

UPDATE

TRANSBORDER ABDUCTIONS BY AMERICAN BOUNTY HUNTERS - THE *Jaffe* CASE AND A NEW UNDERSTANDING BETWEEN THE UNITED STATES AND CANADA

In a previous issue, the *Georgia Journal of International and Comparative Law* published a note on extradition and international kidnapping, focusing on the case of Sidney Jaffe, a land developer who, after being charged with violations of Florida's Land Sales Act, returned to his home in Toronto and obtained full Canadian citizenship.¹ Jaffe's kidnapping by bounty hunters, followed by his conviction and incarceration in Florida, caused a serious rift in diplomatic relations between the United States and Canada.

The *Journal* recently received correspondence from Mr. Jaffe, who now practices law in Canada. Mr. Jaffe included copies of letters that were exchanged between the United States and Canada as part of an amendment to the extradition treaty between the two countries. These letters attempt to resolve the dispute over kidnappings within Canada by American bounty hunters. This update reviews the Jaffe case and the exchanged letters, and concludes with a discussion of the effect of the letters on the proceedings against Jaffe.

I. AMENDMENT OF THE UNITED STATES— CANADA EXTRADITION TREATY

On January 11, 1988, Secretary of State George P. Shultz and Canadian Secretary of State for External Affairs, Joe Clark, signed a protocol amending the extradition treaty between the United States and Canada.² The protocol, which broadened the definition of extraditable offense to include any crime which is punishable in both countries by more than one year of imprisonment, was intended

¹ Note, *The Jaffe Case and the Use of International Kidnapping as an Alternative to Extradition*, 14 GA. J. INT'L & COMP. L. 357 (1984).

² *U.S. and Canada Close Extradition Gap*, N.Y. Times, Jan. 12, 1988, § A, at 3, col. 4; Protocol Amending the Extradition Between the United States and Canada, Jan. 11, 1988, United States-Canada, S. TREATY DOC. 101-17, 101ST CONG., 2D SESS. (1990).

primarily to discourage persons charged with crimes in one country from seeking refuge in the other.³

The protocol also was intended to effectively eliminate transborder abductions by United States bounty hunters of persons who "jump bail" in the United States and flee to Canada.⁴ Because the treaty originally provided extradition only for persons accused of crimes specifically scheduled⁵, many persons were able to escape the reach of one country's law enforcement officers by crossing the other country's border.⁶ The increased opportunity for extradition should make resort to kidnapping by agents of bonding companies less necessary.

More directly, bounty hunters who seize persons in Canada for return to the United States will themselves be subject to extradition to Canada on kidnapping charges. This point was emphasized by an exchange of letters between the two secretaries constituting an "understanding" that the transborder abduction of persons found in Canada to the United States by agents of bail bonding companies is an extraditable offense, and that the United States will upon request begin extradition proceedings against a person charged with or convicted of such an offense by the Canadian Government.⁷ Persons

³ Protocol Amending the Extradition Between the United States and Canada, Jan. 11, 1988, United States-Canada, S. TREATY DOC. 101-17, 101ST CONG., 2D SESS. (1990).

⁴ *Id.*

⁵ Treaty on Extradition Between the United States and Canada, Dec. 3, 1971, United States - Canada, 27 U.S.T. 983, T.I.A.S. No. 8237, Schedule. The schedule lists 30 offenses, including fraud and obtaining money by false pretenses, but not land sale offenses. See Note, *The Jaffe Case and the Use of International Kidnapping as an Alternative to Extradition*, 14 GA. J. INT'L & COMP. L. at 373, n.128. The failure to extradite Jaffe, however, was not due to the limited number of extraditable offenses listed in the schedule, but the inability of Stephen Boyle's office to properly fill out extradition forms. See *infra* note 27.

⁶ *U.S. and Canada Close Extradition Gap*, N.Y. Times, Jan. 12, 1988, § A, at 3, col. 4.

⁷ The body of Mr. Shultz's letter to Joe Clark reads as follows:

I refer to the Protocol Amending the Treaty on Extradition between the United States and Canada we signed today and have the honor to address to you the following.

The United States and Canada recognize that the transborder abduction of persons found in Canada to the United States of America by civilian agents of bail bonding companies, so-called "bounty hunters", is an extraditable offense under the United States - Canada Extradition Treaty.

Where a person has been charged with or convicted of such an offense in Canada and is found within the United States, the United States agrees, upon request, to commence extradition proceedings against such a person

abducted by bounty hunters will be escorted to the border and taken into the custody of Canadian officials.⁸ At the request of the United States, the abductee will be held under provisional arrest by Canadian officials while any extradition proceedings are pending.⁹

II. THE JAFFE CASE

Sidney L. Jaffe, a native of New Jersey, moved to Canada in 1966, became a landed immigrant in 1971, and obtained full Canadian citizenship in June of 1981.¹⁰ A self-described international investor, Jaffe engaged in a number of businesses, including foreign currency

pursuant to the Treaty in order that the person may be returned to Canada.

The United States will use its best efforts to honor Canadian requests for testimony, information, or other assistance pertaining to such abductions.

