

COMMENT

HOW ROD STRUNK BEAT THE PHILIPPINE GOVERNMENT: PROBABLE CAUSE IN UNITED STATES EXTRADITION LAW*

Freddie R. Soto**

For many Filipinos, the murder of veteran actress and beloved cultural icon Nida Blanca¹ in 2001 was a national tragedy. Blanca, then sixty-five, had appeared in 163 films and more than a dozen television shows.² Her estranged husband Roger Lawrence “Rod” Strunk was eventually implicated,³ and the Philippine government requested his extradition, pursuant to the Republic of the Philippines-United States of America Extradition Treaty.⁴

However, the United States District Court for the Ninth District denied this.⁵ It held that the evidence presented regarding how Strunk allegedly conspired to have Blanca murdered was so inconsistent and conflicting that it could not lay a basis to find probable cause.⁶ Moreover, the competent, admissible evidence submitted by Strunk obliterated the Philippines’ case, which rested on a witness’s confession.⁷ Strunk was ordered immediately released.⁸

Blanca’s family and their lawyer blamed the Philippine Department of Justice (DOJ)⁹ and National Bureau of Investigation (NBI)¹⁰ for negligence in

Cite as Freddie Soto, Comment, *How Rod Strunk Beat the Philippine Government: Probable Cause in United States Extradition Law*, 79 PHIL. L.J. 199, (page cited) (2004).

* U.S. Project & Development Manager, United States Department of Housing and Urban Development. LL.M., International Law, Golden Gate University School of Law (2004). J.D., Michigan State University, College of Law (1991). B.A., University of San Diego (1988). The author is a Filipino-American who completed his primary and secondary education in the Philippines, and even had a brief stay at the Maryhurst Seminary in Baguio City. Although he never had the opportunity to study in the University of the Philippines, College of Law, he would like to dedicate this brief contribution to the late Professor Samilo Barlongay.

¹ “I [as] starred in over 163 movies and 14 TV shows and has received over 16 awards for movies and 6 awards for television during her 50-year film career.” Available at <http://www.imdb.com/name/nm0086984/bio>.

² *Nida Blanca murder suspect fights extradition to Manila*, SUNDAY TIMES, Oct. 19, 2003.

³ *In re Extradition of Strunk*, 293 F. Supp. 2d 1117, 1119 (2003).

⁴ *Id.*

⁵ *Id.* at 1140.

⁶ *Id.* at 1133.

⁷ *Id.*

⁸ *Id.* at 1140.

⁹ See Department of Justice, *Mandate, Mission and History of the DOJ*, at <http://www.doj.gov.ph/about.html> (last visited Aug. 30, 2004).

¹⁰ See National Bureau of Investigation, *About us*, at http://www.nbi.doj.gov.ph/about_us.html (last modified in 2001).

prosecuting the extradition request.¹¹ Filipino politicians soon joined the public debate. Senate President Franklin Drilon questioned “the quality of the investigative work and the evidence presented,” which “did not meet the standards of the U.S. judge.”¹² President Arroyo herself stated, “If serious lapses occurred, I shall demand accountability and ensure corrective action in the interest of justice.”¹³ Deputy Presidential Spokesman Ricardo Saludo threatened to impose sanctions on DOJ and NBI officials for their apparent neglect.¹⁴ He elaborated, “The neglect includes the failure to transmit documentary evidence on the murder of Strunk’s wife, actress Nida Blanca, to the California district court,”¹⁵ NBI Director Reynaldo Wycoco could only insist that his agency had provided all the necessary documents to the DOJ.¹⁶

In the Blanca case’s aftermath, Philippine Senator Manuel Villar formally asked the Senate Foreign Relations Committee to review the country’s extradition treaty with the United States. In Resolution No. 711, he alleged the treaty was “lopsided and serving only the best interests of the United States... to the detriment of serving the law enforcement needs of the Philippines.”¹⁷ American ambassador Francis Ricciardone believed there was no urgent need to review it, and claimed it served the purposes of both countries.¹⁸

Is the implementation of the RP-US Extradition Treaty really “lopsided” in favor of the United States? Is its review truly imperative? Or, as indicated by Senate President Drilon, is the real issue the quality of Philippine investigative work? This article argues the latter, and explains how future denials of extradition requests can be avoided by assembling evidence that hurdles American probable cause standards. The Philippine Court also admitted that extradition is a field that requires further study.¹⁹ This article hopes to fill precisely this gap.

