

TBI Conference Report



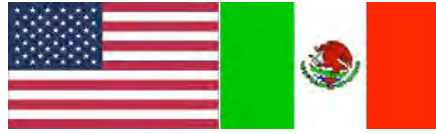
Cross-Border Prosecution and Extradition in the U.S. -Mexico Context

*Proceedings of the international conference
co-sponsored by*

**USD Trans-Border Institute
USD School of Law**

December 2, 2004

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INTRODUCTION

On December 2, 2004, the University of San Diego (USD) School of Law and the USD Trans-Border Institute co-sponsored a conference on *Cross-Border Prosecution and Extradition in the U.S.-Mexican Context* at the Joan B. Kroc Peace and Justice Theatre. This event was part of a series of initiatives promoted by the Trans-Border Institute to promote more effective bi-national understanding and collaboration in law enforcement and security.

The conference convened legal experts, prosecutors, judges, law enforcement officers, government representatives, and academics to address the complex legal issues that impede cooperation on cross-border prosecution and extradition. With almost twenty panelists from both the United States and Mexico, each of the five panels provided robust discussion on the issue, incorporating diverse perspectives from various sectors: law enforcement, prosecution, academia, and the judiciary.

Panelists from both Mexico and the United States discussed each country's perspectives on U.S.-Mexico relations, the legal and procedural impediments to bi-national cooperation in law enforcement, and several legal alternatives or best practices that may provide solutions to the current dilemmas. The overall tone and spirit of this conversation was frank but cordial, with a sincere appreciation on both sides for the importance of mutual respect and cooperation in the U.S.-Mexican relationship.

I would like to recognize the partnership of the USD School of Law in co-sponsoring this important conference, and particularly the collaboration of Dean Daniel Rodriguez, Professor Jorge Vargas, Ms. Yvonne Dutton, and Ms. Teresa O'Rourke in the planning process. Also, many thanks to Sarah M. Johnson, a Fulbright Fellow currently based in Baja California, Mexico, who drafted this report. I would also like to thank TBI's staff and volunteers for the excellent organization of the conference: TBI Assistant Director Stephen Elliott, TBI Research Associate Richard Plank, TBI Assistant Irma Venegas, and TBI volunteers Michelle Ramirez and Emily Mellott. Thanks are also due for the logistical assistance of the Institute for Peace and Justice staff, particularly Louis Cappella and Monica Phelps, and for the simultaneous translation services of Yolanda S. Walther-Meade.

Above all, I would like to express my sincere appreciation for the individual contributions and sincere goodwill of the panelists who came together to promote the earnest bi-national dialogue that made this conference such a success. Their continued efforts in this regard give me great confidence that the U.S.-Mexican relationship will continue to deepen and progress into the future.

Sincerely,



Dr. David A. Shirk
Director, Trans-Border Institute

CONFERENCE PROGRAM



CROSS-BORDER PROSECUTION AND EXTRADITION IN THE U.S.-MEXICAN CONTEXT

Co-sponsored by the

USD School of Law and the USD Trans-Border Institute

THURSDAY, DECEMBER 2, 2004

** The University of San Diego School of Law is a State Bar of California approved MCLE provider, and certifies that this activity is approved for MCLE credit in the amount of 5.75 hours of total general credit.*

CONFERENCE AGENDA

REGISTRATION (8:00-8:30am)

PLENARY REMARKS (8:30-9:00am)

- **Dr. Dan Rodriguez**, Dean and Professor, USD School of Law
- **Dr. David A. Shirk**, Director, USD Trans Border Institute

PANEL 1 (9:00-10:15am): PUTTING THE U.S.-MEXICAN LAW ENFORCEMENT RELATIONSHIP IN CONTEXT

- **Dr. David A. Shirk**, Director, USD Trans Border Institute
- **Lic. Maria Candelaria Pelayo Torres**, Profesora, Facultad de Derecho, Universidad Autónoma de Baja California
- **Lic. Daniel Solorio Ramírez**, Profesor, Facultad de Derecho, Universidad Autónoma de Baja California
- **Dr. Jorge A. Vargas**, Professor, USD School of Law

~COFFEE BREAK (10:15-10:30am)~

PANEL 2 (10:30-11:45am): U.S. AND MEXICAN PERSPECTIVES ON CROSS-BORDER PROSECUTION AND EXTRADITION

- **Ms. Yvonne Dutton**, Instructor, USD School of Law
- **Sheriff Lee Baca**, Los Angeles County

- **Emb. Miguel Angel González Félix**, Coordinador de Asuntos Internacionales y Agregaduría Oficina de la Procuraduría General de la República
- **Dra. Sara Pérez Kasparian**, Profesora, Universidad Anáhuac

LUNCHEON PANEL (12:00-1:45pm): OFFICIAL REFLECTIONS ON PROSECUTION AND EXTRADITION IN THE U.S.-MEXICAN CONTEXT

- **Ms. Joan B. Safford**, U.S. Department of Justice Attaché
- **Emb. Miguel Angel González Félix**, Coordinador de Asuntos Internacionales y Agregaduría Oficina de la Procuraduría General de la República

PANEL 3 (2:00-3:15pm): LEGAL AND PROCEDURAL IMPEDIMENTS TO CROSS-BORDER PROSECUTION AND EXTRADITION

- **Mr. John Kirby**, Assistant U.S. Attorney, Southern District of California
- **Lic. Miguel Méndez**, Deputy Regional Attaché, Southern District of California, Procuraduría General de la República
- **Mr. Peter Nuñez**, former-U.S. Attorney; Instructor, USD Department of Political Science (moderator)
- **Ms. Mary Rodriguez**, Associate Director for the Office of International Affairs, U.S. Department of Justice