Canada and the United States agree to cooperate to deter such transborder abductions. To assist in achieving that purpose, the United States will continue to exert its best efforts to inform those engaged in business as bail bondsmen or bounty hunters and other interested parties of the positions set forth in this exchange of letters.

Canada and the United States agree to consult promptly concerning any case of transborder abduction involving bounty hunters which might arise in the future. The purpose of such consultations shall be to address matters relating to any such case, including any request by the Government of Canada for the return of the person so abducted. In the event of return, the Governments agree to co-operate to have the abducted person escorted to Canada and taken into custody at the border, pursuant to a request for provisional arrest, pending the outcome of extradition proceedings. For the purpose of these consultations, the principal law enforcement contact for the United States will be the Director of the Office of International Affairs of the Criminal Division of the Department of Justice.

I have the honor to propose that this letter and your reply constitute an understanding between our two Governments which is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges for private parties.

Joe Clark, Canadian Secretary of State for External Affairs, wrote in reply:

I have the honor to acknowledge receipt of your letter of today's date [January 11, 1988] concerning transborder abduction of persons found in Canada to the United States of America by civilian agents of bail bonding companies, so-called "bounty hunters". I accept your proposal that your letter and this reply constitute an Understanding between our two Governments which is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges for private parties.

⁸ See *infra* note 10.

⁹ *Id.*

¹⁰ *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2.

trading, financing, and real estate development. Residing in Toronto, he became a wealthy and well-known patron of the arts.¹¹

In 1972, Continental Southeast Land Corporation, of which Jaffe became president, purchased a large tract of land in Florida and registered it for subdivision into some 2800 individual lots.¹² Continental financed its operations through the proceeds of the installment contracts for sale of the lots and through borrowing from individual investors.¹³ According to Florida prosecutors, Jaffe and his company sold lots to about 1100 purchasers, most of whom were from out of state.¹⁴

The form of agreement for deed submitted with the state registration statement for the development said that Continental would deliver insurable title by warranty deed to purchasers upon full payment of the purchase price.¹⁵ However, Nortek Properties, Inc., which held a mortgage on part of the original tract of land, refused to grant individual lot releases for some twenty-eight lots.¹⁶ Consequently, Jaffe could only deliver quitclaim deeds to the purchasers of these lots.¹⁷ Jaffe later said that these were "interim deeds" and that he intended to deliver clear title within a legal time period.¹⁸

¹¹ *Id.*

¹² Jaffe v. Grant, 793 F.2d 1182, 1124 (11th Cir. 1986). The land, St. John's Riverside Estates in Putnam County, Florida, was subject to three mortgages aggregating \$2,727,145.39. Jaffe v. State, 438 So.2d 72, 74 (Fla. Dist. Ct. App. 1983). Nortek Properties Inc., one of the mortgagees, later became Sundowner Properties, Inc. Jaffe v. Sundowner Properties, Inc., 808 F.2d 1425 (11th Cir. 1987).

¹³ *Abduction in Canada Angers Authorities*, Wash. Post, Mar. 27, 1982, Real Estate §, at E5.

¹⁴ *Id.* Most of the sales took place through the mail.

¹⁵ Jaffe v. State, 438 So.2d 72, 74 (Fla. Dist. Ct. App. 1983). A brochure also promised buyers a warranty deed upon completion of payments under the installment contract. *Abduction in Canada Angers Authorities*, Wash. Post, Mar. 27, 1982, Real Estate §, at E5.

¹⁶ Jaffe v. State, 438 So.2d 72, 74 (Fla. Dist. Ct. App. 1983). Apparently, these 28 lots were more valuable than lots to which Nortek's lien would have transferred.

¹⁷ *Abduction in Canada Angers Authorities*, Wash. Post, Mar. 27, 1982, Real Estate §, at E5. The deeds were actually delivered through Atlantic Commercial, Continental's successor in interest. During 1976 and 1977, all of Continental's interests in the land and the installment contracts were transferred to Atlantic Commercial Development Corporation, of which Jaffe was president. Title apparently passed through two other corporations of which Jaffe was also president - Meadow Valley Ranchos, Inc., and Ruby Mountain Construction and Development Corp. Jaffe v. Grant, 793 F.2d 1182, 1184 (11th Cir. 1986); Jaffe v. State, 438 So.2d 72, 74 (Fla. Dist. Ct. App. 1983).

¹⁸ *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2. Many of the purchasers

On August 7, 1980, Sidney Jaffe was arrested in Florida for violating the Florida Land Sales Practice Act.¹⁹ Jaffe was the first person imprisoned for violating the new act, perhaps because prosecutors wanted to use the case as a warning to other "would-be white-collar criminals."²⁰ Accredited Surety and Casualty Corporation posted bond for Jaffe in the amount of \$137,000.²¹ Trial was set for May 18, 1981, but the court failed to give Accredited notice of the date.²²

Before trial, Jaffe returned to Toronto.²³ When he failed to appear at a pretrial conference, a warrant was issued for his arrest.²⁴

who received the quitclaim deeds filed individual suits against Jaffe. Florida officials charged that Jaffe had collected at least \$1.6 million for the defective deeds. According to the local state attorney, Stephen Boyles, purchasers later discovered tax liens and contractor's liens on the lots in addition to Nortek's liens.