I. EXTRADITION REQUESTS IN THE UNITED STATES

Absent a treaty or statutory directive, the United States Government’s executive branch has no power to surrender American citizens to a foreign government pursuant to extradition.²⁰ Thus, without an extradition treaty, foreign

¹¹ Ronnie Calumpita, *Court “bungled” Nida case*, MANILA TIMES, Nov. 18, 2003, at http://www.manilatimes.net/national/2003/nov/18/yehey/top_stories/20031118top6.html.

¹² Philip Tubeza & Leila Salaverna, PHIL. DAILY INQUIRER, Nov. 15, 2003.

¹³ Joel San Juan, *Justice Officials to file new extradition case vs. Strunk*, MANILA TIMES, Nov. 19, 2003.

¹⁴ *Global News Wire*, *Headline: Probe Strunk Bunglers*, MANILA STANDARD, November 18, 2003.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Jocelyn Montemayor, *US envoy defends extradition pact*, MALAYA, November 18, 2003, available at <http://www.philnews.com/nov18/news3.htm>.

¹⁸ Maila Ager, *Despite Palace, Senate rumblings, US envoy says extradition pact ok*, MANILA TIMES, November 18, 2003.

¹⁹ *United States v. Purganan*, G.R. No. 148571, September 24, 2002.

²⁰ *Valentine v. United States*, 299 U.S. 5, 8, 81 L. Ed. 5, 57 S. Ct. 100 (1936).

governments are generally powerless to pursue such fugitives once they enter United States territory.

The Philippines and United States executed an extradition treaty on November 13, 1994.²¹ It contains basic terms, including a prohibition against capital punishment,²² and provisions governing the duality of criminality,²³ the exclusion of political and military offenses,²⁴ and extradition procedures and required documentation for extradition requests.²⁵ Article 7(3) states that the “request for extradition... shall be accompanied by such evidence as, according to the law of the Requested State, would provide probable cause for his arrest and committal for trial if the offense had been committed there....”

A. THE EXTRADITION PROCEDURE

The United States’ processes extradition requests following the procedure set forth in Sections 3181-3195, Title 18 of the United States Code.²⁶ Generally:

1. The foreign government seeking an American citizen’s extradition must submit a formal request to the State Department, accompanied by documentation as specified in the treaty;
2. The State Department reviews and approves the request;
3. The State Department forwards the extradition request to the United States Attorney where the defendant or fugitive is located;
4. The State Department initiates the extradition proceeding in the appropriate District Court.
5. The district court magistrate certifies (or denies) the request to the Secretary of State.
6. The Secretary of State conducts an independent review and determines whether to issue a warrant of surrender or not. The Secretary of State has full discretion whether or not to issue the warrant. This decision is not open to review by the court.²⁷

²¹ 1994 U.S.T. Doc. 104-16.

²² *Id.* art. 5.

²³ *Id.* art. 2(1)

²⁴ *Id.* art. 3

²⁵ *Id.* art. 7

²⁶ *United States v. Linson*, 88 F. Supp. 2d 1123, 1126 (2000).

²⁷ Jacques Semmelman, *Federal Courts, the Constitution, and the Rule of Non-Inquiry in International Extradition Proceedings*, 76 CORNELL L. REV. 1198, 1201-03 (1991).

A successful extradition request must show that the accused has been charged by the requesting government with one or more crimes that fall within the scope of the applicable treaty,²⁸ and establishes probable cause.²⁹ The magistrate conducts a probable cause hearing comparable to a preliminary hearing in a domestic criminal case.³⁰ American law requires that judge to determine whether the evidence is "sufficient to sustain the charge under the provisions of the proper treaty or convention."

