

**Testimony of Jonathan M. Winer
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U.S. Commission on Security and Cooperation in Europe (Helsinki Commission)

Justice in the International Extradition System: The Case of George Wright and Beyond”

Wednesday, July 11, 2012

2:00 p.m.

Room 2203, Rayburn House Office Building

Mr. Chairman and Honorable Members of the Committee:

As former Deputy Assistant Secretary of State for International Law Enforcement, I am honored to testify today to share my views regarding the international extradition system, and the options for the United States when the legal systems of other countries fail to meet the requirements of justice in connection with a legally proper extradition request from our country.

During my tenure in the State Department, I dealt with U.S. policies relating to extradition on many occasions. Then and since, our government has worked to vindicate one underlying goal with regard to fugitives: to secure their return to the U.S. to provide justice for our citizens regardless of the location of a criminal, anywhere. Our diplomats and law enforcement professionals have worked for decades to build a global system to secure this goal internationally. Yet there are times, such as the case involving George Wright, in which justice is denied by a foreign legal system, and the U.S. has to consider options beyond relying on a traditional extradition.

I would like to begin my testimony with my assessment of the George Wright extradition case from a legal perspective, before turning to U.S. options beyond extradition to deal with this and similar cases.

1. THE PORTUGUESE DECISION TO REFUSE EXTRADITION WAS LEGALLY INDEFENSIBLE UNDER OUR BILATERAL TREATY AND UNDER INTERNATIONAL LAW

In brief, the reported decision by the Portuguese judge to refuse Wright’s extradition to the U.S. is legally indefensible under the century-old U.S.-Portuguese Extradition Treaty, and under the principles of extradition law that apply internationally. Neither of the reported grounds for refusal – on the statute of limitations ground and on the ground that he had later become a Portuguese citizen by marriage – is legally legitimate under such principles. Before escaping from prison and from the U.S. through a terrorist hijacking of an airplane, Wright had been convicted of the murder of Walter Patterson, pleading no defense to charges which arose from an armed robbery in which he participated.

The statute of limitations does not run once one has been convicted of a crime. It applies after a specified number of years when a country’s prosecutors have failed to try a case, in order to ensure that the facts are fresh and the trial is fair. Some countries do limit extradition of natural-born citizens to another country, although the U.S. discourages this principle and does not apply it itself. But applying

this principle to someone who has lied about their past, lied about their name, and arrived in a country such as Portugal as a fugitive is a fraud on all jurisdictions involved. A U.S. citizen such as Wright cannot legitimately be protected from extradition by claiming to have become a citizen of another country after committing his crimes. The Portuguese judge's decision on these two issues is legally wrong, morally unjust, and should be given no respect whatsoever by any government beyond that of Portugal.

This analysis takes us to the core question you have asked me to consider – exploring the U.S. government's options for response. I would like to consider each in turn.

2. GET PORTUGAL TO DO THE RIGHT THING

Portugal could still take action to meet its obligations to the United States and to secure justice in this case. Wright appears to have entered Portugal through under a false name, and with materially incomplete or false information about his past. Based on the facts known, he may well have engaged in immigration fraud to enter Portugal and to stay there. It appears that the true facts were not known to Portuguese authorities until 2011. In such cases, under the principles of universally applicable immigration law, Portugal appears to have the right to revoke citizenship, and to deport the person who abused its system. Were Portugal to take these steps, they could put Wright on a plane to the U.S. Or, even if Portugal dropped somewhere else to avoid legal questions about whether his deportation was a disguised extradition, the United States could secure his extradition from essentially any other country that received him, even ones with whom we do not have bilateral extradition relationships, under applicable multilateral agreements, such as the Palermo Transnational Organized Crime Convention.

3. USE INTERPOL, EUROPOL, AND OTHER INTERNATIONAL INSTITUTIONS AGGRESSIVELY

George Wright is currently listed by the United States on INTERPOL's public wanted database as a fugitive. There is therefore a public "Red Notice" on him. However, the public notice I accessed this week remains out of date. It provides little information for others to use to arrest him. It does not state that he is living in Portugal, does not state his Portuguese name, José Luís Jorge dos Santos, does not list his current residence, the village of Casas Novas, just 25 miles from Portugal's capital. It also does not list any identity information, such as a passport, that he may be using for travel in the European Union or elsewhere. Every biographical detail that the U.S. government has on Wright should be provided to INTERPOL, with those necessary to help police and others track him down made publically available.