Continental defaulted on its obligations to individual investors in 1978 and its investors filed suit against Continental and its successor corporations set aside both the installment sales contracts and the transfers of title between the corporations. *Jaffe v. Grant*, 793 F.2d 1182, 1184 (11th Cir. 1986). Jaffe responded by causing Continental to file a Chapter XI bankruptcy petition in June of 1979. *Jaffe v. State*, 438 So.2d 72, 74 (Fla. Dist. Ct. App. 1983); *Abduction in Canada Angers Authorities*, Wash. Post, Mar. 27, 1982, Real Estate §, at E5.

The Bankruptcy court, however, lifted the automatic stay as to the state court proceeding. In March of 1981 the state court entered a default judgment against the corporations setting aside the transfers and holding the corporations liable for money collected from the installment purchasers. On May 15, 1981, Jaffe and his corporations filed suit in federal court against Grant, Continental's trustee in bankruptcy, alleging a conspiracy to violate their civil rights and seeking to enjoin Jaffe's criminal prosecution. Grant filed a counterclaim alleging that the corporations were Jaffe's alter ego, and asking that the state court judgment against the corporations be enforced against Jaffe individually. *Jaffe v. Grant*, 793 F.2d 1182, 1185 (11th Cir. 1986).

¹⁹ 16 FLA. STAT. ANN. § 498 (West 1982); *Jaffe v. Grant*, 793 F.2d 1182, 1184 (11th Cir. 1986).

²⁰ *Abduction in Canada Angers Authorities*, Wash. Post, Mar. 27, 1982, Real Estate §, at E5. Fletcher Baldwin, a professor of constitutional law at the University of Florida, said he had "never seen the state fight so hard even in cases involving murderers and rapists." *Return of Land-sales Figure for Florida Jailing is Assailed*, N.Y. Times, Aug. 9, 1983, at A6, col. 3. Jaffe thought that he was singled out for prosecution because he was from out of state. *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2.

²¹ *Accredited Sur. & Cas. Co., Inc. v. State*, 418 So.2d 378, 379 (Fla. Dist. Ct. App. 1983); *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, at A23.

²² *Jaffe v. Smith*, 825 F.2d 304, 305 (11th Cir. 1987).

²³ *Kear v. Hilton*, 699 F.2d 181, 182 (4th Cir. 1983). Jaffe claimed he returned to Canada, not because he wanted to escape trial, but because he lived there. *To*

On his trial date, his attorney appeared and informed the court that Jaffe was still in Toronto because he had recently suffered a concussion while playing basketball and it was medically dangerous for him to travel.²⁵ The unsympathetic court issued a second warrant for Jaffe's arrest, ordering that bond be estreated and directing the local state attorney, Stephen Boyles, to seek Jaffe's extradition from Canada.²⁶

Extradition papers prepared by Boyles' office were rejected twice by the governor's office because of technical errors.²⁷ In the meantime, Jaffe earned full Canadian citizenship.²⁸ On June 29, 1981, the court entered final judgment against Accredited in the amount of \$137,000.²⁹ Accredited moved to set aside the judgment on August 7, 1981, on grounds that they had not been given proper notice and that Jaffe's failure to appear was excusable because of his illness.³⁰

Jaffe alleged that officials from the state attorney's office then met with Accredited's attorney to persuade the bonding company to kidnap Jaffe from Canada.³¹ Accredited asked for assurances that the bond would be remitted if the company could produce Jaffe.³² According to Jaffe, in return, the state attorney agreed to ask the court to vacate the forfeiture judgment against Accredited and place the money in escrow until Jaffe was returned.³³ Whether or not such collusion took place, the court did vacate the judgment against Accredited and placed the money in escrow, to be remitted on the

Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters, Wash. Post, Apr. 24, 1982, § 1, at A2.

²⁴ Jaffe v. Smith, 825 F.2d 304, 305 (11th Cir. 1987).

²⁵ *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2.

²⁶ Jaffe v. Boyles, 616 F. Supp. 1371 (W.D.N.Y. 1985); Accredited Sur. & Cas. Co., Inc. v. State, 418 So.2d 378, 379 (Fla. Dist. Ct. App. 1983)

²⁷ Jaffe v. Boyles, 616 F. Supp. 1371, 1373 (W.D.N.Y. 1985); Jaffe v. Smith, 825 F.2d 304, 305 (11th Cir. 1987). Extradition papers were never filed with the Canadian government. *Return of Land-sales Figure for Florida Jailing is Assailed*, N.Y. Times, Aug. 9, 1983, at A6, col. 3.

²⁸ *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2.

²⁹ Jaffe v. Smith, 825 F.2d 304, 305 (11th Cir. 1987).

³⁰ Jaffe v. Sanders, 463 So.2d 318, 319 (Fla. Dist. Ct. App. 1984); Accredited Sur. & Cas. Co., Inc. v. State, 418 So.2d 378, 379 (Fla. Dist. Ct. App. 1983).

³¹ Jaffe v. Boyles, 616 F. Supp. 1371, 1373 (W.D.N.Y. 1985).

