McNabb Associates, P.C.'s
International Extradition White Paper

The scene has been played out in countless versions from Hollywood. The fleeing desperado makes it to the shores of Rio de Janeiro, safely out of reach from the long arm of United States law enforcement. Visions of exotic beaches and rum concoctions run through the mind. Life can now be enjoyed spending the rest of ones days in tranquil freedom. Although, here in the real world, life is not so blissful. The United States has a rather comprehensive extradition treaty with Brazil, in force since 1964. In fact, the United States has extradition treaties with over 120 countries, including many former British colonies that adopted by state succession the 1931 treaty with Great Britain. The United States was the first country to negotiate a wide network of extradition treaties, beginning in the late nineteenth century. It is still busily adding to them, and now has more than any other country, embracing most of the western world [1].

The United States Supreme Court in *Terlinden v. Adams*, 184 U.S. 270, 289 (1902), defined extradition as "the surrender by one nation to another of an individual accused or convicted of an offence outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, demands the surrender." An international extradition treaty obligates the host country to surrender to a requesting country a person charged with or convicted of an offense in that country. The willingness of countries to accept limitations on their state sovereignty stems from four purposes which provide the theoretical foundation for international extradition: (1) to obtain reciprocal return of fugitive offenders; (2) to facilitate the punishment of wrongful conduct, and thereby promote justice; (3) to avoid harboring within their borders those who may commit offenses similar to those which they are accused of committing in another jurisdiction; and (4) to avoid international tensions caused by one country's refusal to return a particularly sought-after accused offender[2].

Historically, the practice of extradition originated in the ancient middle- and far-eastern civilizations as a matter of courtesy and good will between sovereigns. The earliest recorded extradition treaty dates to 1280 B.C., between Ramses II, the Pharaoh of Egypt, and King Hattusli III of the Hittites, and provided for the mutual return of criminals[3]. The first, similar provision appeared in Western Europe in 1174 A.D., between Henry II of England and William the Lion, King of Scotland. Over the following centuries, however, extradition remained an ad hoc arrangement between sovereigns, performed as a need arose[4].

In the United States, extradition was first provided for by the Treaty of Amity, Commerce, and Navigation (referred to as the Jay Treaty) of 1794 with Great Britain. The Jay Treaty provided for either government to deliver persons charged with murder or forgery to the other government "on requisition," but only on evidence of criminality that would justify apprehending and trying the defendant in the country where he was located if the offense had been committed there. However, the Jay Treaty provided no specific procedure for extradition[5].

The first reported extradition case under the Jay Treaty occurred when the United States agreed to a request from Great Britain to surrender Jonathan Robbins, a man accused of murder during a mutiny on a British ship. By order of a federal district judge, Robbins was arrested and imprisoned without a hearing. The British Minister requested Robbins' extradition pursuant to

the Jay Treaty. In response, the United States Secretary of State wrote to the judge that "the President "advises and requests' you to deliver Robbins up." Despite arguing that he was a United States citizen who had been impressed into service in the British navy and had escaped during a mutiny by others, Robbins was turned over to the British, and was quickly tried and executed[6].

The Robbins case captured the public's attention and produced a great amount of controversy concerning the apparent failure of either the court or the President to provide procedural justice and substantive rights for Robbins. Due in part to the controversy surrounding the case, the Jay Treaty was allowed to expire. Thereafter, until at least 1840, there were no extradition treaties in effect between the United States and any foreign country[7].

In 1842 the United States and Great Britain signed the Webster-Ashburton Treaty. In part because of the adverse public reaction to Robbins' extradition, a procedure for successive review was instituted in the Webster-Ashburton Treaty[8]. Under Webster-Ashburton, the judiciary took on a more significant role, and the executive branch's role was weakened[9].

In 1848 the extradition procedure, provided for in the Webster-Ashburton Treaty, was incorporated in the first federal statute to deal with extradition. The 1848 statute, which is substantially the same as the current law[10], provided for an extradition magistrate to examine the evidence against a person sought by a foreign government. The extradition magistrate, if he found the evidence to be sufficient, was required to certify that determination to the Secretary of State. Upon certification, the Secretary of State was given authority to make a final determination whether to extradite[11].