~BREAK (3:15-3:30pm)~

PANEL 4 (3:30-4:45pm): BEST PRACTICES IN CROSS-BORDER PROSECUTION AND EXTRADITION

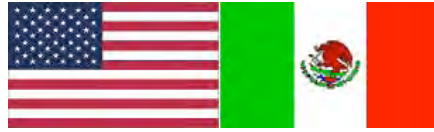
- **Ms. Joan B. Safford**, Country Attaché, U.S. Department of Justice
- **Mr. Alberto Gonzalez**, Special Assistant Attorney, California Department of Justice
- **Mr. Ernest J. Duran**, Special Agent, Foreign Prosecution Unit, California Department of Justice
- **Mr. Juan José Briones**, International Case Coordinator, San Diego County District Attorney's Office
- **Lic. Carlos Humberto Trujillo Altamirano**, Magistrado del Tercer Tribunal Unitario
- **Lic. Adan Gilberto Villarreal-Castro**, Magistrado del Quinto Tribunal Unitario

CLOSING REMARKS (4:45-5:00pm)

- **Dr. Dan Rodriguez**, Dean and Professor, USD School of Law
- **Dr. David A. Shirk**, Director, USD Trans Border Institute

RECEPTION (5:00-6:00pm)

Cross-Border Prosecution and Extradition in the U.S. -Mexico Context



EXECUTIVE SUMMARY

KEY BACKGROUND INFORMATION

Prior to 1978 there was no formal agreement on the extradition process between Mexico and the United States. Mexican nationals who committed crimes in Southern California and fled to Mexico, for example, were often brought back to face trial in California, but only under informal agreement between law enforcement agencies on each side.



Yvonne Dutton, Joan Safford, David Shirk, Mary Rodriguez, Peter Nuñez

The United States and Mexico signed their current Extradition Treaty in 1978, with the provision that Mexico would refuse extradition in cases where subjects would be subject to the death penalty in the United States. In October 2001, the Mexican Supreme Court interpreted the extradition of criminals to face life imprisonment as unconstitutional, since such a sentence constitutes “cruel and unusual punishment” under the Mexican Constitution. U.S. prosecutors must now forgo both the death penalty and life imprisonment, which has contributed to some animosity from U.S. law enforcement toward Mexico.

THE BINATIONAL CONTEXT

The conference’s first panel contextualized U.S.-Mexico the law enforcement relationship, beginning with a broad discussion of bilateral relations and U.S. and Mexican perspectives. While the United States perceives the October 2001 Mexican Supreme Court decision as an unprecedented treaty violation, Lic. Daniel Solorio Ramirez and Lic. María Candelaria Pelayo Torres explained that Mexico views this decision as upholding the Mexican legal tradition that defines the death penalty and life imprisonment as inhumane. Both panelists commented on Mexico’s indignation with regard to a letter that California Senator Boxer recently wrote to President Fox, urging him to reconsider the October 2001 Supreme Court decision.

To close the panel, USD law professor Jorge Vargas emphasized that extradition is a technical legal question that is sensitive, controversial, and confrontational, and becomes even more so when it must operate between two extremely different legal systems. The perception that criminals escape the application of justice creates an emotional response in the United States. However, Professor Vargas noted that the United States must also consider the Mexican perspective that its demands and actions sometimes tend to undermine Mexican sovereignty, as in the case of the abduction of Dr. Alvarez Machain by bounty hunters who were contracted by U.S.

law enforcement officials seeking to avenge the murder of D.E.A. agent Enrique “Kiki” Camarena in 1986.

The panel generally agreed that, in order to continue the trend of increasing extraditions in recent years, there must be increased bi-national interaction and communication, particularly through conferences between U.S. and Mexican judges and lawyers to discuss how laws and treaties will be enforced.

U.S. AND MEXICAN PERSPECTIVES

The second panel focused on U.S. and Mexican perspectives on cross-border prosecution and extradition. Professor Yvonne Dutton noted that despite increased numbers of extraditions, the United States views the Mexican Supreme Court decision negatively because it is perceived to violate the 1978 Extradition Treaty. Additionally, the decision complicates the U.S. judicial process, since U.S. prosecutors have the discretion not to pursue the death penalty, but less flexibility in cases where a life prison sentence is automatically included within the range of possible punishments.

Sheriff Lee Baca of Los Angeles County provided a U.S. law enforcement official’s perspective on the issue. He described the case of Armando García, a drug trafficker who had been previously apprehended twice before killing a California deputy-sheriff and fleeing to Mexico. Sheriff Baca also described his efforts to better understand the Mexican judicial system by visiting Mexico, where he met with officials who explained their policies and showed him that García’s imprisonment would not be a “country club” experience. Reflecting on this trip, he emphasized the need for U.S. officials to make greater efforts to understand the Mexican system in order to achieve bi-national cooperation.

Ambassador Miguel Angel González Félix of the Attorney General’s Office (PGR) gave a powerpoint presentation that focused primarily on the increasing number of extraditions from Mexico to the United States and vice versa; extraditions from Mexico to the United States comprise approximately 75% of all U.S.-Mexican extradition cases. The number of Article 4 cases has also increased in recent years. Article 4 of the Mexican criminal code allows U.S. prosecutors to pursue prosecution in Mexico for adult Mexican nationals (or adult U.S. citizens who have committed a crime against Mexican nationals) in the United States. According to conference participants, the Article 4 procedure was first used in 1978 by Ruben Landa in the California Department of Justice. The San Diego District Attorney’s Office started filing its own cases directly in 1986. Today, according to Amb. González Felix’s data, 80% of Article 4 cases are resolved. Also, Amb. González Felix noted that bi-national cooperation in the Californias is especially important because the vast majority of suspects flee from California to Mexico.

Dr. Sara Pérez Kasparian outlined the U.S. and Mexican processes for determining which cases will be extradition cases. In Mexico, extradition cases must pass through several steps including the judicial power, organs of control, and the executive branch. Ultimately, the Secretariat of International Relations (SRE) makes the final decision. The U.S. process is similar, with the district court judge making a preliminary decision and the Secretary of State making the final decision. Both are a mixture of judicial and executive processes.