³² Accredited Sur. & Cas. Co., Inc. v. State, 418 So.2d 378, 379 (Fla. Dist. Ct. App. 1983).

³³ Jaffe v. Boyles, 616 F. Supp. 1371, 1373 (W.D.N.Y. 1985).

condition that Accredited produce Jaffe within 90 days.³⁴ Accredited then sent one of its agents, Daniel J. Kear, to Toronto with Timm Johnsen, a professional bounty hunter recruited by Kear.³⁵

On September 23, 1981, as Jaffe was returning from jogging, Kear and Johnsen approached him in the lobby of his condominium building in Toronto.³⁶ Johnsen, pretending to be a Canadian policeman, showed Jaffe a badge and asked Jaffe to go with him to police headquarters for questioning.³⁷ After Jaffe got into the waiting car he realized the car's interior door handles had been removed.³⁸ Jaffe claimed that when he rolled down a window and started screaming for help, one of the bounty hunters handcuffed him and beat him with an iron pipe.³⁹ Jaffe later testified that they told him that he would be returned to Florida "dead or alive" and that they would harm his daughter if he alerted government officials at the border.⁴⁰

The pair drove Jaffe to the border at Niagara Falls, New York, where they produced a special bench warrant to secure Jaffe's entry into the United States.⁴¹ Jaffe was taken to the Niagara Falls airport and dragged on board a waiting plane.⁴² Officers from the Niagara

³⁴ Accredited Sur. & Cas. Co., Inc. v. State, 418 So.2d 378, 379 (Fla. Dist. Ct. App. 1983); Jaffe v. Smith, 825 F.2d 304, 305 (11th Cir. 1987).

³⁵ Jaffe v. Boyles, 616 F. Supp. 1371, 1373 (W.D.N.Y. 1985). Johnsen was an Orlando bounty hunter and Kear was a bondsman from Fairfax, Virginia. *Canada Sentences Two for Seizing Businessman*, L.A. Times, June 11, 1986, part 1, at 19, col. 1. Johnsen, who was paid \$13,700 for the abduction, bragged that he had returned fugitives from 21 foreign countries. *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2.

³⁶ Jaffe v. Smith, 825 F.2d 304, 305 (11th Cir. 1987); Kear v. Hilton, 699 F.2d 181, 182 (4th Cir. 1983).

³⁷ *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2; *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, at A23.

³⁸ *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2.

³⁹ *Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2.

⁴⁰ *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2. Jaffe said he did not tell Canadian border officials that he was being kidnapped because "I had been beaten twice, had my life threatened several times. Also they said they'd hurt my daughter. I also didn't know who I was dealing with, whether they were gangsters or the Mafia." *Id.*

⁴¹ Jaffe v. Smith, 825 F.2d 304, 305 (11th Cir. 1987); Kear v. Hilton, 699 F.2d 181, 182 (4th Cir. 1983).

⁴² Jaffe v. Boyles, 616 F. Supp. 1371, 1374 (W.D.N.Y. 1985).

Falls sheriff's department, alerted by Jaffe's son that his father had been kidnapped, surrounded the plane but Johnsen and Kear persuaded the officers to let the plane leave for Orlando with Jaffe.⁴³

Once in Florida, Jaffe filed a motion in the state trial court challenging the jurisdiction of the court on grounds that his illegal abduction made his detention invalid.⁴⁴ Jaffe maintained that the state supplied Johnsen with official documents indicating that Johnsen was acting pursuant to Florida state authority and that Stephen Boyles telephoned Johnsen in Canada with the "final go-ahead" to kidnap Jaffe.⁴⁵ While Florida officials denied complicity in Jaffe's abduction, Georgetown University Law Professor Don Wallace noted that Boyles gave the bounty hunters the special bench warrant and told them where to find Jaffe.⁴⁶ The court denied Jaffe's motion, rejecting his contention that Kear and Johnsen's actions had the "imprimatur of state action".⁴⁷

Jaffe was convicted on all twenty-eight counts of violating the Land Sales Act, as well as for failing to appear at trial.⁴⁸ He was sentenced to five years for each of the twenty-eight counts and five additional years on the failure to appear count.⁴⁹ Seven of the sentences were to be served consecutively for a total of thirty-five years.⁵⁰ Jaffe was also fined \$145,000.⁵¹

⁴³ After Jaffe was safely on the American side of the border, Johnsen and Kear had allowed him to call his family in Toronto. *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2.

⁴⁴ *Jaffe v. Smith*, 825 F.2d 304, 306 (11th Cir. 1987).

⁴⁵ *Jaffe v. Boyles*, 616 F. Supp. 1371, 1373 (W.D.N.Y. 1985). Documents in Johnsen's possession allegedly included certified copies of the bail bonds in addition to the specially drawn Florida bench warrant.

⁴⁶ *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, at A23. Wallace assisted Jaffe in preparing his defense.

⁴⁷ *Jaffe v. Smith*, 825 F.2d 304, 308 (11th Cir. 1987). This finding of fact later barred Jaffe's habeas petition in federal court. See *infra* note 72 and accompanying text.

