THE *JAFFE* CASE AND THE USE OF INTERNATIONAL KIDNAPPING AS AN ALTERNATIVE TO EXTRADITION

Extradition is the method by which one sovereign surrenders a person located in his territory to another sovereign who is seeking the person as an accused criminal or fugitive offender.[1] The extradition process was first employed about 1280 B.C.[2] and has evolved over the centuries into a highly-structured system based on treaties. The system is regularly used today for the transfer of criminals from one state to another.

International kidnapping, however, is a relatively recent development. International kidnappings are apprehensions performed as an alternative to extradition; they do not include seizures by terrorist groups for financial or political goals. One example of international kidnapping is Adolf Eichmann's abduction from Argentina and his transportation to Israel, where he was tried and executed for war crimes committed during World War II.[3]

This Note will examine the history and basic components of both extradition and international kidnapping. A comparison of the two practices will then be made in the context of the case of Sidney Jaffe. In 1981 Jaffe was apprehended from his home in Toronto by two bounty hunters and was brought back to Florida to stand trial as a fugitive. His abductors were subsequently extradited to Canada to stand trial on charges of kidnapping. After reviewing the *Jaffe* case, some conclusions will be drawn concerning the issue of probable future uses of both extradition and international kidnapping.

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[1] *See* J. MOORE, 1 A TREATISE ON EXTRADITION AND INTERSTATE RENDITION 3 (1891); G. LAFOREST, EXTRADITION TO AND FROM CANADA 1 (1961); I. SHEARER, EXTRADITION IN INTERNATIONAL LAW 1 (1971); M. BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 1 (1974) [hereinafter cited as M. BASSIOUNI, WORLD PUBLIC ORDER]; M. BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE, at I § 1-1 (1983) [hereinafter cited as M. BASSIOUNI, UNITED STATES LAW AND PRACTICE]. An "accused criminal" is a suspect in a crime, while a "fugitive offender" is a person who has been convicted of a crime and has escaped from custody.

[2] *See infra* notes 4-6 and accompanying text.

[3] *See infra* notes 90-102 and accompanying text.

I. EXTRADITION

A. *History*

Extradition has existed for many centuries.[4] The first known extradition treaty, a peace treaty between Ramses II of Egypt and the Hittite prince Hattusili III, was signed about 1280 B.C.[5] The treaty provided for the return of criminals who had violated the laws of one territory and who were found within the other territory. It is unknown, however, whether any fugitives actually were surrendered under this treaty.[6]

The practice of extradition lay dormant until the advent of the Roman Empire.[7] In the treaty ending the war with the Syrian king Antiochus, the Romans demanded the surrender of Hannibal, who had promoted the war and was considered an enemy of the Empire.[8] The Empire, by internal law, permitted the surrender of Roman citizens who did violence to the ambassadors of other countries while in Roman territory. At least four Roman citizens were extradited to other states under this unique provision of Roman law.[9]

The period prior to the seventeenth century was noted for the cooperation among states. Few extradition treaties or practices, however, were then in existence.[10] Extradition during this period

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[4] *See* Bassiouni, *International Extradition in American Practice and World Public Order*, 36 TENN. L. REV. 1 (1968); Bassiouni, *International Extradition: A Summary of the Contemporary American Practice and Proposed Formula*, 15 WAYNE L. REV. 733 (1969) [hereinafter cited as Bassiouni, *Contemporary American Practice*]; I. SHEARER, *supra* note 1, at 5; M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 1; M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at I § 1-1.

[5] *See* M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at I § 1-3; *see also* I. SHEARER, *supra* note 1, at 5. The treaty was written on clay tablets and later carved in hieroglyphics on the Temple of Ammon at Karnak in Egypt. One author has suggested that agreements of extradition date from 1496 B.C. *See* J. MOORE, *supra* note 1, at 10. These agreements, however, were probably entered into more out of friendship than out of a desire to develop a system of extradition.

[6] *See* M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at I § 1-3; I. SHEARER, *supra* note 1, at 5.

[7] *See* E. CLARKE, A TREATISE UPON THE LAW OF EXTRADITION 16 (1888). The Roman practice began about 400 B.C. and continued until approximately 100 B.C.

[8] *See id.* at 17-18. Hannibal was delivered up by Syria but escaped to Bithynia. His surrender was again demanded by the Romans, but Hannibal avoided this second extradition by dying.

[9] *See id.* at 18. Two of the Romans were delivered up to the Appolloniatae in 266 B.C., and the other two were delivered up to the Carthaginians in 188 B.C.

[10] *See* M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 4; I. SHEARER, *supra* note 1, at 5; M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at I § 1-4; M. HUDSON,

was generally confined to persons who had committed political or religious offenses,[11] though there was a treaty between the kings of England and of Scotland[12] providing for the surrender of felons who had fled from one state to the other.[13]

During the eighteenth century there was a significant increase in the use of extradition treaties. The government of France initiated the development of extradition treaties during this period by concluding treaties with its immediate neighbors, except England.[14]

RESEARCH IN INTERNATIONAL LAW UNDER THE AUSPICES OF THE FACULTY OF THE HARVARD LAW SCHOOL: DRAFTS OF CONVENTIONS PREPARED FOR THE CODIFICATION OF INTERNATIONAL LAW 41 (1935).

[11] *See* M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at § 1-4; I. SHEARER, *supra* note 1, at 5; E. CLARKE, *supra* note 7, at 18. Political and religious offenders were the most sought because they created the greatest dangers to the existing order. Common criminals, on the other hand, were not considered to be as dangerous to the general welfare since their actions usually threatened only other individuals, and not the public order.

[12] The treaty was concluded in 1174. *See* I. SHEARER, *supra* note 1, at 7. Maintaining the existing order was the primary concern of states during the seventeenth century, and the common criminal did not pose a threat to this order. Professor Shearer has advanced three reasons for this lack of a threat. First, escape was difficult for the criminal because of the slow, inefficient transportation facilities then in existence. Second, by escaping from his home city, the criminal was risking a long exile. Strangers in a new town were regarded with suspicion, treated with contempt, and prevented from securing employment by the people of the town. The exile had little or no resources and no means to obtain new ones. In addition, the transportation system made it difficult for the exile to return to his old home. The third reason advanced by Professor Shearer for the lack of a threat by a common criminal to the public order was that once a criminal left his home state he was of little or no concern to the pursuing authorities. Since he would have difficulty returning to the original state, the authorities there considered resolved any problems he may have posed to the public order. *See id.*

The political offender, on the other hand, by definition was opposed to his home government. If he could not change the state, his best opportunity was to leave it; therefore, the political offender had more reason to leave the state than did the common criminal. A political offender might also succeed in inciting the citizenry of his new home, making him dangerous to his new state as well as to his old state. *See infra* notes 51-53 and accompanying text.