OFFICIAL REFLECTIONS

Ms. Joan B. Safford of the U.S. DOJ and Ambassador Miguel Angel González Félix both emphasized the need for greater cooperation among stakeholders from Mexico and the United States. This, Ms. Safford insisted, is not an issue of distrust or nationalism, but rather a matter of legal process. Also, if the Supreme Court in either country interprets the Constitution in such a

way that its principles are undermined by the Extradition Treaty, the Court can make decisions counter to the treaty on a constitutional basis (as is also the case in the United States).

In Ms. Safford's opinion, the United States must recognize the constitutionality of the 2001 decision and must live with that decision. Also, because Mexico does not object to long-term (such as 60 year) sentences, many prosecutors are combining several charges to create sentences of over 100 years rather than imposing a "life sentence." Ambassador Miguel Angel González Félix affirmed Ms. Safford's remarks by further emphasizing the semantics between a life sentence and a 60-year sentence. He also stated that it is necessary to have more representatives of the Mexican judicial system go to the United States to learn more about the U.S. litigation system.

LEGAL AND PROCEDURAL IMPEDIMENTS

Former-U.S. Attorney Peter Nuñez opened by discussing the bureaucratic challenges to cross-border extradition, as well as the distrust that exists between the United States and Mexico, memorialized in the Enrique "Kiki" Camarena and the Alvarez Machain cases. Lic. Miguel Méndez further noted that the globalization of crime is not an impediment but rather a challenge that obligates us to find new ways to apply justice.

Assistant U.S. Attorney John Kirby described his frustrations as a prosecutor, due to the legal and procedural impediments he faces in dealing with Mexico, particularly with drug trafficking cases. Legal obstacles such as dual criminality, double jeopardy, and the implications of the 2001 decision leave prosecutors challenged to charge suspects in ways that will not get them a life sentence or the death penalty. Mr. Kirby also described, however, the willingness of Mexican federal authorities such as Mexico's General Attorney's Office (PGR), and the Secretary of Foreign Affairs (SRE), to assist the United States in these matters.

Ms. Mary Rodriguez, Associate Director of the Office of International Affairs (OIA) of the Department of Justice (DOJ), noted that despite recent difficulties the 1978 treaty works fairly well and is one of the more recent treaties the United States holds, considering that the U.S. has treaties that date back to 1876. However, Ms. Rodriguez sympathized with the prosecutors' perspective, explaining that there is something inherently offensive about an outside force telling prosecutors how to charge their cases, particularly when the request is that they put forth charges or punishment less stringent than evidence demands.

BEST PRACTICES

Lic. Adán Gilberto Villarreal Castro emphasized that all nation-states desire sovereignty, but also stated that under the Mexican Constitution, international treaties are the highest form of international law. Ms. Joan Safford of the U.S. DOJ discussed the fact that the United States must produce more evidence for cases to be prosecuted in Mexico than anywhere else in the world. Recently, the U.S. has been permitted to correct the mistakes in the evidence they present when requesting extradition cases, which has facilitated the granting of more extraditions. However, the U.S. system must still make a greater effort to understand Mexico's demands for evidence and to communicate constantly with the corresponding offices in Mexico.

Special Agent Ernest Duran described the progress that Mexico and the United States have made in organizing and institutionalizing cross-border prosecution and extradition. Mr. Juan José Briones advocated for the use of the Article 4 option, claiming that it does serve justice and is a practical option. Ms. Mary Rodriguez further noted that Mexico's use of Article 4 is exemplary and that she would like to see other countries follow Mexico's example in that respect. Special Assistant Attorney General Mr. Alberto Gonzalez explained that although it has received much

attention as an option after the 2001 Supreme Court decision, Article 4 has always been intended as the alternative to extradition cases. He concluded by stating, “I do see the differences in our [U.S. and Mexican] systems, but I’ve seen that we’re all equally committed to justice.”

Conference on Cross-Border Prosecution and Extradition in the U.S. -Mexico Context



RAPPORTEUR'S REPORT

On December 2, 2004, the University of San Diego (USD) School of Law and the USD Trans-Border Institute co-sponsored a conference on *Cross-Border Prosecution and Extradition in the U.S.-Mexican Context*. This event was held at the Joan B. Kroc Peace and Justice Theatre at USD. The conference convened legal experts, prosecutors, judges, law enforcement officers, government representatives, and academics to address the complex legal issues that impede cooperation on cross-border prosecution and extradition. With almost twenty panelists from both the United States and Mexico, each of the five panels provided robust discussion on the issue, incorporating diverse perspectives from various sectors: law enforcement, prosecution, academia, and the judiciary. Panelists from both Mexico and the United States discussed each country's perspectives on U.S.-Mexico relations, the legal and procedural impediments to binational cooperation in law enforcement, and several legal alternatives or best practices that may provide solutions to the current dilemmas.

BACKGROUND

Background information for the conference was provided by a packet of materials, including a recent Trans-Border Institute Briefing Paper titled "Cross-Border Prosecution and Extradition in the U.S.-Mexico Context," prepared by Ms. Yvonne Dutton from the USD School of Law. As reported in the briefing paper, prior to 1978 there was no formal agreement on the extradition process between Mexico and the United States. Mexican nationals who committed crimes in Southern California and fled to Mexico, for example, were often brought back to face trial in California, but only under informal agreement between law enforcement agencies on each side. Informal actions became insufficient as incidences of homicide and other high level crimes in Southern California increased.

Figure 1. Key Provisions of the 1978 U.S.-Mexico Extradition Treaty

Article 3: To extradite, evidence must be sufficient under laws of requested nation to justify trial had the offense been committed in the requested state.

Article 5: To be extraditable, offense may not be of a political or military nature.

Article 6: No obligation to extradite an individual who has already been prosecuted, tried and convicted or acquitted by the requested country for the same offense.

Article 7: Offense for which extradition is sought may not be barred by the lapse of time according to the laws of either party.

Article 8: When the offense is punishable by death, Mexico may refuse extradition unless the United States furnishes assurances that such penalty will not be imposed.

Article 9: Neither country is required to extradite its own nationals, but the executive authority of the requested country may extradite a national using its own discretion.