⁴⁸ *Jaffe v. Boyles*, 616 F. Supp. 1371, 1374 (W.D.N.Y. 1985); *Jaffe v. Smith*, 825 F.2d 304, 305 (11th Cir. 1987). Jaffe was acquitted of the charge for failing to appear at the pretrial conference.

⁴⁹ *Jaffe v. Boyles*, 616 F. Supp. 1371, 1374 (W.D.N.Y. 1985).

⁵⁰ *State De ex rel. Boyles v. Parole & Prob. Com'n.*, 436 So.2d 207, 209 (Fla. Dist. Ct. App. 1983); *Kear v. Hilton*, 699 F.2d 181, 182 (4th Cir. 1983).

⁵¹ Each count carried a \$5,000 fine. *Jaffe v. Boyles*, 616 F. Supp. 1371, 1374 (W.D.N.Y. 1985). The New York court mistakenly believed that all the sentences were to run consecutively, for a total of 145 years.

Jaffe's kidnapping severely strained relations between Florida and Canada.⁵² The Canadian Government was livid over Jaffe's abduction and filed diplomatic protests demanding Jaffe's release and return to Canada.⁵³ Following Jaffe's conviction and sentencing, the Canadian Government sent a series of diplomatic notes to the State Department calling Jaffe's abduction unlawful. The notes also accused Florida officials of complicity in the kidnapping and of conducting a campaign of persecution and harassment against Jaffe.⁵⁴

Canada then filed suit in the Middle District of Florida against the United States Government, demanding Jaffe's release and accusing the government of violating the extradition treaty by allowing Jaffe to be kidnapped and returned to the United States.⁵⁵ Canada was successful in persuading the United States Government to extradite Kear and Johnsen to Canada to stand trial for kidnapping.⁵⁶ In June of 1986, Timm Johnsen and Daniel Kear were both sentenced to twenty-one months in prison for abducting Jaffe.⁵⁷

Federal officials, including Secretary of State George Shultz and Attorney General William French Smith, demanded that Florida release Jaffe.⁵⁸ In a forceful letter to the State Parole and Probation Commission, Shultz sympathized with the outrage of the Canadian Government and expressed concern that future cooperation from

⁵² Jaffe's abduction was by no means an isolated incident. The continued diplomatic protests from Ottawa concerning similar episodes undoubtedly led to the new agreement between the United States and Canada. Brian Dickson of Canada's Department of External Affairs said that "[t]o have people kidnapped off the streets of Canada is intolerable", and "[t]here should be a way of getting out the word that bounty hunters should not be free to practice their profession up here." *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, at A23.

⁵³ *Jaffe v. Boyles*, 616 F. Supp. 1371, 1374 (W.D.N.Y. 1985).

⁵⁴ *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, at A23.

⁵⁵ *U.S. Sued Over Abduction*, Wash. Post, July 11, 1983, at A12; *Jaffe v. Boyles*, 616 F. Supp. 1371, 1374 (W.D.N.Y. 1985).

⁵⁶ *Court Permits Extradition of Bail Bondsman*, Wash. Post, June 25, 1982, at A27.

⁵⁷ *Canada Sentences Two for Seizing Businessman*, L.A. Times, June 11, 1986, part 1, at 19, col. 1. Ontario Supreme Court Justice Frank Callaghan delivered the sentence with a warning to bounty hunters to respect Canada's sovereignty. *Id.*

Kear and Johnsen could have received life terms for kidnapping. *Bounty hunters await sentence in kidnapping*, UPI (PM Cycle), Regional News §, May 29, 1986 (NEXIS, Omni file).

⁵⁸ *Return of Land-sales Figure for Florida Jailing is Assailed*, N.Y. Times, Aug. 9, 1983, at A6, col. 3.

Canada, the United States' most important extradition partner, might be jeopardized if the treaty were ignored.⁵⁹ Shultz emphasized that maintaining excellent relations in the area of extradition was "in the law enforcement interest of Florida and the other states, as well as of the federal government. . ."⁶⁰ Nonetheless, Florida officials refused to comply with Shultz's request.⁶¹ Jim Smith, Florida's Attorney General, insisted that Jaffe first pay about \$2.5 million to reimburse some 700 buyers he allegedly had defrauded.⁶²

Calling the incident "a serious foreign policy matter", in December of 1983, United States Attorney General Smith requested an investigation.⁶³ Responding to inquiries by the Canadian Government, he asked Florida Governor Bob Graham's office to determine whether prosecutors in the State Attorney's Office had been improperly involved in Jaffe's abduction.⁶⁴

Although the report prepared by Governor Graham's lawyers noted that there was disputed and inconsistent testimony regarding both the number and nature of hearings on the forfeiture of the bond posted by Accredited and discussions between Accredited and the

⁵⁹ *Parole of Convicted Canadian Becomes an International Issue*, Wash. Post, July 27, 1983, at A2. Over 60% of all criminal suspects returned to the United States were extradited from Canada under the treaty. Shultz pointed out that in Jaffe's case, there was no good reason for circumventing the treaty extradition procedures. He found it "perfectly understandable that the Government of Canada is outraged by [Jaffe's] alleged kidnapping, which Canada considers a violation of the treaty and of international law, as well as an affront to its sovereignty." *Return of Land-sales Figure for Florida Jailings is Assailed*, N.Y. Times, Aug. 9, 1983, at A6, col. 3.