The extradition treaty between the kings of England and Scotland was motivated by the fact that the two states were so close as to afford an easy opportunity for a criminal to flee from one state to the other. It would have been much easier to escape from England to Scotland, or vice versa, than to escape across the English Channel. In spite of this, no evidence exists that the treaty was ever invoked. *See* I. SHEARER, *supra* note 1, at 7; *see also infra* notes 51-53 and accompanying text.

[13] *See* J. MOORE, *supra* note 1, at 10; *see also* E. CLARKE, *supra* note 7, at 18; *see generally* I. SHEARER, *supra* note 1, at 6-7.

[14] *See* M. HUDSON, *supra* note 10, at 41. England was excluded because of the way the government of England perceived itself at this time, as the supreme power in the world and needing no one's assistance in catching its own criminals. Another reason for England's lack of desire to enter into extradition treaties was that the Channel acted as a natural barrier over which it was difficult for fugitives to escape. *Id.*

With these agreements, France took the dominant position in the world of extradition and maintained its dominance well into the nineteenth century.[15] The primary motivation behind the treaties was geographic: France was surrounded by a number of states to which fugitives could easily flee[16] and the French government needed the ability to retrieve and punish these fugitives.[17] Though France lost its superiority in the field of extradition towards the end of the eighteenth century,[18] it reclaimed its powers of extradition during the middle of the nineteenth century by concluding treaties with a number of other states[19] and maintained this position until the end of that century.

Although France was the dominant force in extradition during the eighteenth and nineteenth centuries, the other state powers were not idle. The United States and Great Britain entered into their first international extradition treaty with Jay's Treaty[20] in 1794, but it was only invoked a few times prior to its expiration in 1806.[21] The dormancy of Jay's Treaty probably can be traced to public outrage over the Robbins case.[22] Robbins was charged with and duly imprisoned for murder on the high seas while he was on board a British ship.[23] He served six months in a United States prison before petitioning for a writ of *habeas corpus*. President John Adams intervened, seeking compliance with an extradition request that had been made by the British consul.[24] Robbins was

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[15] *See id.*

[16] These states include Belgium, Luxembourg, Germany, Switzerland, Italy, Monaco, and Spain.

[17] *See* I. SHEARER, *supra* note 1, at 8. The French government was trying to demonstrate its ability to protect French citizens from criminals by proving that fugitives would not be free from punishment if found in French territory. *See id.*

[18] Napoleonic France was at war with most major European powers. During these wars, France had conquered many of the surrounding states and, therefore, needed no formal extradition process in order to retrieve its criminal fugitives. By 1841 France was a party to only four extradition treaties. *See* I. SHEARER, *supra* note 1, at 17.

[19] *See id.* at 18. By 1870 the number of extradition treaties to which France was a party had grown to 28. *Id.*

[20] Treaty of Amity, Commerce and Navigation, Nov. 19, 1794, United States-Great Britain, 8 Stat. 116, T.S. No. 105 [hereinafter cited as Jay's Treaty]. *See* M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at II § 3-2.

[21] *See* I. SHEARER, *supra* note 1, at 14.

[22] *See* Kopelman, *Extradition and Rendition: History - Law - Recommendations*, 14 B. U. L. REV. 591, 597-598 (1934). Robbins was also known as Thomas Nash; he later admitted that he really was a British citizen named Walsh. *See id.* at 598.

[23] Robbins was arrested by authorities when the ship landed in the United States.

[24] The British reasoned that they had jurisdiction over the case because the ship upon which the murder was committed was flying a British flag.

delivered to the British, who tried him by court-martial and sentenced him to be hanged.[25] The United States public was outraged at this case since, even though Robbins confessed to being a British citizen, he was believed to be a United States citizen who killed only as a means of escaping forced service on a British ship.[26] The public and the press attacked President Adams so vehemently for his interference in the case that he refused to renew Jay's Treaty, allowing it to expire.[27]

The United States did not sign any extradition treaties between 1806 and 1842. Extradition, however, was still recognized and practiced by the United States. In 1819 a United States magistrate held that states owed a duty to surrender fugitive criminals, regardless of whether there was a treaty on the subject.[28] The court found that there was a duty under international law to extradite to one's closest neighbors irrespective of a treaty, and that the duty was, therefore, a part of United States law.[29] This extradition duty was repeatedly narrowed by later courts until the Supreme Court held that the duty to extradite did not exist outside of treaty provisions.[30]

The United States' first extradition treaty, after the expiration of Jay's Treaty, was the Webster-Ashburton Treaty[31] entered into with Great Britain in 1842. While the Webster-Ashburton Treaty had only a limited effect on United States-Great Britain extradition, it proved to be of some consequence in United States-Canadian relations.[32] The Webster-Ashburton Treaty signalled a renewed United States interest in extradition agreements, as negotiations began with other states for similar extradition trea-

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[25] *See* Kopelman, *supra* note 22, at 597. Robbins was hanged after admitting that he was a British citizen.

[26] *See id.* at 598.

[27] *See id.* at 598; *see also* E. CLARKE, *supra* note 7, at 38.

[28] *See* E. CLARKE, *supra* note 7, at 39. The first case decided in this manner involved a Canadian citizen wanted on a charge of theft in Canada who was found in the United States. The court held that the fugitive should be surrendered upon a reasonable claim made by the foreign government. This case also expanded the meaning of extraditable offenses by holding that extraditable offenses should not be limited in the absence of a treaty; Jay's Treaty, which had expired, provided that extradition was permissible only for murder or forgery. *See id.* at 39-40.

[29] *See id.* at 43.

[30] *See generally id.* at 40-46.

[31] Webster-Ashburton Treaty, Aug. 9, 1842, United States-Great Britain, 8 Stat. 572, T.S. No. 119. *See* Kopelman, *supra* note 22, at 598.

[32] *See infra* notes 114-18 and accompanying text.

ties.[33] The United States rapidly became one of the dominant forces in the area of extradition.

The modern extradition treaty is the most common type of treaty in existence. As of 1983 the United States was a party to bilateral extradition treaties with ninety-nine other nations and was a signatory of one multilateral extradition treaty.[34] The United States is also a signatory of a number of multilateral treaties on the suppression of international crime which could be used as substitutes for bilateral extradition treaties.[35]

B. *Principles*

Extradition has been defined as "the surrender or delivery of an alleged criminal by one sovereignty or state to another having jurisdiction to try the charge."[36] Modern forms of extradition are usually based on specific treaty provisions,[37] most of which share a common pattern.[38]

The extradition system is based on the assumption that both parties will adhere to reciprocity,[39] a principle of general international law which, in the context of extradition, declares that if one state extradites a fugitive to another state, the latter will respond at a later date by extraditing a fugitive to that first state.[40] Though reciprocity is never expressly provided for in extradition treaties, it is clearly considered a fundamental part of the system.

