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## Delays in the Extradition Process: What I Would Tell A Judge in Washington, D.C.

By David Zapp

An incident occurs in Colombia or elsewhere with a Colombian nexus: a seizure of cocaine, or a plane laden with cocaine abandoned in Mexico. DEA catches wind of the situation and decides to mount an investigation, so they enlist the help of the Colombian National Police (CNP). Although DEA maintains control of the investigation, it is reluctant to designate the investigation, conducted with the assistance of the CNP, a “joint venture.”

A joint venture means that the CNP, when investigating Colombian citizens, must extend to them the same rights given to American citizens under American law. For example, Americans are protected from unreasonable search and seizure; they are given Miranda warnings before being questioned. The U.S. does not want Colombian suspects to have the benefit of American constitutional rights because this will restrict the CNP’s investigation, and complicate any case that U.S. prosecutors may then want to bring.

If a Colombian investigation yields results and a group of conspirators is identified, the United States will request the extradition of those group members. The arrest warrants will be issued by the CNP on behalf of the United States – not for crimes against Colombia, but for crimes against the United States: importation of narcotics, money laundering, and so on. The CNP makes the arrests, the defendants are taken into custody and incarcerated in a prison financed by the United States and built according to specifications suggested by the U.S. Bureau of Prisons. (Not surprisingly, Colombian correctional facilities look a lot like U.S. federal prisons.)

There, defendants spend eight months to two years waiting to be extradited; even those who consent to extradition – and a surprising number do – have to wait. After this lengthy period of incarceration before they have received due process, the defendants are extradited to the District of Columbia and provided with a Federal Defender, a lawyer assigned to the case by the court. But, upon their arrival in the U.S., the defendants are informed that discovery in their case cannot yet take place – maybe because the evidence has not arrived from Colombia, or documents have not been translated – and that it will take at least another two months to provide their lawyers with the prosecution’s evidence. Federal Defenders rarely raise an objection to an adjournment – which constitutes a further delay and further time incarcerated without trial for the defendants – because most of them feel overwhelmed, never having handled a case involving Colombian defendants and extradition from Colombia before.

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This delay is totally unjustifiable. From the time the investigation ends to the time these defendants are brought to the U.S. – many months or even years – U.S. prosecutors have had ample time to gather evidence from Colombia (or any other country for that matter), have documents translated, evidence catalogued and organized ready for supply to the defendants upon their arrival. In fact, there is no reason why a defendant should not be given the opportunity to review the evidence against him while he is still in Colombia, awaiting extradition. There is nothing in the Federal Rules of Criminal Procedure, Rule 16, “Discovery and Inspection,” to prevent a court from directing that the government turn over the discovery material, “[u]pon a defendant's request.” The only requirement is that a defendant make the “request” for discovery.

Very often, additional defendants get added to cases in dribs and drabs over an extended period. Each time, they are extradited from Colombia in the same haphazard fashion described above; and each time the “speedy trial” clock has to be reset. Rules of trial procedure require a defendant to be tried within 70 days, subject to extensions for things like the filing of motions or plea negotiations. Thus, if either party seeks to make a motion, say at the 35-day mark, the speedy-trial clock will pause at the 35th day until the motion has been made and ruled on. Then the clock resumes. But if a co-defendant is added to the case, on his arrival from Colombia he, too, is subject to a 70-day speedy-trial timeframe. This can mean that the original defendants’ clock is reset to the beginning again. And if, later, yet more co-defendants get added to the same case, this process may be repeated again and again. Each time, the original defendants are effectively denied a speedy trial. Some judges – especially in the Southern and Eastern Districts of New York – run out of patience after a while; they might eventually set a final 70-day deadline and order that additional alleged co-conspirators be tried separately later if prosecutors cannot pull them into the main case (or defense counsel cannot be ready) in time. But, in D.C., delay after delay is routine.

Prosecutors can also ask to further toll the speedy-trial clock based on the fact that the case is exceptionally complex. Judges are only too ready to grant such requests despite the fact that most Colombian conspiracy cases are not inherently complex. The logistics of bringing witnesses into the country may be “complex” because the process often has to go through the State Department, but the cases themselves are generally no different from those involving homegrown defendants – declaring them to be “complex” is just a convenience by which prosecutors gain more time. Typical evidence against Colombian defendants includes wiretap interceptions and cooperators just as it does in cases involving American drugs defendants. A dealer making deliveries in Colombia uses code language just as an American dealer would, and conducts meetings in a similarly guarded manner. The only thing special about the evidence in a trial with a Colombian component is the obvious need to get wiretapped conversations and documents translated, a simple administrative task. That aside, there is no reason for an American prosecutor, or a defense attorney, however inexperienced, to find it harder to prepare his case than he would if the alleged criminal acts had been committed by American citizens on American soil.

Tax fraud can be complex – the sophisticated accounting techniques, dummy corporations and cover-ups that usually accompany such cases require careful analysis, and preparing the presentation of the evidence for a lay jury takes time. Terrorism cases, in which foreign customs and traditions may need to be taken into account, can be relatively complex. But drugs cases? Not really. Not when the extended extradition process has already given the government ample time to conduct interviews and transport witnesses. Characterizing the case as “complex” merely results in months or years of unconscionable additional incarceration and deferment of due process.

Defendants have a right to a timely disposition of their cases. One could argue that foreign defendants are, if anything, more entitled – not less – to this courtesy. After all, they find themselves placed in an environment that is alien to them; they may never have been inside the United States before, and for their first introduction to the country to be a jail in the southeast section of Washington, D.C is nothing if not anxiety-provoking. Their families probably will not get to visit because they cannot get visas. Those who will ultimately be acquitted deserve to be able to get back to their homes and lives as quickly as possible. Those who will not are still entitled not to have to wait endlessly for resolution, whatever it may be. Conditions of confinement in the D.C. jail are so distressing that foreign defendants often plead guilty just to bring the ordeal to a close; no one who takes pride in our criminal justice system should find that an acceptable basis on which plea decisions are taken.

The most aggravating aspect of this situation is that, with the will to do so, it could easily be improved. American authorities could request that their Colombian counterparts, with whom they have an excellent working relationship and to whom they give billions of dollars in aid (Colombia is the third largest recipient of U.S foreign aid), speed up the extradition process. A Panamanian defendant who waives extradition can arrive in the U.S. within a week. Along with the injustice, there is also at least one irony in the scattershot approach to extradition from Colombia, and to the way in which the American authorities develop their cases against Colombian conspirators. The first defendants arriving in the U.S. may have to wait to be judged, but on the other hand they do get an opportunity to plea bargain by cooperating with American law enforcement. Defendants who arrive here in a later wave of extraditions may find themselves receiving relatively prompt trials, but their chance of a lighter sentence in a plea bargain is slim, because by the time they set foot in the U.S. any information they might have been willing to trade will be stale.

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