B. PROCEDURAL ISSUES IN THE EXTRADITION PROCESS

An extradition is an executive rather than a judicial function; the power to extradite is derived from the Presidential power to conduct foreign affairs. The judiciary merely performs an independent review function delegated to it by the Executive branch and defined by statute.³¹ Extradition proceedings are not considered criminal proceedings in the United States,³² nor is an extradition hearing a trial on the merits. Rather, it is a probable cause hearing, and the extradition magistrate does not dispute issues of fact. These issues are left for trial in the requesting country's courts.³³

Given that it is a preliminary hearing³⁴ and not a full blown criminal trial,³⁵ both the Federal Rules of Criminal Procedure and Federal Rules of Evidence are inapplicable to an extradition hearing.³⁶ Hearsay testimony is admissible, and questionable documents may be admitted.³⁷ Testimonies not sworn to may also be admissible, if properly authenticated.³⁸

It is immaterial that the foreign judicial system does not provide criminal safeguards identical to those in the United States, even constitutional safeguards.³⁹ For example, *Freedman v. United States*⁴⁰ held that the lack of a speedy trial guarantee should not be considered in every extradition proceeding. *Martin v. Warden, Atlanta Penitentiary*⁴¹ ruled similarly regarding due process rights, as did *Ex parte La Mantia*⁴²

²⁸ *United States v. Rauscher*, 119 U.S. 407, 408, 30 L. Ed. 425, 7 S. Ct. 234. (1886).

²⁹ *Peroff v. Hylton*, 542 F.2d 1247, 1249 (4th Cir. 1976).

³⁰ *Benson v. McMahon*, 127 U.S. 457, 463, 8 S. Ct. 1240, 32 L. Ed. 234 (1888).

³¹ *Martin v. Warden, Atlanta Pen.*, 993 F.2d 824, 828 (1993); *Blaxland v. Commonwealth Dir. of Pub. Prosecutions*, 323 F.3d 1198, 1206 (2003).

³² *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

³³ *Shapiro v. Ferrandina*, 478 F.2d 894, 905 (2d Cir. 1973).

³⁴ *Sayne v. Shipley*, 418 F.2d 679, 685 (C.A. Canal Zone 1969).

³⁵ *Hooker v. Klein*, 573 F.2d 1360, 1368 (9th Cir. 1978), *cert. den* 439 U.S. 932, 58 L. Ed. 2d 327, 99 S. Ct. 323 (1978).

³⁶ *Re Sindona*, 584 F.Supp. 1437, 1446 (ED NY 1984).

³⁷ *Zanazanian v. United States*, 729 F.2d 624, 627 (9th Cir. 1984); *United States ex rel. Sakaguchi v. Kaulukukui*, 520 F.2d 726, 728 (9th Cir. 1975).

³⁸ *Barapind v. Enomoto*, 360 F.3d 1061, 1068-69 (C.A.9 Cal. 2004).

³⁹ *Holmes v. Laird*, 148 US App. DC 187, 194, 459 F.2d 1211, 1218, *cert den* 409 U.S. 869, 34 L.Ed. 2d 120.

⁴⁰ *Freedman v. United States*, 437 F.Supp. 1252, 1255 (ND Ga 1977).

⁴¹ (1993, CA11 Ga) 993 F.2d 824, 828, 7 FLW Fed. C. 463.

regarding the Sixth Amendment right to confront witnesses.⁴³ *Carreno v. Johnson*⁴⁴ denied *habeas corpus* relief against a certificate of extradition.

Similar to the ruling in the *Strunk* case, the court in the *United States v. Fernandez-Morris*⁴⁵ did not issue a certificate of extradition for two American citizens sought by Bolivia because the latter had failed to provide due process to the former. While the fugitives had already been convicted of fraud, illegal association, and breach of trust by a Bolivian court, they had been given no notice, no representation, were convicted in absentia, and had been deemed to have waived their right of appeal. The Bolivian court's apparent disregard for its own procedures and substantive law, and unquestioning acceptance of obviously perjured testimony, led the American court to find a lack of probable cause.

