illustrations and even Mr. Fox's illustrations were, to some extent, much of the crime committed by Mexican residents has been crime against other Mexican residents who are either here legally or, in most cases, illegally. And those, unfortunately, have to be looked at in a little different situation. They don't arouse the same kind of local uproar. Not that we tolerate it, not that we like it. In Mr. Porter's testimony, the cases that he alludes to in my community, the driveby shootings, the bludgeoning deaths of drug dealers, has pretty much been that kind of activity.

But wait until the victims are the victims like Officer March. You wait until those cases begin to multiply, and I can assure you that it will not be just a subcommittee of this committee holding hearings, it will be somebody demanding that somebody's head roll because they haven't done something at the time they should have done to prevent it. I think we can hopefully make some progress to avoid that time. Thank you very much.

Mr. SOUDER. Thank you.

I have one additional question for Mrs. March. In your testimony, you said that the murderer had been deported on three occasions for drug charges and was wanted for two other attempted murders. Why didn't INS tell you that they hadn't held him? Did you ever get a chance to ask them that question or did you ever get any answer back?

Mrs. MARCH. Initially we just were told it was INS's fault. They said, no, it's the Federal Government's fault. I just got a lot of finger pointing. No one's taken any sort of accountability. No one's tried to make their actions correct. I think there is obviously a broken link in the system, and no one's taking fault for it. I have no idea. And I feel like somebody allowed this man to kill my husband.

Mr. SOUDER. One of the things that I would like our subcommittee to do, and this isn't—we pretty much know the answer to the question. And that is, that when we deport, our information systems and our time or willingness to check everybody out, we are just overwhelmed.

Mrs. MARCH. I understand.

Mr. SOUDER. But this is an incredible flaw that, by the way, was also a flaw in September 11 and it has to be fixed. And I would like to find out for the record officially why INS says they would have deported somebody who had drug charges and was wanted for two other attempted murders, and whether they just didn't have time to check it, whether the information system didn't show because the murders were in other States, whether the drug charges were insufficiently high and so we just kind of pretend like they didn't happen. Because this is a huge question.

I'm also on Homeland Security, and when we did our border report, our understanding was—is that you have got deported if your only—and weren't held if your only crime was illegal citizenship, which, by the way, is also a crime. In other words, entering illegally. But supposedly they were supposed to be catching people and

holding them if they had other charges. So the question is, what is the breakdown or multiple breakdowns in our system? And we know, in fact, we have a lot of them, and we are trying to fix them. But I would like to know, because this is a pretty extraordinary case, if it had that many different charges.

Mrs. MARCH. Well, it was kind of explained to me that somehow the system failed. Evidently, you know, he would be sent back and probably most likely not get any sort of punishment in Mexico. The way they explained it to me was—and, unfortunately, I think it's very true—is crime rises. And unless you were able to look in a crystal ball, you wouldn't have thought this guy would be possible for the crime that he did. He—evidently, I guess, when my husband pulled him over, he wasn't going to go to jail again and it didn't matter, he was going to kill my husband, which he said he would do to his prior friends—not him particularly, but any cop that pulled him over.

So I think that was his initial plan to avoid the system. I think he just got a little more courage along the way. And he was probably at the bottom of the stack as far as high threat. And, unfortunately, we don't have enough law enforcement to keep up with the pace of the criminals.

Mr. SOUDER. If somebody is wanted for two other attempted murders, we could keep track like that, you would think.

Mrs. MARCH. Yeah. Well, those—actually those two attempted murders weren't filed until after my husband was murdered. I don't know why. He actually got over the border that night, and they suspected he was going to, and I don't know why there wasn't more attention toward the border. There is so many things that I don't understand why it happened. And I can only imagine it's so I could be here and speak for the other 300 families.

Mr. SOUDER. I don't know if you find this comforting or more scary, but we have spent 2 years and we have held hearings all across the north and south border, and I don't understand either. So I don't know whether you find that encouraging or discouraging.

Mrs. MARCH. Well, you know what? I can see why people take measures to hire, you know, bounty hunters. You don't feel like the justice system is going to do what they need to do, and you don't want him to keep on continuing to kill.

Mr. SOUDER. Well, we have an obligation, because that system won't work either. And it is happening somewhat on the southwest border. But all it is doing is complicating the problem, as it has in Colombia and in other countries, because pretty soon the bounty hunters decide they can do a rogue business on their own as well, and then you have multiple groups of terrorists.

We have an obligation to our citizens to do a better job, which means we need, by the way, responsible immigration policies that work, because we simply can't hire enough Border Patrol people right now to protect that whole border. But we have to take some action for narcotics reasons, for murder reasons, for terrorist reasons, because the current system isn't functioning, particularly if they won't extradite even if they have them.

Mrs. MARCH. They've left us no choice but to try to lure him in, and that essentially gives him his freedom.

Mr. SOUDER. Well, thank you.

Mrs. MARCH. We know exactly where he is at.

Mr. SOUDER. Well, we thank you for your testimony. I also want to insert into the record Mr. Cummings' testimony right after mine as the ranking Democrat.

Anybody else have any additional comments?

Mr. FOX. Thank you.

Mr. SOUDER. Thank you very much for coming today. The subcommittee is now adjourned.

[Whereupon, at 12:29 a.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Elijah E. Cummings and additional information submitted for the hearing record follow:]

Congressman Elijah E. Cummings, D-Maryland-7
Ranking Minority Member
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
U.S. House of Representatives
108th Congress

Hearing on "Strengthening the Long Arm of the Law: How Are Fugitives Avoiding Extradition, and How Can We Bring Them to Justice?"

October 1, 2003

Mr. Chairman,

Thank you for holding this hearing to address obstacles to the extradition of criminals indicted or convicted of crimes in the United States.

Extradition is designed to prevent criminals from escaping justice by fleeing from one country to another. The U.S. is a signatory to bilateral extradition treaties with more than 100 countries. Because Mexico is our immediate neighbor to the South and offers a gateway to Central America, South America and the Caribbean, none of these treaties is more important than our treaty with Mexico. This is underscored by the fact that 200 or more individuals believed to have committed murder in Los Angeles County alone are estimated to have fled to Mexico and remain at large.

It should be noted that recent Mexican judicial cooperation with regard to extraditions has accomplished some positive results. In 2002, Mexico extradited 24 individuals to the United States, the highest number in its history. As of June 2003, Mexico has extradited 13 individuals to the United States, and 6 were extradited by the United States to Mexico. As of the same date, Mexico had arrested 19 individuals for extradition purposes and 9 were arrested by the United States.