Most extradition treaties contain six basic provisions. The first is the requirement that the requesting state have *territorial jurisdiction*. This provision requires that the extraditable offense be committed within the territory of the requesting state, meaning the state which seeks extradition, and that the fugitive be found within the boundaries of the asylum state, the state from which extradi-

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[33] For a list of some of these countries, see E. CLARKE, *supra* note 7, at 70.

[34] For a list of these bilateral extradition treaties, see M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at Booklet 13 ("Table of Current U.S. Extradition Treaties").

[35] *See, e.g.* Montevideo Treaty, Dec. 26, 1933, 49 Stat. 3111, T.S. No. 882.

[36] WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 902 (2d ed. 1934).

[37] The prevailing practice is to extradite under a bilateral treaty. *See* M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 13; *see also* I. SHEARER, *supra* note 1, at 34-35.

[38] *See generally* I. SHEARER, *supra* note 1, at 132; WORLD PUBLIC ORDER, *supra* note 1, at 311; EUR. COMM. ON CRIME PROBLEMS, COUNCIL OF EUROPE, LEGAL ASPECTS OF EXTRADITION AMONG EUROPEAN STATES 9 (1970) [hereinafter cited as LEGAL ASPECTS].

[39] *See* LEGAL ASPECTS, *supra* note 38, at 10.

[40] *See id.*

tion is sought.[41] Problems arise, however, with interpreting territorial jurisdiction. Some states, such as France, claim that they have jurisdiction as a requesting state over crimes of their nationals wherever committed. Others, such as the United States and Great Britain, claim that their jurisdiction as requesting states extends only to crimes committed within their territorial boundaries.[42] The latter view has prevailed in the application of extradition treaties to the extent that territorial jurisdiction now refers to locality of the crime.[43]

The second basic provision found in most extradition treaties requires that a fugitive can be extradited only for certain specified offenses, labeled *extraditable offenses.*[44] The specification of offenses can be accomplished by either of two methods. The "enumerative method" is a listing within the treaty of specific crimes for which the state may grant extradition.[45] This method has two principle defects: first, omitted offenses can only be added by a complete revision of the list; and second, absent such revision, extradition for omitted offenses will be granted only through the good will of the asylum state.[46] As a result of these defects, the "eliminative method" has become the dominant method for determining which offenses are included in the extradition treaty. This method replaces the list of specific crimes with a minimum standard of severity of punishment. Extradition will only be granted for crimes which meet the standard.[47] This insures that extradition will be granted only for serious crimes and that a fugitive who has committed a serious offense will not be protected just because the offense was not included in a specific list.

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[41] *See* Bassiouni, *Contemporary American Practice*, *supra* note 4, at 733; G. LAFOREST, *supra* note 1, at 32-33; J. MOORE, *supra* note 1, at 134.

[42] *See* M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 206-07.

[43] *See id.* at 208; *see also* J. MOORE, *supra* note 1, at 139-40; G. LAFOREST, *supra* note 1, at 35. Other questions can arise with respect to territorial jurisdiction when, for example, the crime is committed only partially within the territorial boundaries of the requesting state. For more on this and other problems, see G. LAFOREST, *supra* note 1, at 33-36.

[44] *See* LEGAL ASPECTS, *supra* note 38, at 11. The offenses included in most treaties are generally limited to major crimes due to the time and effort involved in extradition proceedings. *Id.*

[45] *See* I. SHEARER, *supra* note 1, at 133. The list of offenses was originally small in number but broad in scope. Later, however, the lists became more specific and longer. *Id.* at 133-34.

[46] *See id.* at 134.

[47] *See id.* The first treaty (Treaty of International Penal Laws, 1889, *see id.*) to adopt this method set a minimum standard of two years' imprisonment for accused persons and one year for convicted persons. Today, the majority of treaties utilizing this method have a minimum standard of one year.

The third provision involves *double criminality*. The alleged conduct must be criminal under the laws of both the requesting and the asylum state for asylum to occur.[48] The principle of double criminality is equally applicable in both the enumerative and the eliminative methods of defining extraditable offenses. The principle is usually implicit in treaties following the enumerative method, since the offenses are specifically listed and are criminal in both states. In those following the eliminative method, however, the principle must be express, since it is of vital importance in defining what is extraditable.[49]

The fourth basic provision is a *political offense exception*. This provision prohibits the surrender of persons charged with crimes or offenses of a political nature.[50] The exception is a reversal of earlier extradition procedures in which extradition was granted only for political or religious offenses.[51] National political offenses are excluded from modern extradition treaties because of human rights policies. Not only should the political offender be afforded the right to resist what may be perceived as an oppressive regime, but he also should be assured a fair trial, which might not be available in the state against which the fugitive acted.[52] The political offense exception is so prominent in most extradition treaties that it may be considered a standard clause.[53] The exception does not apply, however, to international political crime, since by its very nature this category of crime is detrimental to all mankind.[54]

The fifth basic provision is the doctrine of *specialty*. This doctrine prohibits prosecution by the requesting state for any offense

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[48] *See* LEGAL ASPECTS, *supra* note 38, at 12; I. SHEARER, *supra* note 1, at 137; M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at VII § 3-1. Double criminality should not be confused with reciprocity. While both reciprocity and double criminality state that the act or conduct complained of should be criminal in both states, reciprocity goes one step farther by requiring the requesting state to, in effect, promise that it will return the favor of extradition at a later date.

[49] *See* I. SHEARER, *supra* note 1, at 137-38. Double criminality recently has evolved into a doctrine of double extraditability, whereby a crime for which extradition is sought not only must be criminal in both states, but also must be extraditable according to the laws of both states. This recent development has occurred in only a few treaties and should not yet be considered a major innovation. *Id.*

[50] *See* Note, *Executive Discretion in Extradition*, 62 COLUM. L. REV. 1313, 1322 (1962); *see also* M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 370; I. SHEARER, *supra* note 1, at 166.

[51] *See supra* notes 11-13 and accompanying text.

[52] *See* M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 425. Obviously, a country will be hostile toward a person who is openly opposing its form of government.

[53] *See id.* at 371.