Requests by the Philippine government should be simpler, however, because such constitutional and legal issues are not as confusing. Both countries recognize the right to notice, hearing, a competent tribunal, and other fundamentals of due process in extradition proceedings.⁴⁶ The Philippine Supreme Court has even ruled, in the landmark case *Secretary of Justice v. Jimenez*,⁴⁷ that not only are the Due Process clauses in the American and Philippine Constitutions worded in exactly the same language and terminology, but more importantly, they have been interpreted similarly by both countries' Supreme Courts. Thus, even if these rights are not specifically guaranteed in the treaty, they are nonetheless Constitutionally protected in both States.

This was explicit in the Philippine Supreme Court ruling in *United States v. Purganan*,⁴⁸ which clearly stated its five postulates of extradition. First, extradition is a major instrument for the suppression of crime. Second, the requesting state will accord due process to the accused. Third, the proceedings are *sui generis*. Fourth, compliance to the treaty provisions must be in good faith. Fifth, there is underlying risk of flight. Again, the United States subscribes to the same principles, and recognizes both the importance of extradition and the rights of individual fugitives.

II. BURDEN OF PROOF OF THE REQUESTING STATE

The American doctrine of probable cause is complex and evolving,⁴⁹ and has invariably presented some of the most difficult problems in American Criminal

⁴² 206 F. 330, 331 (DC NY 1913).

⁴³ UNITED STATES CONST. amend. VI.

⁴⁴ 899 F.Supp. 624, 629 (SD Fla 1995).

⁴⁵ 99 F.Supp. 2d 1358, 1372 (S.D. Fla. 1999).

⁴⁶ *Ang Tibay v. Court of Industrial Relations*, G.R. No. 46496, 69 Phil. 635, 642-44 (1940).

⁴⁷ G.R. No. 139465, 343 SCRA 377, 385-87 (2000).

⁴⁸ G.R. No. 148571, September 24, 2002.

⁴⁹ *Illinois v. Gates*, 462 U.S. 213, 232 (1983); *United States v. Davis*, 458 F.2d 819, 821 (D.C. Cir. 1972); *Bailey v. United States*, 389 F.2d 305, 308 (D.C. Cir. 1967)). For an analysis of the history of probable cause, see generally *Gerstein v. Pugh*, 420 U.S. 103, 114-16 (1975).

law. It is clear and properly interpreted in the domestic criminal law system.⁵⁰ However, its interpretation is more difficult in extradition cases because foreign laws⁵¹ and extradition treaties themselves fail to define the standards required for extradition.⁵² Such incoherence has forced American courts to make many inferences as to the manner of determining probable cause. Over time, they have more successfully solved these problems by considering the special nature of the process.⁵³

Despite the similarity of the two Constitutions, even Filipino lawyers handling extradition cases need to be aware of certain nuances. Title 18, Section 3184 of the United States Code states the requirements a requesting country must establish:

"Fugitives from foreign country to United States. Whenever there is a treaty or convention for extradition between the United States and any foreign government, or in cases arising under section 3181(b), any justice or judge of the United States, or any magistrate [United States magistrate judge] authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, or provided for under section 3181(b), issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate [United States magistrate judge], to the end that the evidence of criminality may be heard and considered. Such complaint may be filed before and such warrant may be issued by a judge or magistrate [United States magistrate judge] of the United States District Court for the District of Columbia if the whereabouts within the United States of the person charged are not known or, if there is reason to believe the person will shortly enter the United States. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, or under section 3181(b), he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made."

An extradition magistrate adopts the probable cause standard in the pertinent treaty. Frequently, although not universally, and as in the case of the RP-US Treaty, United States extradition treaties provide that extradition must adhere to the evidentiary standards required to hold the accused for trial, according to the laws of the place where he is found. Complaints must allege facts sufficient to appraise the fugitive of the nature of the charge against him, and show that an

⁵⁰ *Illinois v. Gates*, 462 U.S. 213, 230-31; *Brinegar v. United States*, 338 U.S. 160, 175 (1949).

⁵¹ 18 U.S.C. §3181, 3184 (1994).