In spite of this progress, however, recent developments -- most notably, a decision by the Mexican Supreme Court barring the extradition of individuals who may be subject to life imprisonment without possibility of parole -- have had the effect of impeding the efforts of U.S. law enforcement to bring international criminal fugitives to justice.

In fact, conditions imposed on extradition by foreign nations have become an area of increasing concern for lawmakers and law enforcement officials throughout the United States, as many nations now refuse to extradite criminals to the U.S. if the accused will be subject to the death penalty or if the individual has been convicted in the United States without being present at his or her trial. Prosecutors in the United States generally have responded by agreeing to seek life imprisonment instead of the death penalty and/or by agreeing to hold a retrial.

The Mexican Supreme Court decision presents a further obstacle and has prompted calls for the Bush Administration to renegotiate its extradition treaty with the Mexican government. What is unclear is whether renegotiation of the treaty can affect the policy established by the court, since its decisions may be overturned only by a decision of the same court.

The Mexican government points out that its executive branch, through the Federal Attorney General's Office (PGR) and the Secretariat of Foreign Relations (SRE), has been closely monitoring the effects of the Mexican Supreme Court's decision. The Mexican government further points out that both the PGR and the SRE, along with representatives of the judiciary, participate in debates on this topic and organize meetings with judges from the United States and Mexico to exchange viewpoints on extraditions and make them more aware of the situations faced in these cases.

Our witnesses today will address the impact of, and possible remedies to, problems posed by the Mexican Supreme Court's decision, in addition to discussing other issues concerning the operation of our bilateral extradition treaties and the extradition process in general.

I thank all of our witnesses for appearing before the Subcommittee today and I look forward to hearing their testimony.

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COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

"STRENGTHENING THE LONG ARM OF THE LAW: HOW ARE FUGITIVES AVOIDING EXTRADITION, AND HOW CAN WE BRING THEM TO JUSTICE?"

OCTOBER 1, 2003

FOLLOW-UP QUESTIONS FOR THE RECORD FOR MR. BRUCE SWARTZ, U.S. DEPARTMENT OF JUSTICE, FROM CHAIRMAN MARK SOUDER

1. **When serial rapist Andrew Luster was captured in Mexico earlier this year, he was returned to the U.S. to serve out his sentence despite the fact that it was 124 years long and was imposed *in absentia*. The legal reason for this was that he entered Mexico under a false name -- and thus was deportable under Mexican immigration law; no extradition was needed. Does this case show a way forward for at least some cases? In other words, through the treaty process, could the U.S. and Mexico agree that each country should treat all fugitives from justice as being illegal entrants (with the right to at least one hearing to ensure that the charges and evidence have not been falsified)? Could this even apply to a country's own nationals?**

   The Andrew Luster case demonstrates that, in some circumstances, we can obtain the deportation from Mexico of U.S. citizen fugitives wanted for prosecution or punishment in this country without having to rely on the formal extradition process. In this respect, the FBI and U.S. Marshals Service at our embassy in Mexico City report that 57 fugitives were deported to the United States in FY 2003. When deportation from Mexico can be accomplished more quickly and effectively than extradition, we are keen to rely on that alternative. However, deportation may not be a viable alternative in all cases involving U.S. citizen fugitives. For example, we understand that Mexico will not deport a fugitive who may be subject to the death penalty, absent an assurance that such penalty will not be imposed.

   Amendments to both U.S. and Mexican immigration laws would be required in order for the U.S. and Mexico to treat all fugitives from justice as illegal entrants subject to quick removal through the immigration process. Such amendments, and their implementation, would not require changes to our extradition treaty, which governs a separate legal regime. It is unlikely, however, that any country (including the United States) would consider making its immigration laws an appropriate basis to deport or expel its own citizens, even if another country asserted that they were fugitives from justice.

2. **What restrictions does Mexico impose on consecutive sentences before it will consider extradition? At what point (in terms of total years or consecutive sentences) does Mexico refuse to extradite?**

To date, Mexico has not imposed any restrictions on consecutive sentences that may be served by fugitives it extradites. Nor has it set a maximum term of years for possible imprisonment beyond which it refuses to extradite. By way of example, Mexico extradited to the United States a fugitive believed to have committed murder in Arizona to stand trial for a lesser offense that did not statutorily mandate a penalty of life imprisonment, along with other crimes involving aggravating circumstances, for a total possible term of imprisonment that exceeded 100 years. Mexico has extradited to the United States other murder defendants statutorily eligible for parole after 25, 30, or 50 years, even without a guarantee that parole will be granted.

At the time of Mr. Swartz's testimony we had understood that Mexican courts had been persuaded that extradition in life sentence cases was permissible under the Mexican Supreme Courts ruling, if there were a possibility of parole. However, in the latter part of November and early December of 2003, we learned that Mexico denied extradition for two serious state homicide cases where parole was a possibility. Contrary to our earlier belief that Mexico would be likely to extradite defendants in cases where parole was a possibility, these two recent decisions from Mexicos appellate (amparo) courts are troubling. Our counterparts in the Mexican foreign ministry tell us that these decisions are binding on the executive branch and thereby prevent the executive from rendering contrary decisions on extradition.

3. **Overall, what is the level of cooperation from the Mexican government in extradition cases? Excluding legal issues, are Mexican authorities cooperative with respect to the logistics of processing extradition claims and arranging for physical transfers of prisoners? How does the level of Mexican cooperation compare to that provided by other countries, such as Canada and members of the European Union?**

Overall, the Mexican Government provides good cooperation on extradition cases, including on the processing of extradition requests and arranging for the physical transfer of persons ordered extradited to the United States. There have been some particularly positive developments in our extradition relationship with Mexico in recent years. For example, since 1996, when Mexico first began to exercise its discretion to extradite its citizens, the total number of extraditions to the United States has increased. In 1995, only four fugitives were extradited; in 1996, thirteen were extradited; and in 2002, twenty-five fugitives were extradited (more than in any previous year), twelve of whom were Mexican nationals. In 2003 Mexico extradited thirty-one fugitives, eight of whom were Mexican nationals. In addition, the Mexican Ministry of Foreign Affairs (Secretaria de Relaciones Exteriores, or SRE) and the Mexican Attorney General's Office (Procuraduria General de la República, or PGR) have worked with us to attempt to minimize the

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adverse impact of the Mexican Supreme Court decision prohibiting extradition in life imprisonment cases.

Extraditions from Canada and European Union countries contain their own challenges (e.g., it can take several years to obtain the surrender of a fugitive from Canada as the result of the extensive judicial process available in Canada and some European states maintain an absolute bar on the extradition of their own citizens). Mexico's overall level of cooperation with the United States on extradition – if we set aside the serious problems posed by the October 2001 decision on life sentences – is comparable to that of many jurisdictions, although at times Mexican courts have rejected extradition requests on what we would view as very technical grounds.