In order for the United States to prosecute a defendant, a court must have jurisdiction over the subject matter and jurisdiction over the person. Therefore, before the U.S. requests extradition from another country, the appropriate authorities must determine whether the conduct was committed within the territory of the U.S., or whether the conduct, even though committed outside of U.S. borders, produced detrimental effects within the United States. After subject matter jurisdiction has been established, the prosecutors try to establish personal jurisdiction over the suspect by successful extradition back to a U.S. court[12].

Currently, a foreign government seeking the defendant's extradition submits a formal request, accompanied by documentation such as copies of the pertinent foreign statutes, and either a certificate of conviction or evidence to support a finding that there is probable cause to believe that the defendant committed the crime for which he is sought. The formal proceeding before an extradition magistrate is initiated by filing a complaint under oath[13]. The magistrate then conducts a hearing to determine: (1) whether there is probable cause to believe that there has been a violation of one or more of the criminal laws of the requesting country; (2) that the alleged conduct, if committed in the United States, would have been a violation of our criminal law; and (3) that the extradited individual is the one sought by the foreign nation[14]. The United States Supreme Court validated the simplicity of this proceeding in *Charlton v. Kelly,* 229 U.S. 447, 461 (1913), holding that the only issue in an extradition proceeding is whether a prima facie showing of guilt is established.

In a technical sense, an extradition hearing is not considered a criminal proceeding. The Federal Rules of Criminal Procedure, for instance, do not apply to an extradition hearing. Nor do the Federal Rules of Evidence, with the result that extradition hearings are lavish in their use of hearsay, and often tolerant of documents of questionable authenticity[15]. United States courts usually conduct extradition hearings much like preliminary hearings, but along the general lines of the Federal Rules of Civil Procedure, with significant criminal procedural safeguards missing. The evidence against the accused can be presented by affidavit or deposition, not necessarily under oath, and usually without witnesses to confront. The person held does not even enjoy the automatic discovery rights of a defendant in an ordinary contract or negligence action[16]. Justice Holmes writing for the Supreme Court in *Glucksman v. Henkel*, 221 U.S. 508, 512 (1911), concisely evaluated the limited avenues for defending against extradition stating, "it is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time."

In fact, the United States Supreme Court has held that the ordinary protections of the sixth amendment, except for the right to counsel, are usually denied him. In *Bingham v. Bradley*, 241 U.S. 511, 517 (1916), the high Court ruled that the necessity of confronting the accused with the witnesses against him was not applicable to extradition proceedings. Further, the U.S. Supreme Court announced in *Wright v. Henkel*, 190 U.S. 40 (1903), that "bail should not ordinarily be granted in cases of foreign extradition," but that it might be if there are "special circumstances.[17]"

The argument for reluctance in allowing pre-hearing release is that anyone sought for extradition probably got to where he is by fleeing, or at least has shown worrisome mobility. Especially if the accused is a foreigner, his ties to the local community are likely minimal, and the chances of his honoring a commitment to appear probably would be slim. Therefore the safest course is to lock him up[18].

A United States citizen is likely to assume that he cannot be arrested and sent away to stand trial in a foreign court. This is simply not so. United States citizenship does not bar extradition by the United States. Between ten and twenty percent of persons extradited to foreign countries are United States nationals. For them, such treasured birthrights as trial by jury, confrontation of accusers, and compulsory process may evaporate[19].

An international extradition treaty obligates the United States to surrender to a foreign country a person charged with or convicted of an offense in that country. Because many foreign criminal justice systems lack the substantive rights and procedural safeguards embodied in American law, a tension exists between the treaty obligation and the rights of the individual facing extradition[20]. In *Charlton v. Kelly*, the Supreme Court held that no principle of international law and no constitutional provision exempts United States citizens from extradition unless there is a provision to that effect in the applicable treaty.