[54] *See id.* at 416.

other than that for which the fugitive was surrendered.[55] The requesting state must afford the fugitive ample time to leave the state before attempting to try him for any offense other than those for which extradition was granted.[56] The fugitive, however, may be tried for any offense arising out of the same set of facts as those governing the offense for which extradition was granted, provided that the new offense is also an extraditable offense.[57]

The sixth aspect of most extradition treaties is the *national* provision. Under this provision, a state is allowed to protect its own citizens from extradition.[58] Common law states generally do not exempt nationals from extradition, but civil law states tend to be more protective of their citizens.[59]

The typical United States extradition treaty contains one of three different types of national provisions. The first type states that extradition will be granted for "all persons." The Supreme Court has held that the word "persons" includes nationals and, therefore, refusal to surrender a fugitive because he or she is a national cannot be justified under such a treaty provision.[60] The second type of provision states that neither party is required to surrender its own nationals in a proceeding brought under the treaty. This is the most common of the three types.[61] The third type of

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[55] *See* United States v. Rauscher, 119 U.S. 407 (1886). *But c.f.* I. SHEARER, *supra* note 1, at 146-47 (The fugitive may be tried for any offense arising out of the same set of facts as long as the offense is also an extraditable offense. *Rauscher* is still good law, however, since in that case an individual was charged after surrender with a non-extraditable offense).

[56] *See* I. SHEARER, *supra* note 1, at 146; M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 353. The purpose of the specialty doctrine is to give the asylum state some control over the requesting state's court proceedings. The asylum state might not grant extradition if it knows the true intent of the requesting state; therefore, the understanding of the asylum state cannot be bypassed by the requesting state through the addition of new charges once jurisdiction is obtained over the fugitive.

[57] *See* I. SHEARER, *supra* note 1, at 146-47. The European position requires the new offense to be merely a new "legal characterization of the same factual situation." *Id.* at 147. Therefore, a fugitive extradited for robbery of a seriously injured victim, in a case where the victim subsequently died, presumably could be tried for felony murder, assuming that felony murder was also an extraditable offense.

[58] *See generally* Bassiouni, *Contemporary American Practice*, *supra* note 4, at 750; M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 435; I. SHEARER, *supra* note 1, at 94; J. MOORE, *supra* note 1, at 152; R. RAFUSE, THE EXTRADITION OF NATIONALS 9 (1939).

[59] *See* M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 435. The practice of non-extradition of a state's own citizens began in France and the Low Countries of Europe. The policy seemed to reflect the view that one state's citizens would be disadvantaged in dealing with another state's courts. *See* I. SHEARER, *supra* note 1, at 95-96.

[60] Charlton v. Kelly, 229 U.S. 447, 457 (1912).

[61] *See* M. BASSIOUNI, WORLD PUBLIC ORDER, *supra* note 1, at 435. When a provision is worded in this manner the asylum state may deliver up its own national. The United States,

national provision is similar to the second one, but with an additional proviso that the executive authority of the asylum state is empowered to surrender its own citizens if it decides that to do so would be advantageous to future relations with the requesting state.[62]

C. *Procedures*

Certain procedures must be followed in an extradition proceeding when a treaty is involved. As an example of these procedures, the process by which the United States makes a request for extradition and by which Canada responds to such a request will be examined. The examples are especially relevant since they reflect the positions of these two states in the *Jaffe* case.

When the United States, for itself or on behalf of a state, is the requesting nation, an application for extradition is made to the United States Secretary of State.[63] If the offense is within the jurisdiction of a state court, then the application must come from the governor of that state. If, on the other hand, the offense is a violation of federal law, then the application must come from the Attorney General of the United States.[64] The application must aver that the person sought is guilty of one of the offenses specified in the particular extradition treaty, or that the punishment for the crime meets the minimum standard of severity under the eliminative method,[65] and that the person has been found or is believed to be in the asylum nation. The Secretary of State then acts upon such applications in his discretion.[66]

The proceedings used by the asylum state are, of course, different from those used by the requesting state. If Canada is the asylum state, its procedures are governed by its Extradition Act.[67] A request is made through diplomatic channels to the Canadian Minister of Justice.[68] After the request is made, a warrant is issued by

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however, generally will not surrender one of its own citizens unless reciprocity is guaranteed by the requesting state.

[62] *See id.* at 436.

[63] *See* Bassiouni, *Contemporary American Practice*, *supra* note 4, at 737.

[64] *See id.* at 738.

[65] *See supra* notes 45-47 and accompanying text.

[66] *See* Bassiouni, *Contemporary American Practice*, *supra* note 4, at 738.

[67] Extradition Act, CAN. REV. STAT. ch. E-21 (1970). This Act applies both in situations where a treaty is involved and in those where no treaty exists between Canada and the requesting state. This Note will concentrate on the former situation.

[68] CAN. REV. STAT. ch. E-21 s. 20 (1970).

a judge for the arrest of the fugitive.[69] Following the arrest, the fugitive will be brought before the judge for a hearing on whether he should be extradited to the requesting state.[70] Upon a finding of cause for surrender, the fugitive will be placed in prison for fifteen days during which time he may make a request for *habeas corpus*.[71] After the expiration of the fifteen days, the fugitive may then be surrendered to the proper authorities of the requesting state.[72]

II. INTERNATIONAL KIDNAPPING

Although it is an old and widely used system, extradition still has a number of problems.[73] As a result, many states have resorted to alternative methods for acquiring jurisdiction over fugitives; one of these methods is international kidnapping.[74] International kidnapping is an abduction performed as an alternative to extradition; it does not include those abductions by terrorist groups for financial or political goals.[75]

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[69] CAN REV. STAT. ch. E-21 s. 10 (1970). A warrant will issue only if the fugitive's act would have been criminal if committed in Canada. This warrant may be acted upon in any of the Canadian provinces to which the fugitive may have fled.

[70] CAN. REV. STAT. ch. E-21 s. 13 (1970). The judge may hear evidence tending to establish both the charge and any defenses.

[71] CAN. REV. STAT. ch. E-21 s. 18-19 (1970).

[72] CAN. REV. STAT. ch. E-21 s. 25 (1970). In some cases, a warrant may be issued for the arrest of a known fugitive before an official request for surrender is made. In still other cases, the arrest of a suspected fugitive may be made before a warrant is issued or a request for surrender is made. Both of these procedures have been upheld by the Canadian courts. For a general discussion of extradition under the act, see G. LAFOREST, *supra* note 1, at 50-89.