4. **Does Mexico require, as a condition to proceeding with its own prosecution of a crime committed in the U.S., that the relevant U.S. jurisdiction promise not to retry the fugitive if he or she is subsequently apprehended in the U.S.?**

The U.S. federal government has never received a request for such a promise from Mexico in any case, state or federal, that originated as a U.S. request for extradition, but that was ultimately converted to a domestic prosecution in Mexico. However, it is possible that U.S. state or local authorities have received such requests from Mexico directly, perhaps in cases that did not originally commence as extradition matters. Some state prosecutors have indicated to us that the double jeopardy provisions of their state constitutions may be interpreted in such a way as to prevent subsequent U.S. state prosecutions after a trial of the same defendant for the same offense in Mexico (e.g., California).

5. **In light of the unfortunate fact that there is still a significant amount of corruption in Mexico, how reliable are the prosecutions of U.S. crimes that take place there? In particular, if the suspect is affiliated with drug traffickers -- like the suspected killer of Deputy Sheriff David March -- how likely is it that the traffickers will try to influence the prosecution?**

We do not have sufficient information about the results of U.S. crimes prosecuted in Mexico (so called "Article 4" prosecutions) to assess whether the rate of conviction is appropriate, and if not, what the cause might be. We do know anecdotally of cases in which significant sentences were imposed. For example, our Embassy in Mexico reports that Los Angeles murderer Juan Casillas, whose extradition was denied in 2001 when life assurances could not be provided, received a 60-year sentence in Mexico. In another California murder case, the case of David Alex ("Pooky") Alvarez, a Mexican court imposed two consecutive 30 year Mexican sentences. We have told Mexican officials that we believe they should improve their tracking and handling of Article 4 prosecutions, and we are encouraged that recently the Mexican Attorney General's Office has added 12

new attorneys to the unit handling those cases and is working to develop a centralized case docketing system.

6. **How zealously do foreign prosecutors pursue convictions for crimes taking place in the U.S. -- given that they may want to give priority to cases arising in their own jurisdictions?**

The possibility that foreign prosecutors may be more zealous in pursuing convictions for crimes that take place in their own countries than for crimes that take place outside their borders is one of the many reasons we believe that fugitives should be extradited to face prosecution in the country whose laws have been violated, and in which the victims and evidence are more likely to be found. This risk could be somewhat ameliorated where – as we understand is being done in Mexico – a country is willing to create a full time unit of professional prosecutors assigned to handle such cases.

7. **Why do you believe the U.S. was able to get the agreement of the European Union and Canada to substantial revisions to our extradition treaties this year, but not Mexico?**

The new U.S.-EU extradition treaty, which was signed earlier this year, and the protocol to our extradition treaty with Canada, which was signed in 2001 and which entered into force earlier this year, contain important and useful provisions, but do not address those issues that are of serious concern in our extradition relationship with Mexico.

The treaty with the European Union updates our oldest bilateral extradition treaties with EU countries, and expands their scope to cover a broad range of serious offenses punishable under both Parties' laws. It also ensures that an extradition request from one EU state to another based on the new European arrest warrant will not receive automatic preference over a competing request from the United States for the same fugitive. The protocol amending the Canadian extradition treaty authorizes the temporary extradition to the requesting State of persons charged with crimes who are serving sentences in the requested State. It also modifies the authentication requirements for U.S. documents submitted in support of extradition from Canada.

Our most serious problem with Mexico is its inability, as a result of its Supreme Court's October 2001 decision, to extradite in cases where the fugitive faces life imprisonment in the United States without the possibility of parole and now, as noted in our response to question number two, perhaps even in cases where parole is a possibility. Because that problem results from an interpretation of the Mexican Constitution by its own Supreme Court, and not from the text of our extradition treaty with Mexico, it cannot be addressed via revisions to that treaty. Therefore, we have not sought to amend the treaty.

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8. **Do you believe that the refusal to extradite on the grounds that life imprisonment is "unconstitutional" is a violation of the U.S. -- Mexico extradition treaty? If not, why not?**

We believe that the Mexican Government's requirement that the United States provide assurances for a punishment other than the death penalty is unsupported by the U.S.-Mexico extradition treaty. The only sentencing assurances contemplated by the Parties to the treaty are death penalty assurances. The general obligation to extradite applies unless a specific exception exists, and nothing in the treaty permits a Party to condition extradition on assurances that a fugitive will not face life imprisonment if extradited and convicted of the offense for which he is sought.

9. **According to your testimony, there are countries in addition to Mexico that will not extradite if life imprisonment is the penalty in the U.S. Which countries are they? You mentioned Costa Rica, Venezuela, and Portugal -- is that all of them? Are they all as categorical in their refusal to extradite as Mexico? How many such cases have arisen in these countries?**

To date, Mexico, Colombia, Spain, and Venezuela have sought life imprisonment assurances in one or more cases. Costa Rica has sought assurances that a sentence in excess of 50 years will not be imposed. We understand Portugal also would seek an assurance as to a maximum term of years, although a concrete case has not yet arisen. Only our 1930 treaty with Venezuela expressly contemplates that a party may seek this kind of assurance. Colombia seeks assurances pursuant to court decisions interpreting its domestic extradition law, under which the Government of Colombia extradites fugitives to the United States.

Unless specifically provided for in the terms of the treaty, we take the position that demands for such assurances are not permitted under the terms of the treaty. As in the case of Mexico, we address the issue on a case-by-case basis, after consultations with the Department of State and the relevant U.S. prosecutor.

Aside from the situation with Mexico and Colombia, the overall number of cases in which we have received demands for "no life imprisonment" assurances has been small. However, such demands are now made routinely by Colombia. They have not posed a significant problem, though, as Colombia has been willing to accept an assurance that (1) the U.S. will not seek life imprisonment, and that (2) should U.S. judicial authorities impose such a penalty, we will formally request that the court reduce the sentence to a term of years. We have successfully obtained the extradition from Colombia of a number of major narcotics traffickers after providing such assurances. We do not have the number of first degree murder cases with Colombia that we have with Mexico.

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10. According to the written testimony of District Attorney Fox, in 1996 the State and Justice Departments approached the National District Attorneys Association about obtaining a blanket waiver of the death penalty in order to facilitate extradition. The NDAA did not support that request. Do you believe that decision should be revisited? Would your Department make the request again?