Therefore, the United States and Mexico signed the current extradition treaty in 1978, with the provision that Mexico would refuse extradition in cases where subjects would be subject to the death penalty in the United States. Capital punishment is not permitted under the Mexican Constitution. Since the treaty's implementation, the numbers of suspects successfully extradited both from Mexico to the United States and from the United States to Mexico have increased steadily and considerably.

In October 2001, however, this cross-border cooperation was greatly affected when the Mexican Supreme Court issued a ruling that the extradition of suspects who may be

Figure 2. International Extraditions in the U.S.-Mexican Context, 1980-2003					
Extraditions	1980-94	1995-2000	2001	2002	2003
From Mexico	8	61	17	24	31
From U.S.	30	86	11	18	17
Total	38	147	28	42	48
Source: Adapted from Congressional testimony by Mary Lee Warren in February 2000 and a 2003 fact sheet on website of Mexican Embassy in the United States www.sre.gob.mx/usa .					

subject to life prison sentences is unconstitutional. This decision was outside the terms of the 1978 Extradition Treaty, which only specified that Mexico would refuse extradition in death penalty cases. The Mexican Supreme Court stated that life imprisonment is “cruel and unusual punishment” that violates the principle of rehabilitation outlined in the Mexican Constitution. Because international treaties are subject to constitutional interpretation, the Court’s decision was binding for Mexican law enforcement authorities. Some members of the U.S. law enforcement community, however, find it difficult to accept the new Mexican policy. In order to win extraditions from Mexico, U.S. prosecutors argue, they are now forced either to forgo prosecution under U.S. laws or to seek a lesser sentence than evidence demands. U.S. observers note that Mexico actually dispenses long-term prison sentences, sometimes combining sentences to add up to over 100 years, which means that U.S. life sentence are effectively consistent with Mexican legal practice.

The December 2 conference provided a forum for U.S. and Mexican experts to address the controversy over extradition and possible solutions to what has become one of the most sensitive issues in the binational security relationship. One alternative that received much attention during the conference was the Article 4 processes. Article 4 of the Mexican Federal Penal Code allows U.S. prosecutors to assist Mexican authorities in the trial and sentencing of offenders who have fled to Mexico. This option can only be used in cases where either the victim or the perpetrator of a crime is a Mexican national, however, and therefore does not address some of the complex problems of cross-border extradition and prosecution.

CONFERENCE RATIONALE AND GOALS

Dr. David Shirk, Director of the USD Trans-Border Institute, and Dr. Daniel Rodriguez, Dean and Professor of the USD School of Law, opened the conference. Both highlighted the role that USD has played in addressing issues related to the U.S.-Mexico relationship, particularly in the legal field. For the law school, “It is essential [to] create neutral spaces for discussing and resolving differences.” Along those lines, Dr. Rodriguez urged

conference participants to “stay tuned” for the annual conference on Mexican law, future binational conferences, and the possibility of a center for regional governance at USD. He emphasized USD’s priority to create an active, multi-disciplinary environment for discussion on U.S.-Mexico relations where participants can “think globally and act locally.” For the Trans-Border Institute, which was formed after the passage of NAFTA as a means to facilitate regional integration, the conference reflects the “greater objective of cooperation and understanding across the U.S.-Mexico border.”

Dr. Shirk noted that despite fast-paced post-NAFTA integration in some areas there are still areas in which the United States and Mexico must work to find common ground. “Extradition is one of the most sensitive issues in U.S.-Mexico security and law enforcement relations today,” emphasized Dr. Shirk. He framed the issue as a tension between sovereignty and justice. Neither country wants the other to change its legislation in a way that runs counter to national world views or domestic norms. However, in the midst of the desire for national sovereignty, both nations have attempted to collaborate to ensure justice and fight impunity. “Extradition is an international courtesy between two like-minded countries,” Dr. Shirk summarized. When the countries are not like-minded, however, they must actively find alternative ways to cooperate. Hence, the purpose of this conference was to bring stakeholders together to discuss the existing alternatives, many of which have not yet been subjected to significant study.

THE BINATIONAL CONTEXT

The conference’s first panel contextualized U.S.-Mexico the law enforcement relationship, and included panelists Dr. David Shirk, Director of the USD Trans-Border Institute, Lic. Maria Candelaria Pelayo Torres, law professor at the Autonomous University of Baja California (UABC), Lic. Daniel Solorio Ramirez, also a law professor at UABC, and Professor Jorge Vargas, law professor at USD. The panel began with a broad discussion of bilateral relations, continued with two representatives of the Mexican perspective on the issue, and ended with a mediation of U.S. and Mexican perspectives, outlining the justifications for each side.



María Candelara Pelayo, Daniel Solorio, Jorge Vargas, David Shirk

Dr. Shirk discussed the pre-September 11 move toward renegotiating the North American relationship in a way that would have “essentially eliminated the border.” Although NAFTA opened the border to the free flow of goods and capital, the trend toward more comprehensive binational cooperation was thwarted by the September 11 attacks. The media cited Mexico’s decision not to support the war effort in Iraq as a significant point of neighborly tension, and issues of national sovereignty became increasingly

relevant, particularly surrounding the enforcement of justice. “Mexico is reluctant to submit itself to external pressure, especially from the North, which has been insistent on imposing its foreign policy agenda,” stated Dr. Shirk. He emphasized that the United States has just as many or more sovereignty concerns of its own. For example, the U.S. opposition to the International Criminal Court demonstrates U.S. unwillingness to “submit [itself] to other nations’ notions of justice.”

Mexican perspectives were presented by both Lic. Pelayo Torres and Lic. Daniel Solorio Ramirez, both UABC law professors. Lic. Solorio Ramirez placed binational extradition and prosecution within the context of cultural issues between two *Distant Neighbors* (in reference to Alan Redding’s well-known book) who do not communicate sufficiently. While the United States perceives the October 2001 Mexican Supreme Court decision as an unprecedented treaty violation, Mexico views



it as upholding the Mexican legal tradition that defines the death penalty and life imprisonment as inhumane. Mexico’s constitution states that all persons in Mexican territory, independent of their nationality, are covered under Mexico’s judicial system. Lic. Solorio Ramirez questioned the U.S. imposition of its own concept of justice on Mexico. Extradition, as an act of cooperation and courtesy between the two countries, can exist only within the limits of Mexico’s constitution, he stated. Lic. Pelayo Torres also emphasized that the concept of social rehabilitation is crucial in Mexico, and that any legal measures must respect this concept as one of a delinquent’s rights.