⁵² *Id.*

⁵³ *Collins v. Loisel*, 259 U.S. 309, 316 (1922).

extraditable offense has been committed.⁵⁴ The judge must review the evidence presented and make an independent determination regarding probable cause. Conclusions purported to be facts do not satisfy probable cause, and must be supported by affidavit or a recital of sufficient underlying circumstances, lest a magistrate be reduced to a rubber stamp for extradition requests.⁵⁵

The country seeking extradition is not required to produce all its evidence at an extradition hearing.⁵⁶ Proof beyond reasonable doubt is likewise not required.⁵⁷ Again, the court only determines whether probable cause exists.⁵⁸ Note that although Section 3184 does not specifically discuss burden of proof, the legal standard it refers to has been defined as proof of probable cause.⁵⁹

The *Strunk* court explained that the probable cause standard is flexible. The United States Supreme Court has acknowledged:

Articulating precisely what "reasonable suspicion" and "probable cause" means is not possible. They are common sense and non-technical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act. As such, the standards are not readily, or even usefully, reduced to a neat set of legal rules.⁶⁰

The determination of probable cause involves examining the totality of the circumstances in a common sense manner,⁶¹ and the bar is hurdled if allegations are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed.⁶² The judge is free to gauge the credibility of a requesting government's supporting evidence.⁶³ However, probable cause involves more than a mere opportunity to commit a crime or presence in a particular place; it must be more than surmise or suspicion.⁶⁴ There must be some tangible fact or incident that will support a judicial act, something which invokes discrimination and judicial discretion.⁶⁵

In *Strunk*, the court noted that superficially, the hired assassin's alleged confession might be sufficient to establish probable cause and implicate Strunk.⁶⁶

⁵⁴ Ex parte Sternaman, 77 F. 595, 506 (DC NY 1896).

⁵⁵ In re Extradition of Platko, 213 F.Supp.2d 1229, 1239 (SD Cal 2002).

⁵⁶ Quinn v. Robinson, 783 F.2d 776, 815 (CA9 Cal 1986), cert den 479 US 882 (1986).

⁵⁷ Mirchandani v. United States, 836 F.2d 1223, 1226 (CA9 Alaska 1988).

⁵⁸ Quinn v. Robinson, 783 F.2d 776, 782-83 (9th Cir. 1989).

⁵⁹ United States v. Galanis, 429 F.Supp. 1215, 1217 (DC Conn. 1977).

⁶⁰ In re Extradition of Strunk, 293 F. Supp. 2d 1117, 1122 (2003), citing *Ornelas v. U.S.*, 517 U.S. 690, 695-96 (U.S.Wis., 1996).

⁶¹ *Ornelas*, 517 U.S. at 695-96; cf. *United States v. Schaafsma*, 318 F.3d 718, 722 (7th Cir. 2003).

⁶² *United States v. Fernandez-Morris*, 99 F.Supp.2d 1358, 1359 (SD Fla 1999).

⁶³ In re Singh, 170 F. Supp.2d 982, 1023 (E.D.Cal. 2001).

⁶⁴ *Fernandez-Morris*, 99 F.Supp. 2d at 1369.

⁶⁵ *Reis v. United States Marshal*, 192 F.Supp. 79, 82 (E.D. Pa. 1961), quoting *United States v. Johnson*, 292 F. 491, 493 (D. Wash. 1923).

⁶⁶ In re Extradition of Strunk, 293 F. Supp. 2d 1117, 1123 (2003).

However, the court was left unconvinced. While some of the more shocking evidence used attempted to show that the suspect was compensated for confessing,⁶⁷ the American court held that the Philippine government had failed to present physical evidence connecting him to the murder, nor any apparent motive for Strunk:

In sum, even ascribing the possibility of a motive to Strunk, however, tenuous, the court cannot ignore the implausibilities and inconsistencies in the declarations submitted by the Philippine government. The evidence in this case is a tangled web of accusation followed by supplementation, and sometimes even further supplementation without regard to consistency of accusation. The significant aspects of the vast majority of "other" evidence submitted by the Philippines squarely rebuts the confession of the one person (Medel) who by reported personal knowledge links Strunk with the murder. Whatever the state of the evidence against Medel, the evidence at this point is simply not reasonably competent to link Strunk with the murder.⁶⁸

This author submits that based on the evidence the Philippine government presented, even a layman would conclude that the threshold was far from satisfied in *Strunk*.