The Justice Department agrees with the NDAA that decisions on foreign requests for assurances in death penalty cases involving state or local defendants are best made on a case-by-case basis by the appropriate state or local prosecuting attorney's office. We have no intention of seeking a "blanket waiver of the death penalty" that would remove this decision from the state or local prosecutor handling the case. If a decision is made by the prosecutor in an individual case to provide the requested assurance, we will continue to follow our current practice of working with the U.S. State Department to ensure that the assurance is provided to the requesting foreign government in the form of a binding and enforceable diplomatic note from the United States Government.

11. According to your testimony, Italy has refused to extradite murderers to a jurisdiction where the death penalty is a legal possibility -- even when the U.S. prosecutor promises not to seek the death penalty. How many cases like that have arisen?

Several years ago, in a case involving a U.S. extradition request for a fugitive from Florida named Venezia for trial for an offense potentially punishable by death, the Italian Constitutional Court ruled that, as a matter of Italian Constitutional law, no U.S. assurances that he would not be subject to or receive the death penalty could be sufficient. In essence, the Venezia decision leaves us in a situation in which the U.S. may obtain extradition from Italy only for non-capital offenses (i.e., offenses in which the death penalty is not even a legal possibility, regardless of whether the prosecutor is willing to forgo seeking the death penalty and to promise that, if imposed, it will not be carried out). Although we are aware of no subsequent U.S. extradition requests to Italy that have been denied on this basis, there have been at least some cases in which, after consulting with the relevant prosecutor's office, we have forgone the opportunity to seek extradition from Italy of a fugitive wanted on capital charges, in hopes that he might be arrested later in another jurisdiction.

12. One key aspect of extradition treaties is the "dual criminality" clause, which defines an extraditable offense as one which is similarly punished in both countries. As Canada and many European center-left governments move to de-criminalize illegal drugs, are you concerned that we will increasingly find ourselves unable to obtain the extradition of major drug traffickers who operate from or flee to those countries? What steps are you taking to deal with that possibility?

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While the de-criminalization of some drugs by some countries does create certain law enforcement concerns for the United States, so far it has not threatened our ability to obtain the extradition of major drug traffickers. The dual criminality clauses of our modern extradition treaties require the parties to extradite anyone who has committed an offense that is punishable under the laws in both countries by some agreed upon minimum penalty – often by more than one year imprisonment. Those clauses do not require that the offense be similarly punished in both countries (so long as the minimum penalty is provided for in both countries). Thus, for example, as long as each country continues to criminalize and punish by more than one year imprisonment the importation, exportation, or distribution of a particular controlled substance (i.e. drug trafficking), extradition for fugitives involved in such activity would remain possible even if the country of refuge were to decriminalize the simple possession of the same substance.

Of course, if a country were to amend its laws to decriminalize the importation, exportation, distribution, or other trafficking of substances that are illegal under U.S. law, that would constitute a serious challenge to our extradition relationship with such a country. Moreover, we would view such actions as contrary to the obligations under the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which Canada and virtually all European countries are party. To date, such decriminalization of drug trafficking offenses has not been a problem with Canada, European states, or any other countries with which we have an extradition treaty.

13. **In March 2002, the Justice Department's Inspector General released a report criticizing some aspects of the Office of International Affairs' handling of extradition cases. Those criticisms focuses on poor record-keeping and a lack of follow-up action over time. During your testimony, you stated that all such criticisms have now been satisfactorily resolved. What specific remedial action was taken with respect to that report? Did the Inspector General specifically state that all of the problems identified in the report had been adequately corrected?**

The Office of International Affairs (OIA), led by a new Director since September of 2001, has worked hard to address the criticisms contained in the Inspector General's report. Many specific remedial actions have been undertaken. For example, the primary criticism of the report, and the main focus of its recommendations, was OIA's failure to monitor the progress of its extradition cases, and in particular, to close cases. That criticism was addressed by the new Director's institution of a complete, office-wide file review. The initial file review led to the closing of thousands of old cases. Such reviews are now conducted every six months by each OIA geographic team, and will ensure that appropriate follow up action on cases is taken, and that they are closed in a timely fashion. When moribund cases are closed – often because fugitives initially believed to be in a particular country have never been located – OIA is now recommending that prosecuting or investigating authorities explore the issuance of Interpol Red Notices and

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diffusions in a further attempt to locate those fugitives. OIA now puts additional emphasis on the need for its attorneys to pro-actively manage their cases, including following up on a regular basis with appropriate U.S. and foreign law enforcement authorities to ensure that required actions have been taken. Finally, OIA paralegals and attorneys are now routinely trained on the Oracle based extradition tracking system, and required to utilize that system for tracking and updating extradition cases for which they are responsible.

14. **Does your office still use the Extradition Tracking System (ETS)? Do your employees now routinely use it in all extradition cases, in contrast to when the Inspector General's report came out? Have any improvements been made to the ETS since that report?**

Yes, the Office of International Affairs (OIA) still relies on the same Oracle based Extradition Tracking System (ETS) in place at the time of the Inspector General's review. However, the Criminal Division has installed new computer hardware which has alleviated considerably the past problem of use of the Oracle system causing repeated shutdowns of users' computers. In addition, all OIA attorneys and paralegals are now routinely trained on the ETS, and required to utilize it for tracking and updating the extradition cases for which they are responsible. That said, the current system is not as useful or "user friendly" as we would like, and we hope to be in a position to upgrade or replace it in the future.

15. **According to the written testimony of District Attorney Fox, we'll be hearing from on the next panel, the Justice Department eliminated its liaison officer who used to work with local prosecutors on extradition cases. Has that position been reestablished?**

Two state prosecutors were detailed to the Office of International Affairs (OIA) in the late 1990s. The first, Florida Statewide Prosecutor Joe Larrinaga, was sponsored by the National Association of Attorneys General (NAAG), and worked in OIA for several months. The second, Los Angeles District Attorney Darrell Mavis, was sponsored by the National District Attorneys' Association (NDAA), and worked in OIA for over a year. Both were very helpful in serving as a resource to state and local prosecutors on extradition and other international criminal law issues. Unfortunately, due to cost issues, the program was discontinued. We are currently considering whether to re-establish it.

In the meantime, we note for the Subcommittee that several current OIA attorneys served for years as state prosecutors before joining the Office. They, like all OIA attorneys, make no distinction between federal, state, and local cases when it comes to providing advice and assistance on extradition or other international criminal matters. In addition, in recent years we have initiated a training course on extradition, alternatives to extradition, and other international criminal law issues at the National Advocacy Center

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in Columbia, South Carolina. That course, which is held at least once a year, is open to state and local as well as federal prosecutors, and its faculty has included state prosecutors as well as OIA attorneys and Assistant U.S. Attorneys. Hundreds of prosecutors have already attended this training course.