[73] *See generally* I. SHEARER, *supra* note 1, at 132. These problems include: (1) the range of offenses covered by existing treaties is inadequate; (2) extradition treaties generally are literally interpreted; (3) many states do not recognize the obligation to extradite in the absence of a treaty as part of customary international law; and (4) the practice of extradition is rigid and time-consuming, after which the request still may be denied. *Id.*

[74] Other methods include the use of immigration and deportation controls by a state, and the assumption of jurisdiction over a fugitive by a state. Immigration and deportation are used to prevent a fugitive from entering a state, or to expel him from the state once he enters its borders. As such these methods are largely self-serving to the asylum state and are not dealt with here. The assumption of jurisdiction is not really a viable alternative to extradition because of problems concerning conflicts of laws and indifferent prosecution. *See generally* I. SHEARER, *supra* note 1, at 19, 68-69; *see also* M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at IV § 1-1.

[75] Some of the more famous international kidnapping cases have been Ker v. Illinois, 119 U.S. 436 (1886) (Ker was forcibly abducted from Peru by a federal agent and brought back to the United States to stand trial on charges of larceny, even though the agent had in his possession the documents necessary to insure compliance by the Peruvian government with Ker's extradition); United States v. Toscanino, 500 F.2d 267, *petition for reh'g en banc*

International kidnapping as a means of obtaining jurisdiction over fugitives frequently occurs in the modern world.[76] Agents of a state which desires to obtain jurisdiction over a fugitive abduct the fugitive within the territorial jurisdiction of one state and transport him to the other state.[77] The agents of the apprehending state may be government employees acting at the request of the apprehending state,[78] or they may be private individuals acting without authority from either the asylum state or the apprehending state.[79] This second type of agent usually acts out of pecuniary interest and is called a *bounty hunter.*

The history of bounty hunters in the United States dates from the period of the Old West.[80] In 1872 the Supreme Court of the United States recognized that the surety of a person released on bail could appoint someone to pursue a bail jumper and return the bail jumper to the jurisdiction to appear before the court,[81] but only if the bail jumper was located within the territory of the United States.[82] Bounty hunters, however, also had the powers of *de facto* deputies; they could ride after, capture, and return to the

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denied, 504 F.2d 1380 (2d Cir. 1974) (Toscanino was abducted from Uruguay, taken to Brazil, tortured and interrogated for almost three weeks, drugged, and then flown to the United States, where he stood trial for conspiracy to import narcotics); United States v. Herrera, 504 F.2d 859 (5th Cir. 1974) (Herrera escaped from the federal penitentiary, fled to Peru, was apprehended there by two United States agents and two Peruvian agents, and returned to the United States to stand trial on escape charges); Attorney General v. Eichmann, 36 I.L.R. 18 (Dist. Ct., Israel, 1961), *aff'd.*, 36 I.L.R. 277 (Supreme Ct. of Israel sitting as a Court of Criminal Appeal, 1962) (Eichmann was kidnapped from Argentina by Israeli agents who took him to Israel, where he was tried for committing war crimes as a Nazi during World War II; he was convicted and later hanged).

[76] *See* Note, *Constitutional and International Law - International Kidnapping - Government Illegality as a Challenge to Jurisdiction*, 50 TUL. L. REV. 169, 170 (1975).

[77] *See* Bassiouni, *Unlawful Seizures and Irregular Rendition Devices as Alternatives to Extradition*, 7 VAND. J. TRANSNAT'L L. 25, 28 (1974).

[78] *See* Feinrider, *Extraterritorial Abductions: A Newly Developing International Standard*, 14 AKRON L. REV. 27 (1980). This is the more common of the two types of agents. Government agents have devised a number of methods to apprehend fugitives: going to the asylum state and apprehending the fugitive himself; enlisting the aid of the asylum state to arrest and expel the fugitive, which is not kidnapping; enticing the fugitive over the border of the asylum state into a friendlier state where the fugitive is then promptly arrested; and hiring someone else to kidnap the fugitive. *Id.*

[79] *See id.* Private action occurs with less frequency than action by government agents, due to the advanced state of our extradition system and because bounty hunting as an occupation is almost non-existent today. *But see infra* notes 87-88 and accompanying text.

[80] *See Putnam County vs. Canada: Two U.S. Bounty Hunters Stir an International Legal Battle*, TIME, Aug. 8, 1983, at 58 [hereinafter cited as *Putnam County*].

[81] Taylor v. Taintor, 83 U.S. (16 Wall.) 366, 371 (1872).

[82] Reese v. United States, 76 U.S. (9 Wall.) 13, 21 (1869).

sheriff fugitives from the law.[83] In asserting jurisdiction over fugitives apprehended and returned by bounty hunters, courts use the *Ker-Frisbie*[84] rule which states that a court may claim jurisdiction over a criminal defendant without regard to the means by which he was brought before the court.[85] The *Ker-Frisbie* rule follows the ancient Roman maxim *male captus, bene detenum*, which translates: an illegal apprehension does not preclude jurisdiction.[86] Bounty hunting has declined and is limited today mainly to apprehending bail jumpers.[87] International kidnapping is the means by which most bail jumpers are apprehended, because it is as easy for them to flee the United States as it is to flee to another state.[88]

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[83] *See Putnam County*, *supra* note 80.

[84] This rule was developed from two cases, Ker v. Illinois, 119 U.S. 436 (1886) and Frisbie v. Collins, 342 U.S. 519, *reh'g denied*, 343 U.S. 937 (1952).