The U.S. could also alert EU bodies, such as EUROPOL, about its goal of having Wright extradited. EUROPOL has the job of tracking down fugitives within the European Union, and while it is directly responsible to its EU members, it has capacities to track down people throughout the European Union.

The FBI has a network of legal attachés throughout Europe, and these attachés, known as LEGATS, could also advise their counterparts of the U.S.'s current interest in Wright, with the goal of intensifying focus on him in the event he considers leaving Portugal.

4. USE THE STATE DEPARTMENT REWARD PROGRAM TO SECURE PRIVATE ASSISTANCE IN RENDERING WRIGHT FROM PORTUGAL

The United States has had reward programs in place for the rendition of important fugitives back to the United States. When I was at the State Department, these reward programs focused on two principle types of defendants – major drug traffickers and major terrorists. In some cases, we put their photographs and names on books of matches and distributed them in the countries where we knew they were located, with the intention that the rewards would motivate people who lived nearby to provide information to the United States on their whereabouts. Alternatively, a reward might lead to a citizen’s arrest, in which the person making the detention would take actions to get the wanted person to U.S. authorities in a location where the U.S. officials could hold the fugitive and get them into U.S. custody.

When I served during the Clinton Administration this was known as a “special rendition,” and it was authorized under a number of circumstances, especially involving terrorists and murderers. The Justice Department policy for many years under a succession of Administrations has been to take the view that we will not inquire into the circumstances of a fugitive’s rendition to the United States.

This approach has been upheld by the Supreme Court. In *United States v. Alvarez-Machain*, 504 U.S. 655 (1992), the Supreme Court ruled that a court has jurisdiction to try a criminal defendant even if the defendant was abducted from a foreign country against his or her will by United States agents.

I note that hijacking an airplane and holding a gun to the head of a flight attendant, as Wright has reportedly admitted to doing, to effectuate his escape from the United States, is a terrorist offense under multiple relevant international conventions of essentially global applicability, and is a terrorist offense recognized by Portugal.

The Justice Department’s internal procedures expressly allow the use of bounty hunters and rewards. As stated in the U.S. Attorneys’ Manual:

Due to the sensitivity of abducting defendants from a foreign country, prosecutors may not take steps to secure custody over persons outside the United States (by government agents or the use of private persons, like bounty hunters or private investigators) by means of *Alvarez-Machain* type renditions without advance approval by the Department of Justice. Prosecutors must notify the Office of International Affairs before they undertake any such operation. If a prosecutor anticipates the return of a defendant, with the cooperation of the sending State and by a means other than an *Alvarez-Machain* type rendition, and that the defendant may claim that his return was illegal, the prosecutor should consult with OIA before such return.

5. USE A LURE TO GET WRIGHT TO LEAVE PORTUGAL

The United States government is authorized to use lures against foreign fugitives. A lure is a subterfuge to entice a criminal defendant to leave a foreign country so that he or she can be arrested in the United States, in international waters or airspace, or in a third country for subsequent extradition, expulsion, or deportation to the United States. As the Justice Department Attorney Manual explains, “lures can be complicated schemes or they can be as simple as inviting a fugitive by telephone to a party in the United States.”

There are a wide range of possibilities with a lure, which in light of Portugal's location could involve the cooperation of officials in nearby jurisdictions, and could involve lures on land or sea, as well as in airspace. In order not to give Wright further clues about how the U.S. might go about this, I will provide no further details on these possibilities, other than to note that for the rest of his life, he will need to suspect absolutely everyone of being a potential lure, ready to betray him to justice in the United States.

6. UNDERTAKE AN EXTRAORDINARY RENDITION

In responding to terrorism, the United States has long been willing to undertake extra-judicial measures on its own, as it did decades ago against the Achille Lauro hijackers who murdered Leon Klinghoffer by throwing him into the ocean from his wheelchair.