16. **Armando Garcia, the alleged killer of Los Angeles Deputy Sheriff David March, was apparently deported three times by the Immigration and Naturalization Service (INS, then part of the Justice Department), despite the fact that he was also apparently wanted for narcotics trafficking and attempted murder. Why did the INS simply deport Mr. Garcia instead of holding him for trial on those additional charges? (Please note that if your Department no longer has any of the relevant INS record, we request that you seek this information from the Department of Homeland Security.)**

We have referred this question to the Department of Homeland Security. That Department has informed us that it will provide its response directly to the Committee.

17. **Please provide our office with the following information:**

a. **The total number of pending extradition requests, and which countries those cases are pending in (if the request was made by a U.S. jurisdiction) or which countries made the request (if the request was made by a foreign jurisdiction);**

A chart containing the total number of pending extradition requests made by the United States to foreign countries, broken down by country, is enclosed. Another chart containing the total number of pending extradition requests made by foreign countries to the United States, again broken down by country, is also enclosed. Although these data reflect the number of currently pending extradition requests made by and to the United States, they do not necessarily reflect the numbers of cases in which requests have been determined to be legally sufficient, fugitives have actually been located and arrested, and formal extradition proceedings have begun. For example, they would include many cases where we sought the arrest of the fugitive in a foreign country, but the fugitive has yet to be located.

b. **The number of extradition cases pending in foreign countries that have stalled due to the policies of the foreign country (such as, e.g., a refusal to extradite when the death penalty may be imposed), as opposed to the normal administrative procedures there;**

Few extradition cases pending in foreign countries are stalled simply due to the policies of the foreign country. In many cases, the United States makes requests for extradition of fugitives believed to be in a foreign country, but those cases

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remain pending for considerable periods because the fugitives have not been actually located and arrested. However, once a fugitive whose extradition has been requested has been located and arrested, the case usually proceeds through the legal system of the other country following the procedures, and at the rate, provided for in that country. Unfortunately, judicial and executive reviews and appeals provided for under the extradition laws of some countries can make extradition from those jurisdictions a multi-year process.

When countries refuse to extradite when there is a possibility of the death penalty being imposed, such refusal is usually based upon the law of the foreign country (often constitutionally based law), and is often dealt with in the "death penalty assurances clause" in its extradition treaty with the United States. It is a position not usually based simply on policy. The extradition case either proceeds after the requested death penalty assurances have been provided, or ends if it is not. In some cases, where it is clear the foreign country will require a death penalty assurance and the prosecutor knows from the outset he or she will not or cannot provide such an assurance, an extradition may not be pursued at all.

If we were to believe that a U.S. extradition request was not being acted upon or was being delayed exclusively because of a policy decision of a foreign country, and contrary to its extradition treaty obligations, we would address such a serious matter with the foreign country through the U.S. State Department.

c. **The number of cases of prisoner transfer or exchange between the U.S. and Mexico, pursuant to our treaty on prisoner exchanges; and**

Prisoner transfers between the United States and Mexico are administered by the Prisoner Transfer Unit, Office of Enforcement Operations, Criminal Division, United States Department of Justice. According to the Prisoner Transfer Unit, a total of 2,817 Mexican prisoners have been transferred from the United States to Mexico since the inception of the U.S. – Mexico prisoner transfer program in 1977 to October 23, 2003. A total of 1,816 American prisoners have been transferred from Mexico to the United States since the inception of the U.S. – Mexico prisoner transfer program in 1977 to October 23, 2003.

According to the Prisoner Transfer Unit, in recent years the number of Mexican prisoners transferred from the United States to Mexico has been declining. Specifically, the numbers transferred in recent years are as follows:

1998: 300
1999: 293
2000: 290
2001: 155

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2002: 150
2003: 108

According to the Prisoner Transfer Unit, this decline is attributable to Mexico's refusal, primarily on grounds of prison over-crowding, to approve more of the applicants that the U.S. has approved and presented for transfer. We routinely raise with the Mexican Government our concern over the low acceptance rate of proposed prisoner transfers to Mexico.

d. The Department's best estimate of the number of fugitives from U.S. jurisdictions currently hiding in foreign countries (indicating how many fugitives are hiding in each country).

Accurate and reliable statistics on this question are not available. We often do not know the location of international fugitives. Even in a case in which we believe a fugitive is in a particular foreign country, we may not have specific enough information on his exact whereabouts to have him arrested. However, the United States Marshals Service estimates that there are several thousand fugitives from U.S. justice located in various countries around the globe, and that the country with the largest number of such fugitives is Mexico.

FOLLOW-UP QUESTIONS FOR THE RECORD FROM VICE-CHAIRMAN NATHAN DEAL

1. Please provide statistics regarding the number of illegal alien criminals incarcerated in federal prison systems.

According to information provided by the Federal Bureau of Prisons on October 27, 2003, there are 42,710 non-U.S. citizen, sentenced inmates currently incarcerated in the federal prison system. That is out of a total of 159,083 sentenced inmates. We were unable to obtain specific information on how many of those non-citizen inmates are here in the United States illegally.

2. Please provide statistics regarding the number of illegal alien criminals incarcerated in the state prison system, broken down by state.

We were unable to obtain from federal sources specific information on the number of illegal alien criminals incarcerated in the state prison system, broken down by state. However, the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS) did provide some related data. According to BJS, as of December 31, 2002, there were 21,065 detainees held by the then Immigration and Naturalization Service. Of those, 9,764 were held in local jails, 453 were held in state prisons, and

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2,595 were held by intergovernmental agreement in some other non-federal facility. A chart provided by BJS showing the breakdown of INS detainees by state, and type of detention facility, is enclosed. The figures contained in this chart represent the number of aliens being detained by INS (now the Bureau of Immigration and Customs Enforcement at the Department of Homeland Security), and not the number of illegal alien criminals convicted of crimes in this country who are currently serving prison sentences.

3. **Does the Department provide any compensation to State and local governments for the costs they incur while incarcerating illegal aliens? How complete is any such compensation?**

The Justice Department's Office of Justice Programs (OJP) provided the following information on a federal assistance program designed to address such costs:

- The State Criminal Alien Assistance Program (SCAAP) is a payment program designed to provide federal assistance to states and localities which incur costs for incarcerating certain criminal aliens being held as a result of state and/or local charges or convictions.

- In FY 2000, responding to a DOJ/OIG audit finding which recommended that OJP use a more streamlined/uniform method for determining state and local average costs, OJP modified the SCAAP formula to include just the annual salary costs for correctional officers, plus the number of days illegal aliens were housed.