⁶⁰ *Parole of Convicted Canadian Becomes an International Issue*, Wash. Post, July 27, 1983, at A2.

⁶¹ Florida authorities relied on *Taylor v. Taintor*, 83 U.S. (16 Wall) 366, 371 (1872), which upheld the right of bounty hunters to retrieve bail jumpers and return them to the court's jurisdiction. See Note, *The Jaffe Case and the Use of International Kidnapping as an Alternative to Extradition*, 14 GA. J. INT'L & COMP. L. at 374, n.136.

⁶² *Return of Land-sales Figure for Florida Jailings is Assailed*, N.Y. Times, Aug. 9, 1983, at A6, col. 3. Jaffe was actually charged with only 28 counts of land sale fraud.

When Stephen Boyles was asked by the State Department to delay Jaffe's sentencing because of complaints from Canada, he refused "because there were no grounds . . . most of it was poppycock." *Abduction in Canada Angers Authorities*, Wash. Post, Mar. 27, 1982, Real Estate §, at E5.

⁶³ UPI (AM Cycle), Feb. 23, 1983, Regional News §, (NEXIS, Omni file).

⁶⁴ UPI (AM Cycle), Regional News §, June 8, 1983 (NEXIS, Omni file); UPI (AM Cycle) Regional News §, Feb. 23, 1983 (NEXIS, Omni file).

State Attorney's Office, Governor Graham concluded that state officials had acted properly.⁶⁵

Governor Graham's office offered to arrange for Jaffe to serve out his sentence in Canada but Jaffe declined because under Florida law and the extradition treaty, Jaffe would have to abandon his appeal of the Florida convictions to receive the transfer.⁶⁶ Jaffe instead requested that the State Parole and Probation Commission release him and allow him to serve out his parole in Canada.⁶⁷

Stephen Boyles and an assistant later attended a meeting in a Toronto hotel room between officials from the Canadian Ministry of the Attorney General, lawyers representing Jaffe, and lawyers representing Johnsen and Kear.⁶⁸ While both Boyles and the governor's office later denied that Boyles was acting as a representative for the governor, Jaffe's attorneys maintained that Boyles claimed to have the authority to negotiate for Jaffe's conditional release.⁶⁹ In any event, the negotiations fell through when Boyles insisted that Jaffe pay a fine, release all claims against the bounty hunters, make restitution of \$500,000, and consent to being transferred as a prisoner rather than a parolee.⁷⁰

⁶⁵ *Return of Land-sales Figure for Florida Jailing is Assailed*, N.Y. Times, Aug. 9, 1983, at A6, col. 3. The report stated that [t]he balance of the information obtained supports the conclusion that the state attorney had no particular interest in the forfeiture proceedings and, in fact, carefully avoided any involvement in the efforts [to recapture Jaffe]. The report also criticized the state attorney's office for exercising poor judgment in giving Jaffe's Toronto address to Timm Johnsen, but noted that the information was already publicly available. See, UPI (AM Cycle), Regional News §, June 8, 1983 (NEXIS, Omni file).

⁶⁶ UPI (AM Cycle), Regional News §, May 21, 1983 (NEXIS, Omni file). State Attorney Stephen Boyles recommended that Jaffe be transferred to Canada to complete his term rather than being granted parole in Florida or Canada. *Id.* Boyles would have no doubt been pleased to cut off Jaffe's appeal and end the international crisis, while at the same time insuring that Jaffe would remain in prison. Jaffe's convictions were overturned a short time later.

⁶⁷ *Id.* No decision was made until after the land sale convictions were overturned. See *infra* note 73. Although the failure to appear conviction was not overturned, Jaffe was allowed to return to Canada after posting bond on the new charges. No arrangements regarding parole were made in Canada.

⁶⁸ UPI (AM Cycle), Regional News §, Apr. 18, 1983 (NEXIS, Omni file).

⁶⁹ *Id.* The Governor's office admitted knowledge of Boyles' trip to Toronto but claimed to have told Boyles that the Governor could not endorse the effort. Boyles did make a report to the Governor upon his return.

⁷⁰ *Id.* Jaffe's attorneys would agree only to compensation of \$156,000, the amount approved by the Florida Parole and Probation Commission, and wanted a parole period of only one day.