Both Mexican professors viewed the October 2001 decision as the delayed implementation of a concept of Mexican jurisprudence that the Mexican court outlined over sixty years ago. Therefore, both commented on Mexico’s indignation with regard to a letter that California Senator Boxer recently wrote to President Fox, urging him to reconsider the October 2001 Supreme Court decision. In their opinion, Senator Boxer’s letter was offensive to Mexico’s legal community because it asked Mexico to act against its Constitution and in opposition to longstanding traditions of jurisprudence.

When speaking of alternatives, Lic. Pelayo Torres discussed deportation, but explained that it is an alternative that applies only to non-Mexican nationals who are in Mexican territory without correct migration documents. She also raised the idea of a local treaty regarding extradition in the California-Baja California region, but stated that any such agreement must abide by the national constitution and by the 1992 federal law on the signing of treaties and the inter-institutional laws. Further analysis is needed to determine if a local extradition agreement would be possible. Lic. Solorio Ramirez stated that finding legal alternatives will not be an easy task, but suggested that perhaps use of the Article 4 procedure is the most feasible alternative.



Jorge Vargas

To close the panel, USD law professor Dr. Jorge Vargas attempted to mediate both the U.S. and Mexican perspectives. He emphasized that extradition is a technical legal question that is sensitive, controversial, and confrontational, and becomes even more so when it must operate between two extremely different legal systems. Mexico has a civil legal tradition while the United States operates under the common law system. Extradition is a delicate issue because it addresses the most serious crimes, such as drug trafficking or homicide, which both countries abhor. The perception that criminals escape the application of justice creates an emotional response in the United States, especially surrounding drug cases. The

United States also perceives corruption and inefficiency in Mexican state and federal police forces. This ultimately leads to the perception that by “erecting legal barriers” that may be contrary to the 1978 treaty, and by creating “non-extraditables” (*no extraditables*) Mexico is allowing impunity rather than enforcing justice.



However, Professor Vargas noted that the United States must also consider the Mexican perspective that it undermines Mexican sovereignty by insisting on implementing justice in its own way. The Alvarez Machain case is the prime illustration of this dynamic. Working as a medical doctor in Guadalajara, Mr. Alvarez Machain was attacked by American officials and forcibly abducted and taken to court in Los Angeles. The judge ignored the abduction, and simply

took jurisdiction of the case as if Mr. Alvarez Machain had arrived in the United States in a legal manner. Professor Vargas stated that this violation of Mexican sovereignty was “absolutely ridiculous... shocking... appalling for Mexicans,” and emphasized that the United States cannot use means outside of the Extradition Treaty to administer justice.

After the Alvarez Machain case, Mexico entered into extradition negotiations with the United States because it felt that the U.S. had violated its sovereignty. “The problem is a lack of trust. Mexico doesn’t trust us,” stated Professor Vargas. He claimed that Mexico’s vote in the United Nations Security Council demonstrated that it will continue to support international law, and that if the United States wants better relations with Mexico, it must respect the Mexican legal system and international law. There is a great need for the U.S. legal community to become educated about Mexico’s legal system. Dr. Shirk later observed that the lack of trust goes both ways, however. He noted that the murder of D.E.A. agent Enrique “Kiki” Camarena in 1986 was caused by corrupt Mexican law officials who betrayed Camarena’s identity. This undermining of U.S. trust for Mexico,



Enrique Camarena

was what later led resentful U.S. officials to seek the abduction of Alvarez Machain, one of the doctors allegedly involved in Camarena's torture.

Despite these issues of distrust, Professor Vargas also asserted that the law enforcement relationship between the two countries is improving, and has never been better than it is today. In recent years, Mexico has extradited a large number of Mexicans to the United States. Post-September 11th security measures have also unified law enforcement agencies on both sides of the border. In order to continue the trend, there must be increased binational communication. Judges from both sides of the border proposed having binational judge conferences to discuss how laws and treaties will be enforced. Judge conferences would also facilitate learning about the counterpart's legal system. During the question-and-answer period, one participant noted that such a meeting recently took place between two judicial councils.

U.S. AND MEXICAN PERSPECTIVES

The second panel focused on U.S. and Mexican perspectives on cross-border prosecution and extradition, and included panelists Ms. Yvonne Dutton, USD law professor, Sheriff Lee Baca of Los Angeles County, Ambassador Miguel Angel González Félix, Coordinator of International Affairs in the Mexican Attorney General's Office (*Procuraduría General de la República*, PGR), and Dra. Sara Pérez Kasparaian, Anáhuac University Professor.

Professor Yvonne Dutton reiterated earlier observations that there has been a recent trend toward improved cross-border cooperation on extradition and prosecution. She cited that the numbers of extraditions between the United States and Mexico have been increasing steadily since the treaty enacted in 1980. From 1980-1985, there were very few extraditions. However, the



Sheriff Lee Baca and Ms. Yvonne Dutton

numbers increased under Zedillo's term with 61 extraditions between 1995 and 2000, and again under Fox with 17 in 2001, 24 in 2002, and 31 in 2003. Despite increased numbers of extraditions, however, Professor Dutton explained that the United States views the Mexican Supreme Court decision negatively because it is considered to be in direct contradiction to the 1978 Extradition Treaty.

Additionally, the decision complicates the U.S. judicial process in a way that Mexico's stance against the death penalty exemption did not. While U.S. prosecutors have the discretion not to pursue the death penalty, there is less flexibility in cases where a life prison sentence is automatically included within the range of possible punishments. In

these cases the judge, not the prosecutor, determines whether to give the maximum penalty of a life sentence. Therefore, in order to eliminate the possibility of charging a suspect with a life sentence, the prosecutor may have to pursue lesser charges or drop charges altogether. The U.S. perspective fears that the suspect may not face appropriate charges for the crime committed. Additionally, this situation gives suspects an incentive to flee to Mexico to avoid the death penalty or a life sentence, which is disadvantageous not only to the United States but also to Mexico, who will house the suspects. This area of mutual concern should provide incentive for greater cross-border collaboration, Ms. Dutton urged.