- Under the new formula, the data is aggregated and run along with the total funding available to produce an allocation of funds. Each recipient receives a relative share of the total amount available. Annual SCAAP payments are in no way tied to the actual costs incurred by states and localities in incarcerating illegal aliens and are not intended to cover all those costs.

- Since the Program's inception in FY1995, OJP has distributed over $4 billion in SCAAP funds to eligible states and local jurisdictions which incur costs of incarcerating certain categories of aliens (primarily those entering the U.S. without permission inspection or overstaying visas who have been convicted of one felony or two misdemeanors).

- By statute, payments made to states and localities are unrestricted and are available for any lawful state or local purposes—they are not limited to correctional or even criminal justice purposes.

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Office of International Affairs
Criminal Division
U.S. Department of Justice

Pending Requests for Extradition Made by the U.S. for Fugitives in Foreign Countries
27-OCT-03

To Country	Event Count
ALBANIA	1
ARGENTINA	9
ARUBA	13
AUSTRALIA	14
BAHAMAS	20
BELGIUM	7
BELIZE	4
BOLIVIA	3
BRAZIL	11
BULGARIA	2
CANADA	218
CHILE	1
COLOMBIA	220
COSTA RICA	26
CROATIA	2
CUBA	1
CURACAO	4
CYPRUS	2
CZECH REPUBLIC	2
DENMARK	2
DOMINICA	1
DOMINICAN REPUE	74
ECUADOR	3
EL SALVADOR	1
FRANCE	18
GERMANY	9
GHANA	4
GREECE	4
GUATEMALA	7
GUYANA	1
HAITI	1
HONDURAS	4
HONG KONG	11
HUNGARY	1
INDIA	13
IRELAND	4
ISRAEL	18
ITALY	[illegible]
JAMAICA	25

Office of International Affairs
Criminal Division
U.S. Department of Justice

Pending Requests for Extradition Made by the U.S. for Fugitives in Foreign Countries
27-OCT-03

To Country	Event Count
JAPAN	1
JORDAN	4
KOREA, REPUBLIC	4
LEBANON	2
LIBERIA	1
LITHUANIA	1
LUXEMBOURG	1
MACEDONIA	2
MALAYSIA	1
MEXICO	311
NETHERLANDS	41
NETHERLANDS AN	7
NEW ZEALAND	2
NICARAGUA	5
NIGERIA	3
NORWAY	2
PAKISTAN	9
PALESTINE	2
PANAMA	33
PARAGUAY	1
PERU	9
PHILIPPINES	31
POLAND	2
ROMANIA	2
RUSSIA	1
SOUTH AFRICA	4
SPAIN	33
SRI LANKA	1
ST. CHRISTOPHER	2
ST. MARTEEN (Dut	7
ST. MARTIN (French	1
ST. VINCENT/GREN	1
SWEDEN	1
SWITZERLAND	7
TAHITI	1
THAILAND	32
TONGA	1
TRINIDAD AND TOB	4
UNITED ARAB EMIR	3

Office of International Affairs
Criminal Division
U.S. Department of Justice

Pending Requests for Extradition Made by the U.S. for Fugitives in Foreign Countries
27-OCT-03

To Country	Event Count
UNITED KINGDOM	39
UNKNOWN	12
VENEZUELA	4
YUGOSLAVIA	1
	2
Sum	1413

Office of International Affairs
Criminal Division
U.S. Department of Justice

Pending Requests for Extradition Made by Foreign Countries for Fugitives in the U.S.
27-OCT-03

From Country	Event Count
AFGHANISTAN	1
ARGENTINA	7
ARMENIA	1
AZERBAIJAN	2
BAHAMAS	2
BELARUS	2
BELGIUM	11
BELIZE	1
BOSNIA-HERZEGOVINA	3
BRAZIL	3
BULGARIA	2
CANADA	28
CHILE	2
COLOMBIA	21
COSTA RICA	8
CROATIA	6
CZECH REPUBLIC	19
DOMINICA	1
DOMINICAN REPUBLIC	2
ECUADOR	6
EGYPT	3
EL SALVADOR	4
ESTONIA	2
FINLAND	1
FRANCE	15
GERMANY	15
GREECE	12
GUADELOUPE & MAR	1
GUATEMALA	3
HONDURAS	1
HONG KONG	5
HUNGARY	15
INDIA	6
ISRAEL	7
ITALY	25
JAPAN	1
JERSEY ISLANDS	2
KAZAKHSTAN	4
KENYA	1

Office of International Affairs
Criminal Division
U.S. Department of Justice

Pending Requests for Extradition Made by Foreign Countries for Fugitives in the U.S.
27-OCT-03

From Country	Event Count
KOREA, REPUBLIC	15
LATVIA	1
LITHUANIA	6
MACEDONIA	2
MARSHALL ISLANDS	1
MEXICO	344
MICRONESIA	1
NETHERLANDS	3
NORWAY	1
PAKISTAN	5
PALAU	1
PANAMA	10
PERU	11
PHILIPPINES	12
POLAND	12
PORTUGAL	2
ROMANIA	4
RUSSIA	14
SAUDI ARABIA	1
SINGAPORE	1
SLOVAKIA	2
SOUTH AFRICA	3
SPAIN	9
ST. CHRISTOPHER (ST. KITTS & NEVIS)	1
SWEDEN	1
SWITZERLAND	11
TANZANIA	1
THAILAND	4
TURKEY	4
UKRAINE	2
UN WORLD TRIBUNAL (SIERRA LEONE)	1
UN WORLD TRIBUNAL (YUGOSLAVIA)	1
UNITED KINGDOM	7
URUGUAY	1
VENEZUELA	2
VIETNAM	1
ZAMBIA	1
[illegible]	1
[illegible]	751

Table 1. Number of detainees held by the Immigration and Naturalization Service (INS), December 31, 2002