While Jaffe's appeal of his state court conviction was pending, he filed a federal habeas corpus petition in the Middle District of Florida, claiming that because he was abducted in violation of an extradition treaty, the state court had no jurisdiction to try, convict, or incarcerate him.⁷¹ The court dismissed the petition because Jaffe had not exhausted his state court remedies, but granted a certificate of probable cause for appeal to the Eleventh Circuit Court of Appeals.⁷²

While his certificate for appeal was pending before the Eleventh Circuit, all twenty-eight of Jaffe's land sale convictions were overturned by a state appeals court.⁷³ The court held that the indictment failed to state a criminal cause of action under the statute, and that "even if the charging document accurately tracked the statute, the proof at trial would not sustain those allegations."⁷⁴ By this time, Jaffe had been imprisoned for two years⁷⁵, but because the court did not also overturn the conviction for failure to appear at trial, Jaffe remained in jail.⁷⁶

Even before the land sale convictions were overturned, Jaffe had secured an early parole date by making restitution to the twenty-eight land purchasers.⁷⁷ The Florida Parole and Probation Commission then voted to release him on May 24, 1983, but the State Attorney's Office persuaded the Commission to delay his release for at least an additional six months⁷⁸ while the State Attorney's Office sought a court order preventing Jaffe's release until May of 1988.⁷⁹

On July 18, 1983, the state attorney again filed charges against Jaffe - this time one count of organized fraud based on the same transactions.⁸⁰ The indictment alleged that Jaffe fraudulently obtained

⁷¹ Jaffe v. Smith, 825 F.2d 304, 306 (11th Cir. 1987).

⁷² *Id.*

⁷³ Jaffe v. State, 438 So.2d 72, 76 (Fla. Dist. Ct. App. 1983).

⁷⁴ *Id.* at 75. The court also expressed doubts about the constitutionality of the statute itself.

⁷⁵ *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, at A23.

⁷⁶ Jaffe v. State, 438 So.2d 72, 75 (Fla. Dist. Ct. App. 1983); Jaffe v. Smith, 825 F.2d 304, 306 (11th Cir. 1987). Because Jaffe had then exhausted his state remedies as to the failure to appear charge, his habeas petition was remanded to the district court by the Eleventh Circuit. *Id.*

⁷⁷ State De *ex rel.* Boyles v. Parole & Prob. Com'n., 436 So.2d 207, 209 (Fla. Dist. Ct. App. 1983).

⁷⁸ UPI (AM Cycle), Regional News §, May 21, 1983 (NEXIS, Omni file).

⁷⁹ State De *ex rel.* Boyles v. Parole & Prob. Com'n., 436 So.2d 207, 209 (Fla. Dist. Ct. App. 1983); UPI (AM Cycle), Regional News §, Apr. 18, 1983 (NEXIS, Omni file).

⁸⁰ Jaffe v. Sanders, 463 So.2d 318, 319 (Fla. Dist. Ct. App. 1984).

at least \$50,000 by persuading eight persons to purchase land deeds by misrepresenting that he would deliver marketable title to them when title could never be obtained.⁸¹

The trial court denied Jaffe's motion to dismiss the new charges on grounds of double jeopardy and estoppel.⁸² His subsequent petition for a writ of prohibition enjoining the prosecution was denied by a Florida appeals court.⁸³ He was finally released in October of 1983 after posting \$150,000 bond for the new charges.⁸⁴ Jaffe then returned to Toronto.⁸⁵

Jaffe and his attorneys argued that the new charges stemmed from State Attorney Stephen Boyles' personal vendetta against Jaffe.⁸⁶ They argued that the case should be heard in federal court because Jaffe was a Canadian citizen and none of the alleged victims were citizens of Florida.⁸⁷ Jaffe considered the new charges "false and baseless" and refused to leave Toronto until the United States and Canadian Governments resolved the dispute.⁸⁸

After Jaffe failed to appear for trial on the new fraud charges, a Florida judge revoked his bond and issued a warrant for his arrest.⁸⁹ In early April of 1985, the federal district court in Jacksonville denied motions by the Canadian Government and Jaffe to enjoin the second state trial.⁹⁰ Canada joined in Jaffe's habeas corpus petition, not because it was concerned with the guilt or innocence of Jaffe, nor

⁸¹ *Fraud Trial May Begin Without Jaffe*, UPI (AM Cycle), Regional News §, Apr. 14, 1985 (NEXIS, Omni file); *Jaffe v. Sanders*, 463 So.2d 318, 319 (Fla. Dist. Ct. App. 1984).

⁸² *Jaffe v. Sanders*, 463 So.2d 318, 319 (Fla. Dist. Ct. App. 1984).

⁸³ *Id.* The court held that there was no double jeopardy because the first convictions were overturned on grounds other than insufficiency of the evidence. *But see Jaffe v. State*, 478 So.2d 72, 75 ("even if the charging document accurately tracked the statute, the proof at trial would not sustain those allegations.").

⁸⁴ *Jaffe v. Smith*, 825 F.2d 304, 306 (11th Cir. 1987). Perjury charges were also filed against Jaffe on March 2, 1984. *Jaffe v. Boyles*, 616 F. Supp. 1371, 1374 (W.D.N.Y. 1985).

⁸⁵ *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, at A23.

⁸⁶ *Jaffe Wants Trial Site Change*, UPI (AM Cycle), Regional News §, Nov. 1, 1983 (NEXIS, Omni file).

⁸⁷ *Id.*

⁸⁸ *Canadian Refuses to Face Florida Trial*, L.A. Times, Apr. 16, 1985, part 1, at 5, col. 4 (home edition).