Such actions, in which U.S. government officials authorize direct action to capture a terrorist, can involve many different mechanisms. In some cases, such as the US Navy Seal operation that killed Osama bin Laden, the authorization may be to capture or kill the terrorist, as circumstances dictate. In other cases, the authorization may only extend to a capture of the wanted person. In principle, the U.S. government could choose to undertake a covert operation to snatch Wright as he is going about his day-to-day business, and to bring him to the United States to serve out his murder sentence, and if the law permits, to try him on his terrorist hijacking.

Notably, the use of bounty hunters, lures, and extraordinary rendition could well provoke significant protests on the part of the government of Portugal. There are precedents for those involved in these types of activities to become subject to criminal investigations and indictments in the country in which the fugitive is living. A successful extra-judicial rendition can also spark direct government-to-government protests which can chill a bilateral relationship for years, as happened between Mexico and the U.S. in connection with the Alvarez-Machain case.

Such risks must be taken into account by private persons involved in an extra-legal "snatch" of a fugitive and by U.S. officials when a rendition is the result of directed U.S. policy and activities.

7. APPLY TREASURY OFAC SANCTIONS TO WRIGHT AND THOSE WHO ASSIST HIM

The United States has active economic sanctions against terrorists, administered through the Office of Foreign Asset Control ("OFAC") at the U.S. Department of the Treasury. These sanctions are imposed against foreign threats who engage in activities, such as terrorism, that pose serious threats to U.S. national security. While Wright is a U.S. citizen, he is now located in Portugal and for the time being, is viewed by Portugal as a Portuguese citizen. Accordingly, the U.S. could designate Wright as a terrorist under OFAC sanctions, making it illegal for any U.S. person to engage in any transaction with him, and freezing any assets that he may have in any U.S. financial institution.

Although other countries need not apply such sanctions to a person designated as a terrorist by the U.S. by OFAC, in practice, sanctioned persons face difficulty in undertaking financial transactions at any major financial institution, anywhere, due to automatic OFAC screening put into place by any bank that has contacts with U.S. financial institutions. Sanctions may be particularly appropriate in this case, as

Wright has stated publicly that he hopes to write a book about his life. U.S. imposition of terrorist sanctions against him would make it much more difficult for him to sell the book and to profit off his crimes, and might make it possible for profits from the book to be seized by the U.S.

8. PUT BILATERAL PRESSURE ON PORTUGAL THROUGH LIMITATIONS ON OTHER BILATERAL PROGRAMS AND ACTIVITIES, SUCH AS IN THE LAW ENFORCEMENT OR SECURITY SPHERE

In principle, the U.S. could undertake steps to punish Portugal for its court's unjust refusal to extradite Wright. However, in the case of Portugal, such steps would likely frustrate rather than facilitate justice. To begin with, it would appear to be fundamentally unfair. The failure to extradite Wright was the decision of an independent local judge, not Portugal's government as a whole, its justice ministry, or its other law enforcement components. The U.S. and Portugal work closely on military issues, which include support for U.S. forces deployed throughout Europe, the Middle East, Asia, and Africa, as well as counterterrorism, humanitarian, and combat operations in Afghanistan and Iraq. U.S. law enforcement works daily with Portuguese counterparts on a range of activities of deep importance to the security of both countries. It would almost surely be counterproductive to place this cooperation at risk through generalized sanctions, restrictions, or constraints directed against Portugal to apply pressure to secure Wright's return to the United States.

That said, our Ambassador to Portugal, our law enforcement and intelligence agencies, and the State Department and Justice Department generally, can continue to raise this issue as one that needs to be resolved, inviting positive steps by Portugal, such as denaturalization and deportation, with the goal of securing justice for Walter Patterson, and for all of those victimized by Wright's criminal and terrorist activities.

9. BEYOND GEORGE WRIGHT – SECURING JUSTICE GLOBALLY

For many decades, the U.S. government has worked to build a global array of tools to extradite or otherwise secure the return of fugitives to the U.S., regardless of their location. These policies are sensible, and broadly serve the interests of the American people and of justice. There is nothing wrong with the international instruments and mechanisms we have in place. However, it is inevitable that in some particular cases, an extradition will fail and justice will be denied.