In closing, Ms. Dutton noted that in 2003, 70 fugitives were returned via deportation, an option that is only available for persons who are not Mexican nationals and who have violated migration law. Additionally, she stated that in 2001-2003, 178 out of 194 requested Article 4 prosecutions received convictions, drawing attention to this option.

Sheriff Lee Baca of Los Angeles County provided a U.S. law enforcement official's perspective on the issue. He described the case of Armando García, a drug trafficker who had been previously apprehended twice. He killed a California deputy-sheriff and fled to Mexico. Sheriff Baca described his original outrage over the Court's decision (since it prevented the extradition of García). Sheriff Baca described his efforts to better understand the Mexican judicial system by visiting Mexico, where he met with officials who explained their policies and showed him that García's imprisonment would not be a "country club" experience. Reflecting on this trip, he emphasized the need for U.S. officials to make greater efforts to understand the Mexican system in order to achieve bi-national cooperation. He also suggested that the United States must overcome its worry that someone will go to Mexico and not serve time. In fact, it is easier to convict a murderer in Mexico than it is in the United States, he said, and U.S. officials need to be content that criminals will be punished appropriately. Additionally, he proposed that the United States evaluate its concept of life sentence without parole. In the case he described, he found it preferable that a criminal serve what is effectively a life sentence in Mexico rather than go free because the United States and Mexico are "busy arguing about mistrust issues."

Sheriff Baca also praised the California Attorney General for creating a clearinghouse for Article 4 cases, but suggested that Mexico should also notify the United States that they have a fugitive, even before the U.S. has filed for Article 4. Additionally, Sheriff Baca stated that in his



Amb. Miguel González Félix and Sheriff Lee Baca

law enforcement experience, he has learned that Mexican police are very willing to pursue fugitives, but only in cases where the United States can provide sufficient evidence to warrant such a search. He closed by stating that he does not criticize

Mexican police or prosecutors, but rather the Mexican Supreme Court. He stated that “the Supreme Court of Mexico is not only arrogant, but it has also chosen to be activist in nature.” It made this ruling without request or appeal, and the Mexican Attorney General appealed the decision, asking the Supreme Court to reverse their decision on the grounds that the court violated process by ruling without an appeal to start the process of judicial review. However, the Mexican Supreme Court did not change its decision. Sheriff Baca asserted that the Court’s decision ignores the fact that the life sentences in the United States are no different than the common 60 or 85-year sentences in Mexico.



Dr. Sara Pérez Kasparian and Amb. Miguel Angel González Félix

The panel then shifted to the Mexican perspective with comments by Ambassador Miguel Angel González Félix of the District Attorney’s Office, or the PGR. Ambassador Miguel Angel González Félix of the Attorney General’s Office (PGR) gave a powerpoint presentation that focused primarily on the increasing number of extraditions from Mexico to the United States and vice versa. The number of extraditions from the United States to Mexico and from Mexico to the United States have been increasing since 1996. Extraditions from Mexico to the

United States comprise approximately 75% of all U.S.-Mexican extradition cases, while extraditions from the United States to Mexico accordingly comprise 25%. The number of Article 4 cases has also increased in recent years. Article 4 of the Mexican criminal code allows U.S. prosecutors to pursue prosecution in Mexico for adult Mexican nationals (or adult U.S. citizens who have committed a crime against Mexican nationals) in the United States. According to conference participants, the Article 4 procedure was first used in 1978 by Ruben Landa in the California Department of Justice. The San Diego District Attorney’s Office started filing its own cases directly in 1986. Ambassador González Félix noted that today 80% of Article 4 cases are resolved, and the majority of suspects in extradition or Article 4 cases receive sentences ranging between 11 and 20 years. Additionally, his data demonstrated that bi-national cooperation in the Californias is especially important because the vast majority of suspects flee from California to Mexico.

The Ambassador commented that law enforcement environment has changed significantly from the “Kiki” Camarena and Alvarez Machain days. For example, since 1994 there has been greater cooperation on the abductions issue, with Bush Sr., Clinton and Bush Jr. stating that the United States will not promote, condone, or tolerate abductions in Mexico. When abductions have occurred since then, the Department of Justice in Washington has reacted quickly and the person has normally been returned to Mexico. Additionally, with immigration reform and post-September 11 measures, there are now more avenues for the United States to expel people from U.S. territory, which

has increased the number of cross-border judicial cases. Most recently, Mexico has deported 120 fugitives between January 1 and October 25 of 2004, and the United States has deported 77 fugitives to Mexico during this time. Additionally, Ambassador González Félix asserted that the United States and Mexico still work with respect in this area. However, better information exchange is necessary, and a conference is scheduled for February 2005 in Mexico City to address the issue.

Dr. Sara Pérez Kasparian transitioned the discussion toward the broad principles of reciprocity and territoriality. In her recently published research, which extended through 2001, she outlined the U.S. and Mexican processes for determining which cases will be extradition cases. In Mexico, extradition cases must pass through several steps including the judicial power, organs of control, and the executive branch. Ultimately, the Secretariat of International Relations (SRE) makes the final decision. The U.S. process is similar, with the district court judge making a preliminary decision and the Secretary of State making the final decision. Both are a mixture of judicial and executive processes.



Dr. Sara Pérez Kasparian

Additionally, Dr. Pérez Kasparian called for the renegotiation of the Extradition Treaty and a reexamination of the list of crimes classified as extradition cases. She pointed out that human trafficking and child pornography, for example, are not on the treaty's list.¹ She also stated that attention to human rights, penal reform, and police corruption in Mexico must enter into the discussion. Additionally, she noted that Article 15 of the treaty, which provides for temporary extradition, is a good option that is not used.