Region and location	Number of Detainees held under INS for December 31, 2002:								
						Inter-government Agreements			
	Total	INS-Operated	Private facilities under exclusive contract to INS	Federal Bureau of Prison	Other Federal	Total	State Prisons	Local Jails	Other Facilities
U.S. Total	21,085	5,087	1,936	1,100	130	12,812	453	9,764	2,595
Northeast	3,475	321	425	19	0	2,710	158	2,550	2
Connecticut	222	0	0	0	0	222	77	145	0
Maine	8	0	0	0	0	8	0	8	0
Massachusetts	410	0	0	13	0	388	1	387	0
New Hampshire	16	0	0	0	0	16	2	13	0
New Jersey	1,094	0	256	1	0	838	0	838	0
New York	902	311	170	2	0	19	0	17	2
Pennsylvania	1,140	1	0	3	0	1,136	0	1,136	0
Rhode Island	78	0	0	0	0	78	78	0	0
Vermont	6	0	0	0	0	6	0	6	0
Midwest	1,899	1	0	122	0	1,576	200	1,313	63
Illinois	326	1	0	23	0	304	0	242	62
Indiana	51	0	0	47	0	4	0	4	0
Iowa	43	0	0	0	0	43	0	43	0
Kansas	186	0	0	31	0	155	0	155	0
Michigan	295	0	0	0	0	295	0	295	0
Minnesota	185	0	0	0	0	185	58	127	0
Missouri	156	0	0	21	0	135	0	135	0
Nebraska	211	0	0	0	0	211	142	68	1
North Dakota	0	0	0	0	0	0	0	0	0
Ohio	102	0	0	0	0	102	0	102	0
South Dakota	0	0	0	0	0	0	0	0	0
Wisconsin	142	0	0	0	0	142	0	142	0
South	9,663	2,216	906	634	130	5,083	91	3,648	1,346
Alabama	162	0	0	13	0	149	0	149	0
Arkansas	28	0	0	6	0	22	0	22	0
Delaware	0	0	0	0	0	0	0	0	0
District of Columbia	0	0	0	0	0	0	0	0	0
Florida	2,010	720	0	0	0	1,290	0	619	671
Georgia	312	0	0	6	0	306	0	270	36
Kentucky	59	0	0	25	0	34	0	34	0
Louisiana	1,117	2	0	456	126	532	0	531	1
Maryland	297	0	0	1	0	296	0	296	0
Mississippi	6	0	0	6	0	0	0	0	0
North Carolina	108	0	0	12	0	96	0	96	0
Oklahoma	162	0	0	21	0	141	0	141	0
South Carolina	84	0	0	3	0	81	0	28	53
Tennessee	145	0	0	22	0	123	91	32	0
Texas	4,259	1,496	906	62	5	1,690	0	1,298	392
Virginia	327	0	0	0	0	327	0	114	213
West Virginia	8	0	0	0	0	8	0	8	0
West	6,585	2,483	613	239	0	3,248	4	2,161	1,183
Alaska	4	0	0	0	0	4	4	0	0
Arizona	1,717	1,401	0	20	0	296	0	75	221
California	3,638	1,077	0	6	0	2,455	0	1,403	952
Colorado	408	0	329	79	0	3	0	3	0
Hawaii	57	2	0	55	0	0	0	0	0
Idaho	19	0	0	0	0	19	0	19	0
Montana	8	1	0	0	0	6	0	6	0
Nevada	258	0	0	0	0	258	0	258	0
New Mexico	13	0	0	0	0	13	0	13	0
Oregon	152	0	0	0	0	152	0	152	0
Utah	108	0	0	0	0	108	0	108	0
Washington	302	2	197	79	0	34	0	34	0
Wyoming	1	0	0	0	0	1	0	1	0
U.S. Territories	348	64	0	98	0	96	0	94	1
Guam	40	0	0	0	0	40	0	40	0
Puerto Rico	151	64	0	96	0	1	0	0	1
Virgin Islands	54	0	0	0	0	54	0	54	0

Dated 4/1/2003

Questions for the Record Submitted to
Mr. Samuel Witten by
Chairman Mark Souder (#1)
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
Committee on Government Reform
October 1, 2003

Question:

What impact do you believe economic or other pressure from the U.S. could have in getting the Mexican government to change is policies on extradition?

Answer:

The problems we are facing in connection with extraditions from Mexico are primarily the result of an October 2001 Supreme Court decision interpreting the Mexican constitution. In that decision, the Mexican Supreme Court held that life sentences were unconstitutional under the Mexican constitution and that no fugitive in Mexico could be extradited if that fugitive faced a life sentence in the State requesting his extradition. Because we are dealing with a decision from an independent judiciary, and because the Mexican Executive Branch has asked its Supreme Court to revisit that decision, we do not believe that additional economic pressure on Mexico from the United States will advance our cause, and, in fact, it could be counterproductive.

In advance of the October 2001 decision, the Mexican Executive Branch had expressed to the Mexican Supreme Court its view that life imprisonment was not unconstitutional in Mexico. Since that time, the Mexican Executive Branch has requested that the Supreme Court review this decision. In addition, the Mexican Executive Branch continues to work with us, within the current constitutional restraints imposed by the Mexican judiciary, to obtain fugitives. From 1995 to 2000, the number of fugitives received from Mexico grew from a low of four in 1995 and hovered in the low teens up until 2001. In 2001, however, we received 17, followed by 25 in 2002. As of October 1, 2003, we have received 25 fugitives. If we compare this to the number of fugitives the United States extradites to Mexico, in 2002, we extradited approximately 20 and, as of October 1, 2003, we have only extradited five.

Exerting pressure on the Mexican Executive Branch will not necessarily prompt the Mexican judiciary to modify its constitutional interpretation, and may in fact decrease the amount of cooperation we currently receive from the Executive Branch.

Questions for the Record Submitted to
Mr. Samuel Witten by
Chairman Mark Souder (#2)
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
Committee on Government Reform
October 1, 2003

Question:

Why do you believe the U.S. was able to get the agreement of the European Union and Canada to substantial revisions to our extradition treaties this year, but not Mexico?

Answer:

The new U.S.-EU extradition treaty, which was signed earlier this year, and the protocol to our extradition treaty with Canada, which was signed in 2001 and which entered into force earlier this year, contain important and useful provisions, but do not address those issues that are of serious concern in our extradition relationship with Mexico.

The treaty with the European Union updates our oldest bilateral extradition treaties with EU countries, and expands their scope to cover a broad range of serious offenses punishable under both Parties' laws. It also ensures that an extradition request from one EU state to another based on the new European arrest warrant will not

receive automatic preference over a competing request from the United States for the same fugitive. The protocol amending the Canadian extradition treaty authorizes the temporary extradition to the requesting State of persons charged with crimes who are serving sentences in the requested State. It also modifies the authentication requirements for U.S. documents submitted in support of extradition from Canada.

Our most serious problem with Mexico is its inability, as a result of its Supreme Court's October 2001 decision, to extradite in cases where the fugitive faces life imprisonment in the United States without the possibility of parole. Because that problem results from an interpretation of the Mexican Constitution by its own Supreme Court, and not from the text of our extradition treaty with Mexico, it cannot be addressed via revisions to that treaty. Therefore, we have not sought to amend the treaty.