In such cases, as my testimony highlights, the U.S. has a set of graduated tools it can use to secure justice regardless.

Which of these tools will be most applicable in any particular case depends on the circumstances of the case, the governments involved, the attitude of the foreign government to the case, and a host of important institutional equities, such as bilateral cooperation on other security and law enforcement matters.

The Congress could strengthen the Executive Branch's ability to analyze and apply these tools and to consider whether it has other ones through encouraging ongoing interagency consideration of the

problems of failed extraditions. It was my experience that interagency discussions of such issues tended only to arise in an ad hoc fashion, relating to particular cases or particular bilateral relationships.

In preparing my testimony, I sought to find public sources on the question of how often extraditions requested by the U.S. are refused by other countries, and which ones. I found some documents that refer to extradition statistics, but these appeared to be ad hoc, and not fully responsive to the issues under consideration by the Commission. If no existing reporting requirement applies to such information, Congress could mandate that the President, in consultation with the Secretary of State and Attorney General, provide an annual report on extraditions to Congress covering such issues as total extraditions by country, number of extraditions requested, number of granted and numbers refused, reasons for refusal of extraditions, and steps taken by the U.S. in response to a refused extradition. Such a reporting requirement might provide for further focused attention on these issues by both the Executive Branch and by Congress, thereby facilitating and vindicating the goal of securing justice for all. Any Administration will have legitimate reasons to protect confidential intelligence, diplomatic and law enforcement programs, activities, and relationships. For that reason, the Committee may wish to consider structuring any such reporting mandate to provide for a public report that delivers statistical data and information on completed matters, with a classified appendix to cover matters that are ongoing or otherwise necessarily secret.

10. CONCLUSION: A FUGITIVE CAN RUN, BUT CANNOT HIDE, FROM JUSTICE

George Wright has expressed his relief at not being returned to the United States to serve out his prison sentence, and being allowed to spend the remainder of his life with his wife and his grown children, while profiting off his crimes by writing a book about them.

Walter Patterson and his family have been denied these and many other pleasures and instead forced to suffer outrageous injuries from Wright due to decisions he took of his own volition, without regard for the consequences to anyone.

In this case, and in other cases like this, it should be the policy of the United States to take appropriate steps to make sure that murderers and terrorists, wherever located, can never breathe the sigh of relief that they have reached safety as a result of outlasting law and justice.

Which of those steps should be taken in this case will depend on the consideration by those in the U.S. government with the most knowledge of the facts about what will best secure justice here. The Committee may contribute to that process through ongoing dialogue with those who have those current responsibilities.

I am available to respond to any questions you may have.

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For the Committee's background, I am currently a Senior Director at the Washington strategic communications firm of APCO Worldwide, where I provide strategic advice on a range of issues from financial services regulation to foreign investment and trade, consumer regulations, congressional

investigations, data protection, foreign corrupt practices, energy policy, information security, money laundering, national security and sanctions. At the State Department, I was one of the architects of U.S. international policies and strategies on promoting and harmonizing financial transparency, as well as on cross-border law enforcement issues. I led negotiations on these and related issues with the European Union and the Organization of American States, as well as bilaterally with China, Cyprus, Hungary, Israel, Lebanon, Nigeria, Poland, Russia, Thailand, and numerous other countries in Europe, Latin America, Southeast Asia, and Africa. I previously served for 10 years as chief counsel and principal legislative assistant to U.S. Senator John F. Kerry, handling and drafting legislation pertaining to financial regulation and working with the Senate committees on foreign relations and banking. During that time, I helped conduct a series of congressional investigations, including the investigation of the Bank of Credit and Commerce International from 1989-1992. In November 1999, I received a distinguished honor award from Secretary of State Madeleine Albright for my service at the State Department. The award stated that I "created the capacity of the Department and the U.S. government to deal with international crime and criminal justice as important foreign policy functions," and that "the scope and significance of his achievements are virtually unprecedented for any single official."