During the question-and-answer session, one conference participant commented that Mexico's institutions and particularly the Attorney General's Office (PGR) have improved significantly in terms of their processes and transparency, and that the United States must recognize these improvements and trust that Mexico has the capacity to handle cases of high importance. Another participant noted that Article 4 is



not the optimal way to process cases because of the importance that the community that has suffered a crime places on being able to witness the judicial process. If a case is tried

¹ Note: It was later observed that a crime does not have to be on the list in order to become an extradition case; it must simply be considered a high level crime in both countries.

in Mexico rather than in the U.S. community where the crime occurred, the case is completed on paper but the community cannot observe the decision. According to the participant, this explains why the United States holds the position that Article 4 serves as a backup option.

OFFICIAL REFLECTIONS

The next panel convened two government representatives, one from each side of the border. Ms. Joan B. Safford of the U.S. DOJ and Ambassador Miguel Angel González Félix of Mexico's Attorney General's Office (PGR) both emphasized the need for greater cooperation among stakeholders from Mexico and the United States. Ms. Safford began by discussing the advantages and disadvantages of prosecuting cases under Article 4 status, giving examples of when Article 4 is most and least appropriate. Article 4 of the Mexican Criminal Code is a fitting course of action when witnesses disappear from a crime scene, for example, and when "evidence needs to be memorialized." However, this is a process of last resort, according to Ms. Safford, who also emphasized that there are many cases when Article 4 is not appropriate. For example, in narco-trafficking cases where many defendants remain in the United States, turning over the remaining defendants to Mexico violates trust as well as the principle of witness protection. Mexico is not yet prepared to provide the same witness protection that the United States can provide. Furthermore, Ms. Safford emphasized that with circumstantial evidence, the oral, accusatory system in the United States is advantageous because the written process in Mexico allows non-written evidence to be lost. Ultimately, in cases where there is a choice of where the trial is conducted, the decision should be made based on where the



Ms. Joan Safford

case is most likely to achieve a conviction and prevent impunity. This, Ms. Safford insisted, is not an issue of distrust or nationalism, but rather a matter of legal process.

Ms. Safford also explained that Mexico always has the jurisdiction to prosecute a case involving a Mexican national, and Mexico uses this as a basis for refusing to prosecute the case anywhere but in Mexico. Under this line of reasoning, Mexico often chooses not to extradite. However, Mexican law states that treaties trump Mexican

domestic law (as U.S. law states as well). For this reason, the United States protested the 2001 Mexican Supreme Court decision on the grounds that it was contrary to the treaty. However, of still higher jurisdiction is the Mexican Constitution, which trumps treaties (as is the case in the United States as well). If the Supreme



Court in either country interprets the Constitution in such a way that its principles are undermined by the Extradition Treaty, it can make decisions counter to the treaty on a constitutional basis. In the case of the 2001 decision, the Mexican Supreme Court stated that the concept of a life prison sentence runs counter to Mexico's penal system of combined punishment and rehabilitation. The Mexican Constitution states that the prison system has an obligation to provide rehabilitation opportunities to its charges. In Ms. Safford's opinion, the United States must recognize the constitutionality of the 2001 decision and must live with that decision.

Additionally, if the United States promises Mexico that it will not apply life sentences in extradition cases, the U.S. must fulfill that promise. Ms. Safford posed the question of how the United States can hold to that agreement, and explained that the answer need not always translate into a reduction of charges. Because Mexico does not object to long-term (such as 60 year) sentences, many prosecutors are combining several charges to create sentences of over 100 years rather than imposing a "life sentence." However, something must be done to assure that suspects will be prosecuted by some means, and more brainstorming is needed on how this can best be achieved.

Ambassador Miguel Angel González Félix then affirmed Ms. Safford's remarks by further emphasizing the semantic difference between a life sentence and a 60-year sentence. He stated that it is necessary to have more representatives of the Mexican judicial system go to the United States to learn more about the U.S. litigation system. He also mentioned legal loopholes that often cause people to commit small crimes in hopes of incurring minor charges and avoiding charges for more serious crimes. Ambassador González Félix also noted that persons with dual citizenship face additional complications and the California-Baja California region is the most dynamic region to examine how dual citizenship cases work. Ambassador González Félix described the current situation as an empty plate that we must fill with conversation and interchange of justice.

LEGAL AND PROCEDURAL IMPEDIMENTS

The next panel highlighted specific obstacles to collaboration in cross-border extradition and prosecution, focusing on professionals who are directly involved in the judicial process. Former U.S. Attorney and current USD political science professor Peter Nuñez opened by discussing the bureaucratic challenges to cross-border extradition, as well as the distrust that exists between the United States and Mexico, memorialized in the Enrique "Kiki" Camarena and the Alvarez Machain cases. Lic. Miguel Méndez further noted that the globalization of crime is not an impediment but rather as a



Miguel Mendez, Mary Rodriguez, John Kirby, Peter Nuñez

challenge that obligates us to find new ways to apply justice.

Assistant U.S. Attorney of the Southern District of California John Kirby described his frustrations a prosecutor, due to the legal and procedural impediments he faces in dealing with Mexico. He focused on drug trafficking as the center of many of these issues, and noted that there have been several successful extraditions, such as the two suspects in a national heroin network for whom Mr. Kirby won extradition to the United States. However, Mr. Kirby highlighted the magnitude of the issue, claiming that extradition of a country's nationals is a political issue, a part of national identity. Legal obstacles such as dual criminality, double jeopardy, and the implications of the 2001 decision leave prosecutors challenged to charge suspects in ways that will not get them a life sentence or the death penalty. Mr. Kirby also described, however, the willingness of Mexican federal authorities such as Mexico's General Attorney's Office (Procuraduría General de la República, PGR) and the Secretary of Foreign Affairs (*Secretaría de Relaciones Exteriores*, SRE), to assist the United States in these matters. Prosecutors and law enforcement officers in Mexico are targets, Mr. Kirby stated, and many have been killed. "The work they are doing is very courageous work," he concluded.