III. EVIDENCE USED TO OPPOSE EXTRADITION

Under the general rule of non-contradiction, evidence that only tends to contradict the credibility of the requesting State's evidence is generally not permitted.⁶⁹ Hence, evidence explaining or completely rebutting the requesting government's evidence appears to be the only evidence admissible for the accused.⁷⁰ He may offer limited evidence to explain elements of the case built against him.⁷¹ However if his evidence merely controverts that government's evidence or raises a defense, then it is excluded.⁷² Even evidence that tends to prove the fugitive's innocence is inadmissible,⁷³ such as alibi.⁷⁴ Further, some American courts have ruled that evidence showing insanity is likewise inadmissible.⁷⁵ The extraditee is not allowed to turn an extradition hearing into a full trial on the merits.

⁶⁷ *Id.* at 1125.

⁶⁸ *Id.* at 1127.

⁶⁹ *Hooker v. Klein*, 573 F.2d 1360, 1369 (9th Cir. 1978).

⁷⁰ *Sayne v. Shipley*, 418 F.2d 679, 685 (C.A. Canal Zone 1969).

⁷¹ *Quinn v. Robinson*, 783 F.2d 776, 817 (CA9 Cal 1986), *cert den* 479 US 882, 93 L Ed 2d 247, 107 S. Ct. 271 (1986).

⁷² *Shapiro v. Ferrandina*, 478 F.2d 894, 905 (2d Cir. 1973); *In re Sandhu*, No. 90 Cr. Misc. 1 (N.Y. Sup. 1915).

⁷³ *Melia v. United States*, 667 F.2d 300, 302 (2d Cir. 1981); *In re Powell*, 4 F. Supp. 2d 945, 958-59 (S.D. Cal. 1998); *In re Ezeta*, 62 F. 972, 986 (C.C.N.D. Cal. 1894).

⁷⁴ *Hooker v. Klein*, 573 F.2d 1360, 1368 (9th Cir. 1978).

⁷⁵ *Charlton v. Kelly*, 229 U.S. 447, 457 (1913); *Sayne*, 418 F.2d at 685.

The non-contradiction rule is often applied strictly and this leads to harsh results. The credibility of even the most disreputable government witness may not be impeached, and the testimony of even the most reputable defense witness may not be introduced to rebut the requesting government. This application strictly limits the accused's ability to contest the extradition.

This rule is most easily applied at its extremes. For example, where the government relies on accomplice testimony to establish probable cause, the accused may not call witnesses to offer a contrary account or to establish an alibi. The accused may, however, offer evidence to explain the government's proof without contradicting it. The subtle distinction is shown by the circumstances in *United States v. Lui Kin-Hong*.⁷⁶ Dealing with alleged bribes, the accused did not controvert the sources, amounts, and timing of payments presented by the requesting government, and he would not have been allowed to. However, to the extent that the government was arguing that it was reasonable to infer that the payments were in fact bribes, the accused was allowed to offer an explanation to the

The extent to which a fugitive may offer explanatory proof is largely within the discretion of the court. In *Strunk*, the court held that a fugitive nevertheless can "offer evidence that tends to explain the government's case of probable cause." The distinction between evidence which "explains" and evidence which "contradicts" seems illusory. On one hand, the court cannot weigh conflicting evidence to make factual determinations. On the other hand, an accused is nevertheless permitted to attempt to negate or obliterate probable cause.⁷⁷ *In re Singh*⁷⁸ held that in permitting the introduction of explanatory evidence, "the intention is to afford an accused person the opportunity to present reasonably clear cut proof which would be of limited scope and have some reasonable chance of negating a showing of probable cause."⁷⁹

United States courts also allow recantations. In *Republic of France v. Moghadam*⁸⁰ has held that a co-conspirator's recantation is admissible since the substance and circumstances of the recantation were more reliable than the original accusations. Also it was held in the case of *In Matter of Extradition of Contreras*⁸¹ ruled that recantation evidence is admissible if it negates probable cause.