[85] *See, e.g.*, Gernstein v. Pugh, 420 U.S. 103, 119 (1975) (The Court stated that it would not retreat from the established rule that illegal arrest or detention does not void a subsequent conviction.); United States v. Marzano, 537 F.2d 257, 271 (7th Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977) (Impropriety of the method used to bring a person before the court does not affect the power of the court to try that person.); United States v. Quesada, 512 F.2d 1043, 1045 (5th Cir.), *cert. denied*, 423 U.S. 946 (1975) (Arguments of defendant that his kidnapping from his homeland of Venezuela by United States federal agents denied him due process are without merit.); United States *ex rel.* Lujan V. Gengler, 510 F.2d 62, 65 (2d Cir.), *cert. denied*, 421 U.S. 1001 (1975) (The Supreme Court has never felt compelled to disavow the *Ker-Frisbie* rule.); United States v. Winter, 509 F.2d 975, 985-87 (5th Cir. 1975), *cert. denied*, 423 U.S. 825 (1976) (The court explained that, although the *Ker-Frisbie* rule has been criticized, the Supreme Court has never refused to apply it.); United States v. Herrera, 504 F.2d 859, 860 (5th Cir. 1974) (Defendant's contention that his illegal kidnapping from Peru by federal agents divests the court of jurisdiction is without merit.); United States v. Cotten, 471 F.2d 744, 748 (9th Cir.), *cert. denied*, 411 U.S. 936 (1973) (The *Ker-Frisbie* principle, though criticized, has been widely reasserted.); United States *ex rel.* Calhoun v. Twomey, 454 F.2d 326, 328 (7th Cir. 1971) (No decision of the Supreme Court has rejected the *Ker-Frisbie* rule.); Hobson v. Crouse, 332 F.2d 561 (10th Cir. 1964) (The *Ker-Frisbie* rule is firmly established.); *cf.* United States v. Lira, 515 F.2d 68, 70 (2d Cir. 1975), *cert. denied*, 423 U.S. 847 (1976) (The *Ker-Frisbie* rule will apply only where United States government agents do not engage in outrageous and reprehensible conduct in their apprehension of fugitives.). *But see* United States v. Toscanino, 500 F.2d 267, 275, *petition for reh'g en banc denied*, 504 F.2d 1380 (2d Cir. 1974) (The court held that kidnapping of a fugitive violates the fourth amendment guarantee against unreasonable seizures and, therefore, the defendant should be released and returned to the state where he was found.); United States v. Edmonds, 432 F.2d 577, 583 (2d Cir. 1970) (The court questioned whether the Supreme Court would still adhere to the *Ker-Frisbie* rule.); *see also* Note, *supra* note 76, at 175 (expressing the view that the holdings of *Toscanino* and *Lujan*, taken together, force a court to scrutinize the means by which jurisdiction is obtained over a criminal defendant, thereby restricting application of the *Ker-Frisbie* rule).

[86] *See* Note, *supra* note 76, at 171.

[87] *See Putnam County*, *supra* note 80.

[88] *See* Gress, *Jaffe Incident Trying U.S.-Canada Relations*, Atlanta J. & Const., Aug. 21, 1983, at 32-A, col. 4. One known bounty hunter has boasted of accomplishing international kidnappings in 21 nations.

Bounty hunting is not the only motivation for international kidnappings. As the *Eichmann*[89] case demonstrates, revenge may also be a factor in the commission of an international kidnapping. Adolf Eichmann was a lieutenant colonel in the SS[90] in Nazi Germany prior to World War II. In 1939 he was appointed head of the Gestapo[91] sub-section on Jewish affairs.[92] This position gave him responsibility for the "Final Solution": the complete extermination of the Jews.[93] Eichmann escaped from Germany at the end of World War II.[94] Israeli agents traced Eichmann to Argentina, where they apprehended him in 1960.[95] Eichmann was taken to Israel, tried, found guilty for war crimes and crimes against humanity, and sentenced to death.[96]

Argentina and the rest of the world were appalled by the Israeli actions.[97] Argentina demanded that Eichmann be returned immediately to stand trial under Argentine law; Israel refused.[98] Argentina then brought the matter before the United Nations, where Israel all but admitted that the abduction had been illegal, yet still refused to return Eichmann.[99] After much debate in the Security

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[89] Attorney General v. Eichmann, 36 I.L.R. 18 (Dist. Ct., Israel, 1961), *aff'd*, 36 I.L.R. 277 (Supreme Ct. of Israel sitting as a Court of Criminal Appeal, 1962). For a brief description of the incident, *see supra* note 75.

[90] SS refers to the elite personal guards of the leaders of Nazi Germany. OXFORD AMERICAN DICTIONARY, 890 (1980).

[91] The Gestapo was the German secret police. *Id.* at 365.

[92] *See* C. WIGHTON, EICHMANN: HIS CAREER AND CRIMES 83 (1961).

[93] *See id.* at 84. Eichmann is credited with having originated the plans for both the gas chambers and the crematoria used to exterminate the Jews. *See id.* at 116-33.

[94] *See id.* at 249-52; *see also* M. PEARLMAN, THE CAPTURE AND TRIAL OF ADOLF EICHMANN 36-37 (1963). Eichmann remained in Germany and Austria until May of 1950. At that time he escaped to Argentina and assumed the new identity of Ricardo Klement, an Austrian Catholic from Bozen.

[95] Descriptions differ about the apprehension of Eichmann. One author suggests that Eichmann, believing his abductors to be Argentine police, cooperated completely and, even after realizing they were Israeli agents, admitted his true identity and acted relieved. *See* C. WIGHTON, *supra* note 92, at 277-78. Another author, however, states that Eichmann immediately resisted the abduction and was knocked to the ground and thrown on the floor of the abductor's car. *See* M. PEARLMAN, *supra* note 94, at 54-56. What is certain, though, is that Eichmann was abducted on May 11, 1960, was kept in hiding in Argentina by Israelis until May 20, and was then transported to Israel aboard a diplomatic airplane.

[96] *See* M. PEARLMAN, *supra* note 94, at 628-29.

[97] *See generally id.* at 62-79; C. WIGHTON, *supra* note 92, at 283-84; Y. ROGAT, THE EICHMANN TRIAL AND THE RULE OF LAW 24 (1961).

[98] *See* C. WIGHTON, *supra* note 92, at 284.

[99] *See* Y. ROGAT, *supra* note 97, at 24. Israel agreed that the abduction had been a violation of both international law and Argentina's territorial sovereignty. *But see* M. PEARLMAN, *supra* note 94, at 73-75 (Prime Minister Meir denied that Israel violated or ever intended to violate Argentina's sovereignty).

Council, a resolution[100] was passed in which Israel agreed to make a formal apology and pay reparations to Argentina.[101] Eichmann was later hanged by the Israelis.

As demonstrated by the United Nations Security Council resolution,[102] international kidnapping has been soundly denounced.[103] The criticism ranges from arguments that international kidnapping is too hazardous and uncertain to be considered a viable alternative to extradition[104] to arguments that international kidnapping is a gross violation of both territorial sovereignty and customary international law.[105] Nonetheless, the ability to accomplish in a short period of time the same objective that extradition takes weeks or months to complete makes international kidnapping a useful tool for obtaining jurisdiction over fugitives from the law.

III. UNITED STATES-CANADA RELATIONS

Due to their thousands of miles of shared boundary, the United States and Canada have enjoyed a long history of mutual extradition.[106] The provisions of Jay's Treaty[107] were largely confined in practice to relations between Canada, then a British colony, and the United States.[108] After the expiration of the treaty in 1806, the United States and Great Britain entered into no common extradition treaties until 1842.[109] The United States and Canada, how-

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[100] 15 U.N. SCOR (868th mtg.) at 1, U.N. Doc. S/P.V. 868 (1960), *reprinted in* 1960 Y.B.U.N. 196, 198 (the resolution denounced the abduction as an action which could endanger international peace and security).