Finally, Mary Rodriguez, Associate Director for the Office of International Affairs of the U.S. DOJ spoke about her work in the office that handles extradition requests for all countries with which the United States has extradition treaties. She described the U.S. DOJ's relationship to Mexico as distinct from its relationship to other Latin American countries because Mexico is a politically stable country that is capable of its own judicial procedure. In comparative terms, Mexico also has more legal stipulations than any other Latin American country with which the United States has a treaty, and demands guarantees from the U.S. rather than accepting "best efforts" offers. In Ms. Rodriguez's opinion, despite recent difficulties, the 1978 treaty works fairly well and is one of the more recent treaties the United States holds, considering that the U.S. has treaties that date back to 1876 (some of which still address more historical challenges such as "piracy on the high seas").



Mary Rodriguez and John Kirby

Ms. Rodriguez also noted that the United States must work with many countries regarding their refusal of the death penalty, as all but two or three of the countries with which the United States has treaties have abolished capital punishment. The United States is the only country in the Western Hemisphere that uses the death penalty. However, Ms. Rodriguez sympathized with the prosecutors' perspective, explaining that there is something inherently offensive about an outside force telling

prosecutors how to charge their cases, particularly when the request is that they put forth charges or punishment less stringent than evidence demands.

In terms of results, Ms. Rodriguez stated that cooperation has certainly been increasing, with informal relationships between law enforcement officers playing a significant part in cooperative efforts. However, these improvements have not come without cost, she noted, and cited that although Mexico extradited 25 more criminals in 2002 than in the previous year, 25 suspects were also not extradited; 21 of those 25 cases were refused extradition due to possible life sentence convictions. Ms. Rodriguez cited cases where offenders were not convicted due to technical reading by Mexico judges, and expressed that the U.S. DOJ has some concerns about the Mexican judiciary's commitment to assuring that justice is served. There are differences in the countries' two systems, and hopefully with interchange between judges and others, discussion of these differences will be possible. Additionally, Ms. Rodriguez noted translation nuances as a logistical barrier to cooperation, and stated that if the treaty is renegotiated, translation issues must be considered. However, she emphasized that the U.S. DOJ does not question the PGR's or the SRE's efforts to collaborate on extradition issues. She described the collaboration process as "frustrating, difficult, trying at times, but never a dull moment."

BEST PRACTICES

The last panel focused on best practices in cross-border prosecution and extradition. Lic. Adán Gilberto Villarreal Castro, Magistrate of the Fifth Tribunal, read sections of several articles of the Mexican Constitution as well as sections of the 1987 Extradition Treaty in an effort to give a concrete legal perspective on the issues at hand. He emphasized that all nation-states desire sovereignty, but also stated that under the Mexican Constitution, international treaties are the highest form of international law.

Ms. Joan Safford of the U.S. DOJ discussed the extensive evidence that the United States must provide to Mexico in extradition cases. In fact, the United States must produce more evidence for Mexico than anywhere else in the world. Types of evidence used in the Mexican and the U.S. systems are different as well. In the United States, all evidence prior to the trial is solely hearsay, whereas in Mexico, all evidence is put into writing from the time the crime is recorded. Although each system has its advantages, the United States has the burden of providing Mexico with all evidence without use of hearsay. Recently, the U.S. has been permitted to correct the mistakes in the evidence they present when requesting extradition cases, which has facilitated the granting of more extraditions. However, the U.S. system must still make a greater effort to understand Mexico's



Ernest Duran, Adan Villarreal, Juan Briones, Joan Safford, Alberto González

demands for evidence and to communicate constantly with the corresponding offices in Mexico.

Next, Special Agent of the Foreign Prosecution United in the California Department of Justice Ernest Duran described the progress that Mexico and the United States have made in organizing and institutionalizing cross-border prosecution and extradition. When extradition began to be a formal process, cases were processed in various agencies in California. Mexico would like to see the centralization of this process in only one California agency.

Mr. Juan José Briones, International Case Coordinator at the San Diego County District Attorney's Office advocated for the use of the Article 4 option. He discussed a 1999 case in which the United States failed to provide enough evidence to win an extradition, and the case was therefore tried under Article 4. Although critics claim that Article 4 does not produce the same results as extradition, Mr. Briones claimed that it does serve justice and is a practical option. During the later question-and-answer session, Dr. Shirk noted that Article 4 is a much more cost effective option for the United States, but U.S. officials stated that the U.S. should not use Article 4 only based on cost differentials. Ms. Mary Rodriguez further noted that Mexico's use of Article 4 is exemplary and that she would like to see other countries follow Mexico's example in that respect.



The last panelist to speak was Special Assistant Attorney General Mr. Alberto Gonzalez of the California DOJ. Regarding Article 4, he explained that although it has received much attention as an option after the 2001 Supreme Court decision, it has always been intended as the alternative to extradition cases. He stated that in processing Article 4 cases, information on a person's criminal record is also included, which helps Mexican judges make better-informed decisions. The success of Article 4, Mr. Gonzalez stated, is raising the bar for criminal defense. He concluded by stating, "I do see the differences in our [U.S. and Mexican] systems, but I've seen that we're all equally committed to justice."

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CLOSING REMARKS

In his closing remarks, Dean Daniel Rodriguez of the USD School of Law noted the value of conferences such as this one in promoting a shared understanding in our cross-border relationship with Mexico, and the tremendous importance that the University of San Diego places on U.S.-Mexican affairs. Dr. David Shirk of the USD Trans-Border

Institute also stated that the conference had helped to greatly illuminate the issue of cross-border extradition and prosecution. However, Dr. Shirk observed, since phases of heightened tensions and sensitivity will surely arise, it is essential to carefully study the systemic differences between the United States and Mexico while striving to achieve increased cooperation. Dean Rodriguez and Dr. Shirk expressed their great appreciation to the conference participants and the audience. Both also expressed a shared interest in a continuing role for the USD School of Law and the Trans-Border Institute in promoting collaboration across the border on this and other topics related to the rule of law and security in the U.S.-Mexican context.