While it is true that some treaties contain provisions specifically authorizing courts to refuse extradition requests[21] when it is unlikely the defendant would receive a fair trial in the tribunal of the requesting nation[22], under the established "rule of non-inquiry," the court determining whether a defendant is extraditable may not examine the requesting country's criminal justice system or take into account the possibility that the defendant will be mistreated or denied a fair

trial in that country[23]. A defendant who anticipates unfair or abusive treatment following extradition may seek relief on that ground only from the Secretary of State, who has discretion to deny the extradition request.

The rule of noninquiry originated when Congress amended the extradition statutes in 1900 to include a provision for the extradition of fugitives found in the United States who committed certain enumerated crimes in "any foreign country or territory . . . occupied by or under the control of the United States.[24]" The statute provided for the return of the fugitive "to the authorities in control of such foreign country or territory . . . who shall secure to such a person a fair and impartial trial.[25]"

The United States Supreme Court expressly adopted the rule of non-inquiry in *Neely v. Henkel,* 180 U.S. 109, 122-23 (1901). The defendant in *Neely,* facing extradition to Cuba (then under United States occupation), challenged the constitutionality of the statute. He argued that it did not ensure him "all of the rights, privileges and immunities that are guaranteed by the Constitution" upon his surrender to the foreign country, including "the fundamental guarantees of life, liberty and property embodied in that instrument."

The Court rejected the argument, holding that constitutional provisions "have no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country.[26]" The defendant's United States citizenship made no difference. When an American citizen commits a crime in a foreign country he cannot complain if required to submit to such modes of trial and to such punishment as the laws of that country may prescribe for its own people, unless a different mode is provided for by treaty stipulations between that country and the United States[27].

The Court interpreted the statutory requirement of "a fair and impartial trial" to require nothing more than "a trial according to the modes established in the country where the crime was committed, provided such trial is held without discrimination against the accused because of his American citizenship.[28]" It noted that in the judgment of Congress these provisions were deemed adequate to the ends of justice in cases of persons committing crimes in a foreign country . . . and subsequently fleeing to this country. We cannot adjudge that Congress in this matter has abused its discretion, nor decline to enforce obedience to its will as expressed in the statute.[29]" Thus, the Court only required that the foreign country apply its customary procedures (whatever they entailed), and that it not discriminate based upon United States citizenship[30]. Those requirements were, according to the Court, mandated by the statute, not the Constitution[31].

Proponents of the noninquiry rule argue that United States courts should not question the quality of a nation's court system or the motives behind its decision to extradite[32]. These Strict interpreters of the noninquiry rule argue that courts must trust the Secretary of State to intervene to prevent the extradition if he believes it necessary to prevent an injustice. Their position was articulated by Justice Holmes in *Glucksman v. Henkel,* who opined that while of course a man is not to be sent from the country merely upon demand or surmise, yet if there is presented, even in somewhat un-technical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender. The United States Supreme Court is bound by the existence of an

extradition treaty to assume that a trial of an extradited prisoner will be fair[33].

Critics of the rule of non-inquiry argue that it is inappropriate to entrust the protection of an individual's rights solely to the executive branch, which may be more concerned with political expediency than with protecting the rights of the accused[34]. "For obvious reasons of state, our diplomats are rarely eager to label foreign governments unjust, particularly when military and economic advantages hang in the balance.[35]" The fear is that the Secretary of State would sacrifice the rights of individuals in the name of foreign policy[36].

The critics maintain that a United States court should not participate in a procedure that may lead to the abuse of an individual's rights[37]. Instead, before extradition may occur, a court should be entitled, or even required, to scrutinize the investigative, judicial, and penal systems of the requesting country and make an independent assessment of how the defendant is likely to be treated following extradition[38]. However, the U.S. Supreme Court has yet to accept certiorari[39] to re-evaluate the rule of noninquiry.