[101] *See* M. PEARLMAN, *supra* note 94, at 77-79. Israel tendered a second formal apology. While the apology was apparently accepted by Argentina, the Israeli ambassador to Buenos Aires was declared *persona non grata*. All diplomatic ties between the two states were not severed, however, and new ambassadors were exchanged after a cooling-off period.

[102] *See supra* note 100 and accompanying text.

[103] *See* M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at V § 1-3; Abramovsky & Eagle, *U.S. Policy in Apprehending Alleged Offenders Abroad: Extradition, Abduction, or Irregular Rendition?*, 57 OR. L. REV. 51, 63 (1978).

[104] *See* I. SHEARER, *supra* note 1, at 75. The practice is dangerous to all involved, whether fugitive, abductor, or even innocent bystander.

[105] *See* M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at V § 1-3.

[106] *See* G. LAFOREST, *supra* note 1, at 2; E. CLARKE, *supra* note 7, at 28, 88.

[107] *See supra* notes 20-27 and accompanying text.

[108] *See* G. LAFOREST, *supra* note 1, at 2. The only time Jay's Treaty was used with Great Britain rather than with Canada was the Robbins case, *supra* notes 22-27 and accompanying text, after which the treaty was allowed to expire.

[109] *See* E. CLARKE, *supra* note 7, at 38. Being a colony of Great Britain, Canada was not able to conclude its own extradition treaties with states not a member of the Commonwealth.

ever, continued voluntarily to extradite fugitives to each other.[110] Canada also passed an Extradition Act[111] governing the surrender of any persons charged in a foreign country with a crime which, if committed in Canada, would have been punishable by death or hard labor.[112]

The Webster-Ashburton Treaty,[113] signed by the United States and Great Britain in 1842, appeared to narrow the scope of extradition then existing between the United States and Canada.[114] The treaty superseded the Canadian Extradition Act as between Canada and the United States, and it listed fewer extraditable offenses than the earlier act.[115] The United States and Canada subsequently entered into a number of Supplementary Conventions to the Webster-Ashburton Treaty designed to enlarge the scope of the original treaty.[116] The treaty and its conventions were invoked a number of times to extradite fugitives between the two states.[117]

In 1971 the United States and Canada signed a treaty which, when entered into force in 1976, superseded the Webster-Ashburton Treaty.[118] Under the terms of the new treaty, the United States and Canada agreed to the extradition of fugitives found in their respective territories.[119] The fugitive must have violated one of the offenses listed in the treaty,[120] and the offense charged must

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[110] *See* G. LAFOREST, *supra* note 1, at 2; E. CLARKE, *supra* note 7, at 38.

[111] Extradition Act, 1833, 3 Will. 4, ch. 6. The Act was passed by the legislature of Upper Canada to remedy a situation in which the Governor of Canada refused to extradite to the United States four Canadian men who crossed the border and killed a woman who was a citizen of the United States.

[112] *See* G. LAFOREST, *supra* note 1, at 2-3. Before the Act, one man had been extradited from the United States to Canada in 1819, and one had been extradited from Canada to the United States in 1827. After the Act was brought into force, Canada could unilaterally extradite any fugitive, even a national, to any requesting state in the world. In practice, however, the Act in practice was confined to United States-Canada relations.

[113] Webster-Ashburton Treaty, Aug. 9, 1842, United States-Great Britain, 8 Stat. 572, T.S. No. 119.

[114] *See* G. LAFOREST, *supra* note 1, at 4.

[115] *See id.* The treaty also afforded fugitives the opportunity to escape apprehension by requiring that a request for the arrest of the fugitive be received by Canada before a fugitive could be detained. The Act, while no longer controlling relations between Canada and the United States, remained in effect until 1860 between Canada and states with which Great Britain had no extradition treaty.

[116] Six Supplementary Conventions have been signed since 1842. For a list of these Conventions, see *id.* at 163-71.

[117] *See* E. CLARKE, *supra* note 7, at 60-67, 70-72, 77-79, 82-87.

[118] Treaty on Extradition Between the United States of America and Canada, Dec. 3, 1971, United States-Canada, 27 U.S.T. 983, T.I.A.S. No. 8237 (Mar. 22, 1976).

[119] *See id.* at art. 1.

[120] *See id.* at Schedule. The Schedule lists thirty major areas of offenses ranging from

meet the requirement of double criminality.[121] Though the treaty contains certain exceptions,[122] it is still relatively extensive in scope. The treaty is to be used when a person commits a major crime in one of the countries and flees to the other country to escape prosecution. Upon formal application of the requesting state, if the activity meets the requirements of the treaty, then the fugitive will be extradited to the requesting state. It was in the context of this background and the 1971 Treaty that the events in the Jaffe incident occurred.

IV. THE JAFFE INCIDENT

Sidney Jaffe was a Florida land developer who in 1980, was engaged in the sale of newly created subdivisions.[123] He ran into difficulties, however, and was arrested on charges of violating Florida's new Land Sales Act.[124] Bail was posted for Jaffe by a professional bonding company, and he was released from jail.[125] Fearing prosecution, Jaffe fled to Toronto, obtained Canadian citizenship, and failed to appear for his preliminary hearing in Florida. Faced with the prospect of losing its investment, the bonding company applied to the state Attorney General for the commencement of extradition proceedings.[126]

The extradition proceedings advanced slowly, and the bonding company feared it would have to forfeit its bond.[127] There were also some questions as to whether land sale violation charges were extraditable under the 1971 Treaty.[128] The bonding company, therefore, commissioned one of its agents, Daniel Kear, to abduct Jaffe from his Toronto home. Kear enlisted the aid of Timm Johnsen, a professional bounty hunter, to help him bring Jaffe back to

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kidnapping, murder, and rape to larceny and bribery.

[121] *See id.* art. 2.

[122] *See id.* arts. 4-7.

[123] *See* Harper, *Jaffe Charges Brutality in Extradition*, Fla. Times-Union & Jacksonville J., Jan. 8, 1984, at A-1, col. 1.

[124] 16 FLA. STAT. ANN. § 498 (West 1982). Jaffe was the first person to be charged under this law, and his arrest was seen as a message for developers to "clean up their act." *See* Harper, *supra* note 123, at A-10, col. 4.

[125] Bail was set at $137,500. Kear v. Hilton, 699 F.2d 181 (4th Cir. 1983).

[126] *See Putnam County*, *supra* note 80.

[127] *See* Gress, *supra* note 88.