CONCLUSION

This author opines that the American legal system is an international model for impartiality and integrity, and that the facts of the Strunk case did not

⁷⁶ 110 F.3d 103, 116-17 (C.A.1 Mass.1997).

⁷⁷ *Hooker v. Klen*, 573 F.2d 1360, 1368 (9th Cir. 1978). "In practice, the standard is extremely difficult to apply."

⁷⁸ 170 F. Supp.2d 982 (F.D.Cal. 2001).

⁷⁹ *Id.* at 994.

⁸⁰ 617 F.Supp 777, 783 (N.D. Cal 1985).

⁸¹ 800 F. Supp. 1462, 1469 (S.D. Tex. 1992).

indicate judicial bias or impartiality. The 1994 RP-US Extradition Treaty has given each country sufficient power to limit criminals' ability to evade justice, and there are enough safeguards to guarantee fair and impartial extraditions in the treaty and in the respective countries' laws. Further, the American extradition procedure found in Section 3184 is clear and unambiguous.

The doctrine of probable cause in extradition cases has been improved and continually explained by United States precedents. The Philippine judicial system is similar to that of the United States'.⁸² In *Strunk*, satisfying the probable cause requirements is crucial, and often the only issue in dispute. The tragedy in *Strunk* actually lies in the insufficient evidence presented, and this author argues that the Philippine government's case would have been rejected in any competent court in the world. In fact, the American probable cause standard for extradition is even lower than that in other American proceedings and it even seemed that the magistrate hearing the case was inclined to issue the certificate of extradition if only corroborating evidence was presented.

Simply, the Philippines presented a number of allegations, yet failed to support them with even minimal evidence. The judge in *Strunk* even specified the following lapses:

- 1) Despite a large number of references to critical communications made via cellular phone, this was not substantiated with even a single phone record;
- 2) Although it was reported that the Strunk and the alleged assassin frequented a piano bar, not a single affidavit was presented from a witness who observed them there;
- 3) There was no affidavit from the person who arranged to have Strunk and the alleged assassin meet;
- 4) It was alleged that Strunk was coming to and going from the building where the murder took place, on the night of the murder, yet no record or affidavit from the building's security office was ever presented⁸³

Some courts have authorized extraditions supported only by simple yet competent evidence. Some, for example, have even allowed presentation of investigator's summaries without the actual witness affidavits.⁸⁴ There are many cases of successful extradition with much less evidence. Again, however, it is crucial

⁸² Supreme Court, *The Philippine Court System*, at <http://www.supremecourt.gov.ph/hierarchy.htm> (last visited Apr. 29, 2003). The Philippines' system of government is a representative democracy, modeled after the United States'. Bernard Hibbitts, *Philippines: Constitution, Government & Legislation*, ¶1, at <http://jurist.law.pitt.edu/world/philippines.htm> (last modified in 2003).

⁸³ In re Extradition of Strunk, 293 F. Supp. 2d 1117, 1139 (2003).

⁸⁴ *Zanazanian v. United States*, 729 F.2d 624, 627 (9th Cir. 1984) (permitting unsworn police summaries of witness statements as evidence to support finding of extraditability).

that the evidence presented must be competent and not marred by inconsistencies and contradictions.

In concluding *Strunk*, the court held that neither the Philippine nor the United States government had a right to appeal a decision not to extradite. However, the court reminded the parties that principles of double jeopardy are not in play in extradition. Therefore, the Philippine government is still free to make another extradition attempt in good faith.

The claim that the RP-US Extradition Treaty is skewed in favor of the United States is best rebutted by Senator Edgardo Angara himself, the Chair of the Philippine Senate Foreign Relations Committee. He stated: "Extradition really depends on the evidence the prosecution marshals before the judge. And if the evidence is not adequate or even if adequate but not ably presented, then the judge has no choice but to dismiss it."⁸⁵

- o0o -

⁸⁵ Montemayor, *supra* note 17.