Should the extradition magistrate (usually a United States district judge, but sometimes a magistrate) find the accused extraditable, from that decision, there is no appeal[40]. The U.S. Supreme Court in *Collins v. Miller*, 252 U.S. 364, 370-71 (1920), held that the extradition magistrate's decision is considered non-final, the continued detention of the accused is merely holding the prisoner for action by the Secretary of State, and dismissed the appeal.

The accused then may only bring an action for habeas corpus to test the legality of his detention. Thus he abruptly leaps from a proceeding that is pretrial in nature, to one usually associated with post-conviction collateral attack[41]. The heart of the ordinary criminal process -- the part where the defendant's rights are at their maximum -- is missing. But if the accused points that out, he is told that the trial is exactly the *piece de resistance* that is impatiently awaiting him abroad[42].

As if to add insult to injury, the scope of *habeas corpus* review for a finding of extraditability, as originally delineated in a series of U.S. Supreme Court decisions[43], is extremely limited[44]. The U.S. Supreme Court in *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925), held that, *habeas corpus* can not be used to rehear the findings of a magistrate in extradition, but only to inquire: (1) whether he had both subject matter and personal jurisdiction; (2) whether the offence is within the treaty; and (3) whether there was any evidence warranting the finding of reasonable ground to believe the accused guilty. The Court has repeatedly reaffirmed that these listed issues are the only ones within the scope of a court's authority on habeas corpus review of a finding of extraditability[45]. However, the Court has not spoken on the subject since 1926[46].

Although it appears that one accused in an extradition hearing has no chance to prevent their removal to the requesting country, this is a gross overstatement as there are ways to challenge process. It is true that a United States court sitting for extradition will not allow a full-scale defense of the merits of the case, because that is the function of the judicial authorities abroad. It is also true, however, that the demanding country must establish probable cause to believe the accused is guilty.

Additionally, the Supreme Court in *Collins v. Loisel*, 259 U.S. 309, 317 (1922), held that the

accused in an extradition proceeding, while he may not put on a full defense, may submit evidence to rebut the requesting country's prima facie case. Moreover, he is entitled by statute to an evidentiary hearing[47].

Through "full adversary participation of counsel," he also can pursue "extensive inquiry" into "whether each charge satisfies the treaty requirements.[48]" He can develop facts to show the expiration of the treaty's statute of limitations which, "no less than any found in domestic law, represents an important right of the accused.[49]"

The credibility of witnesses and the weight to be accorded their testimony is solely within the province of the extradition magistrate and the accused may have considerable leeway to persuade the magistrate to disbelieve what the requesting country presents. He may also "explain" the case against him, a concept that can be quite expansive[50].

There is an additional "safeguard" which falls under the maxim of international law, and a standard provision in nearly every United States extradition treaty, that extradition will not take place unless the offense charged is a crime in both the demanding and the requested country. This is called the rule of "double criminality.[51]" The U.S. Supreme Court in *Factor v. Laubenheimer,* 290 U.S. 276, 287, 300 (1933), held that the double criminality requirement is based on treaty provision rather than international law. Ironically, the Court further held that extradition treaties, like other treaties, should be liberally construed, rather than strictly interpreted in the manner of criminal statutes[52]. So although it has been called "central to extradition law," the double criminality requirement often does not mean much[53].

Although the double criminality test has come to mean little, a related doctrine may provide a more attractive defense. Often overlooked, but analytically distinguishable from the requirement of double criminality, is the necessity that an offense be one made extraditable by the pertinent treaty[54]. If it is not in the treaty, then the issue of double criminality need not even be reached. Sometimes, however, the courts blur the two requirements, or discuss only double criminality, which they quickly dismiss out of hand, without separately facing the need for treaty coverage[55].

Double criminality is also distinguishable from the related doctrine known as the Rule of Speciality. The doctrine of specialty dictates that once the asylum state extradites an individual to the requesting state under the terms of an extradition treaty, that person can be prosecuted only for the crimes specified in the extradition request[56]. The United States Supreme Court first recognized the doctrine of specialty in *United States v Rauscher,* 119 US 407 (1886). In that case, the United States asked Great Britain to extradite William Rauscher, an officer on an American vessel at the time of his alleged crimes, to stand trial on a charge of murder on the high seas. Great Britain agreed. Once *Rauscher* arrived in the United States, however, he was also charged with infliction of cruel and unusual punishment, a charge not included in the extradition request[57].