[128] *See* Treaty on Extradition Between the United States of America and Canada, *supra* note 118. The Schedule of Extraditable Offenses contained in the Treaty, following the enumerative method, speaks of fraud and of obtaining money by false pretenses, but does not specifically address the issue of land sales violations; the treaty could, therefore, be strictly interpreted to protect Jaffe from extradition.

Florida.[129]

Kear and Johnsen went to Toronto to retrieve Jaffe. Posing as a policeman, Johnsen approached Jaffe after the latter's morning jog to ask him a few questions.[130] Jaffe was subsequently thrown in the back of a rented car and driven to the border, after which he was flown back to Florida. Upon his arrival in Florida, Jaffe was arrested for jumping bail and was incarcerated.[131] He was convicted in October, 1981, on twenty-eight counts of illegal land sales and was sentenced to thirty years in prison; he also received a five year sentence for jumping bail.[132]

The Canadian government was infuriated by the abduction of Jaffe.[133] As Argentina had done during the Eichmann incident,[134] Canada complained that its national sovereignty had been violated.[135] Federal officials in the United States also sought Jaffe's release, a request refused by Florida authorities. Florida cited an 1872 Supreme Court decision which held that a bondsman or his agent could pursue and return the bail jumper to the jurisdiction to appear before the court.[136] Canadian authorities then requested the extradition of Kear and Johnsen to stand trial on kidnapping charges.[137] The two have been extradited to Canada and are free on bond pending trial for Jaffe's kidnapping.[138]

There are many differences between the cases of Eichmann and Jaffe. First, a comprehensive extradition treaty existed in Jaffe's

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[129] *See Kear*, 699 F.2d at 182.

[130] *See* Atlanta Const., Sept. 30, 1983, at 32-A, col. 1; *see also* Harper, *supra* note 123. This event occurred on September 23, 1981.

[131] *See* Harper, *supra* note 123. Jaffe claimed he was treated brutally both during the abduction and after his incarceration, where he avers he was made to sleep in a drunk tank holding cell.

[132] *See id.* The sentence for the illegal land sales was overturned in October of 1983, but the bond-jumping conviction was upheld. Under pressure from both the United States and the Canadian governments, Florida authorities then released Jaffe on bond pending trial on organized fraud charges.

[133] Canada appeared in United States federal court to protest the abduction. *See* Atlanta Const., *supra* note 130.

[134] *See supra* notes 89-101 and accompanying text.

[135] *See* Atlanta Const., *supra* note 130. Since Jaffe had obtained Canadian citizenship, the Canadian authorities also felt that one of their citizens had been kidnapped.

[136] Taylor v. Taintor, 83 U.S. (16 Wall.) 366, 371 (1872). This decision was tempered by another case which held that the bail jumper, in order to be apprehended, must be located within the territory of the United States. *See* Reese v. United States, 76 U.S. (9 Wall.) 13, 21 (1869).

[137] *See* Atlanta Const., *supra* note 130.

[138] *See* Harper, *supra* note 123. A preliminary hearing has been held on the issue of whether to bind the two bounty hunters over for trial, but no decision has been made.

case; none existed in the case of Eichmann.[139] While some doubt existed that Canada would extradite Jaffe,[140] there was no doubt that Argentina would refuse to surrender Eichmann to the Israelis.[141] Second, there was a substantial question as to whether Israel had jurisdiction over Eichmann for his "war crime." Eichmann had never been a citizen of Israel, nor had any of the crimes for which he was accused been committed within Israeli territory.[142] In contrast, Jaffe had been a United States citizen at the time he allegedly committed the crimes, and all of the activity alleged to be criminal had occurred within United States territory. Third, the nature of the crimes allegedly committed by the fugitives was very different. Eichmann was accused of war crimes and crimes against humanity for ordering the extermination of six million European Jews.[143] Jaffe, on the other hand, was charged with illegal land sales within the state of Florida. Finally, the motives for the abductions were significantly different; the Israelis were seeking revenge for murder, while the employers of Kear and Johnsen were simply trying to prevent an economic loss.

V. CONCLUSIONS

There are problems with the use of both extradition and international kidnapping. Although the federal courts have held that extradition is to be applied liberally,[144] many extradition treaties are nonetheless very rigidly written and enforced. International kidnappings then occur out of frustration over the problems connected with the use of legitimate channels to have a fugitive returned.[145] The use of international kidnapping creates its own problems, especially if the abductors become over-zealous in carry-

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[139] *See generally* C. WIGHTON, *supra* note 92, at 268. An extradition treaty between Argentina and Israel had been negotiated at the time of Eichmann's capture, but had not yet been ratified.

[140] *See supra* note 128 and accompanying text.

[141] *See* C. WIGHTON, *supra* note 92, at 268. Eichmann was known to have friends in the upper echelons of the Argentine government, people who could easily alert him and afford him the opportunity to escape. The Israeli government also knew of the Argentine government's failure to cooperate with West Germany on the extradition of another well-known war criminal, Dr. Josef Mengele. *See id.* at 270-71.

[142] *See id.* at 268.

[143] *See id.* at 282.

[144] *See* Factor v. Laubenheimer, 290 U.S. 276, 293 (1933) (Narrow constructions of conflicting treaty obligations are to be avoided.); Villareal v. Hammond, 74 F.2d 503, 505 (5th Cir. 1934) (extradition treaties are to be liberally construed).

[145] *See generally* M. BASSIOUNI, UNITED STATES LAW AND PRACTICE, *supra* note 1, at V § 1-3.

ing out their task, or if the fugitive becomes violent in his resistance. In addition, the territorial sovereignty of an asylum state is violated during an international kidnapping, creating tensions between the states involved.

International kidnappings will probably continue until the worldwide extradition system becomes more consistent and flexible. The extradition system also needs more effectively to define extraditable offenses so that fugitives such as Jaffe are not able to evade extradition merely because the offense charged does not exactly fit the provisions of the extradition treaty. The system should be less time-consuming while at the same time insuring that the fugitive is not deprived of his basic rights. Perhaps *Ker-Frisbie*[146] and similar rules need to be modified to allow a court to refuse jurisdiction over a person brought before it by means of international kidnapping.

As has been shown, many problems need to be corrected before international kidnapping can be eliminated as a means of acquiring jurisdiction over a fugitive from justice. Changes need to be made both in the perceptions of extradition and in the acceptance of international kidnapping. The formal, legal method of extradition, as outlined in the treaties, must be conducted without hesitation or question. It is only in this way that the continued utilization of international kidnapping will be viewed as an unacceptable means of obtaining jurisdiction over a fugitive who has fled to another country.

Wade A. Buser

[146] *See supra* notes 85-87 and accompanying text.