Questions for the Record Submitted to
Mr. Samuel Witten by
Chairman Mark Souder (#3)
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
Committee on Government Reform
October 1, 2003

Question:

Do you believe that the refusal to extradite on the grounds that life imprisonment is "unconstitutional" is a violation of the U.S.-Mexico treaty? If not, why not?

Answer:

We believe that the Mexican Government's requirement that the United States provide assurances for a punishment other than the death penalty is unsupported by the U.S.-Mexico extradition treaty. The only sentencing assurances contemplated by the Parties to the treaty are death penalty assurances. The general obligation to extradite applies unless a specific exception exists, and nothing in the treaty permits a Party to condition extradition on assurances that a fugitive will not face life imprisonment if extradited and convicted of the offense for which he is sought. That said, we understand that Mexico's life imprisonment assurances requirement is based upon an interpretation of the Mexican Constitution by the Mexican Supreme Court, and thus that its position may be required

as a matter of domestic Mexican law.

Questions for the Record Submitted to
Mr. Samuel Witten by
Chairman Mark Souder (#4)
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
Committee on Government Reform
October 1, 2003

Question:

According to the written testimony of District Attorney Fox, in 1996 the State and Justice Departments approached the National District Attorneys Association about obtaining a blanket waiver of the death penalty in order to facilitate extradition. The NDAA did not support that request. Do you believe that decision should be revisited? Would your Department make the request again?

Answer:

The Justice Department agrees with the NDAA that decisions on foreign requests for assurances in death penalty cases involving state or local defendants are best made on a case-by-case basis by the appropriate state or local prosecuting attorney's office. We have no intention of seeking a "blanket waiver of the death penalty" that would remove this decision from the state or local prosecutor handling the case. If a decision is made by the prosecutor in an individual case to provide the requested assurance, we will continue to follow our current practice of working with the U.S. State Department to ensure that the assurance is provided to the requesting foreign

government in the form of a binding and enforceable diplomatic note from the United States Government.

The Department of State supports the Department of Justice's position on this issue.

Questions for the Record Submitted to
Mr. Samuel Witten by
Chairman Mark Souder (#5)
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
Committee on Government Reform
October 1, 2003

Question:

One key aspect of extradition treaties is the "dual illegality" clause, which defines an extraditable offense as one that is similarly punished in both countries. As Canada and many European center-left governments move to de-criminalize illegal drugs, are you concerned that we will increasingly find ourselves unable to obtain the extradition of major drug traffickers who operate from or flee to those countries? What steps are you taking to deal with that possibility?

Answer:

While the de-criminalization of some drugs by some countries does create certain law enforcement concerns for the United States, so far it has not threatened our ability to obtain the extradition of major drug traffickers. The dual criminality clauses of our modern extradition treaties require the parties to extradite anyone who has committed an offense that is punishable under the laws in both countries by some agreed upon minimum penalty - often by more than one year imprisonment. Those clauses do not require that the offense be similarly punished in both countries (so long as the minimum penalty is provided for

in both countries). Thus, for example, as long as each country continues to criminalize and punish by more than one year imprisonment the importation, exportation, or distribution of a particular controlled substance (i.e. drug trafficking), extradition for fugitives involved in such activity would remain possible even if the country of refuge were to decriminalize the simple possession of the same substance.

Of course, if a country were to amend its laws to decriminalize the importation, exportation, distribution, or other trafficking of substances that are illegal under U.S. law, that would constitute a serious challenge to our extradition relationship with such a country. Moreover, we would view such actions as contrary to the obligations under the 1988 U.N. Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, to which Canada and virtually all European countries are party. To date, such decriminalization of drug trafficking offenses has not been problem with Canada, European states, or any other countries with which we have an extradition treaty.

Questions for the Record Submitted to
Mr. Samuel Witten by
Chairman Mark Souder (#6)
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
Committee on Government Reform
October 1, 2003

Question:

Please provide the Subcommittee with a list of all countries with which the U.S. has an extradition treaty, including the dates the original treaties were entered into, and the dates of any still-valid amendments and addenda.

Answer:

A list of extradition treaties to which the United States is a party can be found in the notes to 18 U.S.C. § 3181. We have attached a copy of this list for your convenience.

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

"STRENGTHENING THE LONG ARM OF THE LAW: HOW ARE FUGITIVES AVOIDING EXTRADITION, AND HOW CAN WE BRING THEM TO JUSTICE?"

OCTOBER 1, 2003

FOLLOW-UP QUESTIONS FOR THE RECORD FOR HON. JAMES FOX, NATIONAL DISTRICT ATTORNEYS ASSOCIATION

1. In light of the unfortunate fact that there is still a significant amount of corruption in Mexico, how reliable are the prosecutions of U.S. crimes that take place there? In particular, if the suspect is affiliated with drug traffickers – the suspected killer of Deputy March – how likely is it that the traffickers will try to influence the prosecution?

As a nation operating under the "rule of law" credence has to be given to their judicial process whether we fully agree and support it or not.

2. Even where corruption is not a factor, how zealously do foreign prosecutors pursue convictions for crimes taking place in the U.S. – given that they will naturally want to give priority to cases arising in their own jurisdictions?

All prosecutors face the same distractions. Programs such as that run by Arizona, where the Attorney General supports the prosecution in Mexico have merit but are costly and probably can only be effective in a limited number of cases.

3. Do you have an estimate of how many fugitives are now in Mexico? How many of them are first degree murderers? How many fugitives are now in countries other than Mexico?

No

4. Are you concerned that as Canada and some European countries move to decriminalize or legalize drugs, that you will run into problems trying to extradition of drug traffickers from these countries – due to the "dual illegality" clauses contained in most of the treaties?

It is unlikely that a prosecutor would try and extradite a person for possession of "decriminalized" drugs; the types of offenses for which theyI would extradite a person remain viable offenses in the countries.

5. How responsive and effective have the Departments of State and Justice been in assisting you in obtaining extraditions? Do they follow up on cases after the initial filing and investigation? What specific improvements to the process would you like to see?

The biggest single improvement would be funding to re-establish the liaison position within DOJ. In my experience both Departments have been responsive in assisting me within the limitations of the realities of international law.

6. In your testimony, you related that in 1996 the NDAA refused to support a blanket waiver of the death penalty in extradition treaties. Would you favor revisiting that decision, if it would get Mexico's cooperation on extraditing suspected murderers?

The blanket waiver alluded to was for all treaties that the US would negotiate in and would always afford the guarantee that a local prosecutor would not seek the death penalty in return. I would not, not can I imaging the NDAA membership, agreeing to limit the inherent discretion of a local prosecutor in this or any other case. The prosecutor can always make this promise on a case-by-case determination but none of us would support a blanket guarantee.