The United State's request for the extradition of *Rauscher* was made pursuant to an extradition treaty between the United States and Great Britain. Although this treaty enumerated certain offenses for which an individual could be extradited, it did not explicitly stipulate that an extradited individual could only be charged with the crimes indicated in the extradition request.

However, the U.S. Supreme Court held that the specific enumeration of extraditable offenses made it clear that the countries could not charge an individual with any other offenses by stating, "It is unreasonable that the country of the asylum should be expected to deliver up such person to be dealt with by the demanding government without any limitation, implied or otherwise, upon its prosecution of the party.[58]"

The high Court further held that the specialty doctrine applies to every extradition treaty to which the United States is a signatory, even if specialty is not explicitly mentioned. *Rauscher* indicates that an individual extradited to the United States has standing to assert the doctrine when the surrendering state also clearly objects to the additional charges not mentioned in the extradition request.

Extradition treaties confer upon the contracting nations a greater degree of control over certain citizens of the nations with which they contract. They set forth particular guidelines by which a transfer of nationals may occur, thus putting into place a means by which a nation may lawfully, and with respect for the sovereignty of the other, exercise jurisdiction over a particular national of the other country. It has been the unfortunate practice of nations however, to act under preconceived notions of sovereignty to evade existing extradition treaties under which foreign nationals could have been properly extradited[59].

If the requested (host) country refuses to extradite the fugitive, or the requesting country foresees a possible problem, there are a number of options other than the formal extradition process. These alternative means are referred to as Irregular Rendition, and fall into three categories: (1) the abduction of an individual by agents of the requesting country; (2) the informal surrender of an individual by the requested (host) country to the requesting country without formal or legal process; and (3) the informal surrender of an individual by the requested (host) country involving abduction of the suspect by agents of the requested country in cooperation with the requesting country. The last category of informal rendition is when the requested country uses its immigration laws to turn over the suspect to the requesting country[60].

The latter two categories of informal rendition usually involve a measure of cooperation between the requesting country and those of the requested (host) country. For example, if the requested (host) government has a policy of refusing to extradite its own citizens, or the requesting country feels that the requested (host) state will protect the offender or allow him to escape, the requesting country will try to work out an informal surrender of the suspect between the respective law enforcement agencies, either in the foreign country or on the requesting countries soil. Although the kidnapping and unsupervised police coordination employed in informal rendition have the potential for abuses of human rights, surprisingly, United States courts have generally not inquired into potential mistreatment of informal extraditees by U.S. or foreign officials[61].

In *Frisbie v. Collins*, 342 U.S. 519, 522 (1952), the U.S. Supreme Court held that the power of a court to try a person for a crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a "forcible abduction." However, *Frisbie* involved a kidnapping within the United States, where no extradition treaty applied, and may be considered dictum[62] [63]. The concept of irregular rendition did not come out of thin air. As early as 1886, in the cases of

Ker v. Illinois, 119 U.S. 436, 444 (1886) and *United States v. Rauscher*, the United States Supreme Court held that when the language of a treaty does not prohibit abduction and is not referred to in the procurement of the act, the treaty is not violated and the accused must stand trial.

The most recent and arguably the most famous example of irregular rendition is the case of *United States v. Alvarez-Machain*, 508 U.S. 655 (1992). The U.S. Supreme Court held, in an opinion written by Chief Justice Rehnquist, that the applicable extradition treaty did not explicitly forbid a unilateral abduction and that neither the language nor the history of the treaty supported an implied prohibition on acquiring jurisdiction outside of its terms[64]. After finding that the kidnapping did not violate the terms of the treaty, the court applied the *Ker-Frisbie* doctrine and overruled the lower court's decision by holding that *Alvarez-Machain* could stand trial in the U.S[65]. Therefore, given the majority's opinion, it seems that a defendant must locate a provision in the applicable extradition treaty which forbids bilateral or unilateral abduction before a favorable return will be granted on an argument which relies on a violation to rescind personal jurisdiction[66].

The multi-country transactions of the contemporary world economy, the clash of late-twentieth-century governmental ideologies, the ease and speed of modern travel, and the steady increase in prosecutions for complex economic crimes all ensure that extradition law will become an ever more important part of the United States legal experience[67]. Balancing the right of a defendant to fair and humane treatment against international treaty obligations and foreign relations concerns of the United States is a delicate matter. These competing interests have been reconciled to the Secretary of State[68]. However, it is well past time for United States extradition doctrine to be rethought and brought into the twenty-first century. No other domain of criminal procedure exists in which the controlling U.S. Supreme Court cases nearly all predate World War I, and the most recent decision was authored by Charles Evans Hughes[69]. Constitutional doctrine in adjoining compartments has not stood still in the meantime[70].

FOOTNOTES

[1]John G. Kester, *Some Myths of United States Extradition Law,* 76 Geo. L.J. 1441, 1498 (1988).

[2]Barbara Banoff, *To Surrender Political Offenders: The Political Offense Exception In United States Law,* 16 N.Y.U.J. Int'l L. & Pol. 169, 173-74 (1984).

[3] Kai I. Rebane, *Extradition and Individual Rights: The Need for an International Criminal Court to Safeguard Individual Rights,* 19 Fordham Int'l L.J. 1636, 1645 (1996).

[4]*Id.*

[5]Benjamin N. Bedrick, *United States Extradition Process: Changes in Law to Address Constitutional Infirmity,* 15 Dick. J. Int'l L. 385, 387 (1997).

[6]*Id.*

[7]*Id.* at 387-388.

[8]*In re Kaine,* 55 U.S. (14 How.) 103, 112-13 (1852).

[9]Bedrick, *supra* at 388.

[10]See 18 U.S.C. 3184.

[11]Bedrick, *supra,* at 389-390.

[12] Matthew W. Henning, *Extradition Controversies: How Enthusiastic Prosecutions Can Lead to International Incidents,* 22 B.C. Int'l & Comp. L. Rev. 347, 350 (1999).

[13] *Id.* at 391.

[14]*Id.*

[15]Kester, *supra* at 1445.

[16]*Id.*

[17]*Wright,* at 63.

[18]Kester, *supra* at 1447.

[19]Kester, *supra* at 1474-75.

[20] Jacques Semmelman, Federal Courts, The Constitution, and The Rule of Non-Inquiry in International Extradition Proceedings, 76 Cornell L. Rev. 1198 (1991).

[21]Although a country may have guaranteed minimum due process protections at the time an extradition treaty was signed, it is possible that at the time of its enforcement that country no longer offers such protections. When this happens, it is important that courts take an active role in protecting minimum human rights, rather than leaving this role solely to the Secretary of State.

[22]Mary-Rose Papandrea, *Standing to Allege Violations of the Doctrine of Specialty: An Examination of the Relationship between the Individual and the Sovereign,* 62 U. Chi. L. Rev. 1187, (1995).

[23]Semmelman, *supra* at 1198.

[24]Act of June 6, 1900, ch. 793, 31 Stat. 656.

[25]*Id.* at 657.

[26] *Neely v. Henkel,* 180 U.S. 109, 122 (1901).

[27] *Id.* at 123.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 122-23.

[31] Semmelman, *supra* at 1213.

[32] Papandrea, *supra* at 1208.

[33]*Glucksman v. Henkel,* 221 U.S. 508, 512 (1911).

[34] Semmelman, *supra* at 1199.

[35] Extradition Reform Act of 1981, Hearings on HR 5227 before the Subcommittee on Crime of the House Committee on the Judiciary, 97th Cong, 2d Sess 60 (1982) (statement of Professor Christopher H. Pyle).

[36] Papandrea, *supra* at 1208.

[37] Semmelman, *supra* at 1199.

[38] *Id.*

[39]Latin for "to be more fully formed." An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in a case for review. The U.S. Supreme

Court uses certiorari to review most of the cases it decides to hear. Blacks Law Dictionary 179 (7th ed. 2000).

[40] Kester, *supra* at 1472.

[41]*Id.*

[42]*Id.*

[43] See *Collins v. Loisel*, 259 U.S. 309, 314-15 (1922); *Bingham v. Bradley*, 241 U.S. 511, 516-17 (1916); *Charlton v. Kelly*, 229 U.S. 447, 456 (1913); *McNamara v. Henkel*, 226 U.S. 520, 523 (1913); *Elias v. Ramirez*, 215 U.S. 398, 406-07 (1910); *Terlinden v. Ames*, 184 U.S. 270, 278 (1902); *Bryant v. United States*, 167 U.S. 104, 105 (1897); *Ornelas v. Ruiz*, 161 U.S. 502, 508-09 (1896); see also *Hughes v. Gault*, 271 U.S. 142, 151-52 (1926) (dictum). Semmelman, *supra* at n 97.

[44] Semmelman, *supra* at 1211.

[45] *Id.*

[46] The abrupt cessation of U.S. Supreme Court consideration of the issue coincided with the enactment of the so-called "Judges' Bill." Act of Feb. 13, 1925, ch. 229, 43 Stat. 936. The bill "radically altered the [Supreme] Court's function, converting what had been a largely mandatory jurisdiction into a predominantly certiorari (or discretionary) docket." Samuel Estreicher & John Sexton, *Redefining The Supreme Court's Role* 12 (1986). Semmelman, *supra* at n 97.

[47] 18 U.S.C. § 3184.

[48] Kester, *supra* at 1469.

[49]*Id.* at 1469-70.

[50] *Id.* at 1470.

[51] Kester, *supra* at 1459.

[52] *Factor v. Laubenheimer*, 290 U.S. 276, 303 (1933).

[53] Kester, *supra* at 1461.

[54] *Id.* at 1462.

[55] *Id.* at 1462-63.

[56] Papandrea, *supra* at 1189.

[57]*United States v Rauscher*, 119 US 407, 409 (1886).

[58] *Id.* at 419.

[59] David H. Herrold, *A New, Emerging World Order: Reflections of Tradition and Progression Through the Eyes of Two Courts*, 2 Tulsa J. Comp. & Int'l L. 143 (1994).

[60]Henning, *supra* at 361.

[61] *Id.*

[62] A statement of opinion or belief considered authoritative because of the dignity of the person making it. Blacks Law Dictionary, 366 (7th ed. 2000).

[63] Kester, *supra* at n46.

[64]*United States v. Alvarez-Machain*, 508 U.S. 655, 656-63 (1992).

[65]*Id.* at 656-63.

[66] Henning, *supra* at 366.

[67] Kester, *supra* at 1442.

[68] Semmelman, *supra* at 1241.

[69] Charles Evans Hughes was born in Glens Falls, New York, on April 11, 1862. He died on August 27, 1948, at the age of eighty-six. On April 25, 1910, President William H. Taft nominated Hughes to the Supreme Court of the United States, and the Senate confirmed the appointment on May 2, 1910. In 1910, Hughes accepted nomination to the High Court from President Taft. He was commissioned on May 2, 1910 and he was sworn in on October 10, 1910. Six years later, on June 10, 1916, Hughes resigned to run against Woodrow Wilson for the presidency as the nominee of the Republican and Progressive Parties. He lost by a mere 23 electoral votes. On February 3, 1930, President Herbert Hoover nominated Hughes for Chief Justice of the United States Supreme Court. The U.S. Senate confirmed the appointment on February 13, 1930. Hughes' nomination to be chief justice met with opposition from Democrats who viewed Hughes as too closely aligned with corporate America. Their opposition was insufficient to deny Hughes the position. He was commissioned on February 13, 1930. After serving eleven years as Chief Justice, Hughes retired from his post on June 30, 1941.

[70] Kester, *supra* at 1491.