⁸⁹ *Id.*

⁹⁰ *Fraud Trial May Begin Without Jaffe*, UPI (AM Cycle), Regional News §, Apr. 14, 1985 (NEXIS, Omni file).

even that Jaffe was a Canadian citizen, but because it wished to "vindicate its rights" under the extradition treaty.⁹¹

After Jaffe's first failure to appear charge was affirmed, the Eleventh Circuit remanded Jaffe's habeas corpus petition to the district court which dismissed it because Jaffe, now living in Canada, was "an abuser of the writ" and a "fugitive from justice."⁹² The Eleventh Circuit affirmed dismissal of the petition on August 21, 1987, holding that Jaffe had no rights under the extradition treaty because his abductors were "individuals acting outside the parameters of a treaty."⁹³ The court relied on the state trial court's finding that "there were no facts to indicate that the abduction had the state's imprimatur."⁹⁴ Jaffe's abduction from Canada did not constitute a treaty violation because no governmental actors were involved.⁹⁵

The Eleventh Circuit based its decision on the Ker-Frisbie rule that the law is unconcerned with how a criminal defendant finds his way into court.⁹⁶ Under the rule, a defendant ordinarily may not assert the illegality of his obtainment to defeat a court's jurisdiction over him.⁹⁷ The court held that "[t]here is nothing in the Constitution which requires a court to permit a guilty person rightfully convicted to escape justice just because he was brought to trial against his will."⁹⁸

Adherence to the Ker-Frisbie rule has produced complaints that the United States Government is itself tacitly encouraging a "cowboys and Indians approach to law enforcement."⁹⁹ Several years after the

⁹¹ *Parole of Convicted Canadian Becomes an International Issue*, Wash. Post, July 27, 1983, § 1, at A2. According to Axel Kleiboemer, a Washington lawyer representing Canada in the suit, the issue was "whether or not lawlessness in international relations is going to be tolerated." *Id.*

⁹² *Jaffe v. Smith*, 825 F.2d 304, 306 (11th Cir. 1987). The court also indicated that if it had accepted jurisdiction it would have dismissed the case on the merits. *Id.*

⁹³ *Jaffe v. Smith*, 825 F.2d 304, 307 (11th Cir. 1987).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Ker v. Illinois*, 119 U.S. 436 (1886); *Frisbie v. Collins*, 342 U.S. 519, *reh'g denied*, 343 U.S. 937 (1952). The rule is based on the ancient Roman maxim *male captus, bene detentum* (bad capture, good detention). See Note, *The Jaffe Case and the Use of International Kidnapping as an Alternative to Extradition*, 14 GA. J. INT'L & COMP. L. 357, 369 (1984), for a comprehensive list of cases addressing the rule.

⁹⁷ *Ker v. Illinois*, 119 U.S. 436, 444; *Frisbie v. Collins*, 342 U.S. 519, 522.

⁹⁸ *Jaffe v. Smith*, 825 F.2d 304, 307 (11th Cir. 1987) (citing *Frisbie v. Collins*, 342 U.S. 519, 522).

⁹⁹ According to an editorial in the Toronto Star:

Jaffe incident, the United States Department of Justice expressed its strong disapproval of transborder abductions by bounty hunters, promising to “do everything in our power to have those people arrested and extradited to face the music.”¹⁰⁰ But even as a Justice Department official stated that “[w]e deplore this kind of conduct, people taking the law into their own hands”, United States Attorney General Meese was at the same time publicly refusing to rule out abductions abroad by United States Government agents of suspected drug dealers or terrorists.¹⁰¹

III. EFFECT ON PRIOR STATE CHARGES AGAINST JAFFE

In October of 1983, Jaffe expressed a desire to return to Florida and practice law.¹⁰² According to Florida state officials, however, as late as May of 1987, Jaffe was “still a fugitive in Florida’s eyes.”¹⁰³ Did the protocol and exchange of letters render the pending charges against Jaffe null and void?

Because the United States and Canada have now established a procedure for returning persons kidnapped by bounty hunters, a court might find that failure to return someone such as Jaffe to Canada

The cowboys and Indians approach to law enforcement seems to be alive and well in the United States. . . . But when bounty hunters, hot on the trail of a fugitive from American justice, choose to ignore international boundaries and import such tactics here—breaking Canadian law in the process—Canada not only has a right but a duty to protest. *To Catch a Canadian; Neighbor to the North Livid Over Grab in Toronto by U.S. Bounty Hunters*, Wash. Post, Apr. 24, 1982, § 1, at A2.

According to Jaffe, “[t]he United States is engaged in a serious war against drug traffickers and terrorists. . . . If they can ever get their hands on one of those guys, they don’t want to have to turn them loose because of the exact niceties of how they were brought to court.” *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, at A23.

¹⁰⁰ *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, § 1, at A23.

¹⁰¹ *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, § 1, at A23. This position has been adopted by the Bush administration. See e.g. *U.S. paid \$20,000 for Mexican’s capture*, Atlanta J. and Const., May 26, 1990, at A5, col. 1.

¹⁰² *Jaffe Wants to Practice Law in Florida*, UPI (AM Cycle), Regional News §, Oct. 24, 1983 (NEXIS, Omni file). Jaffe, an economist and lawyer, claimed he had all the credentials necessary to take the Florida Bar Exam. State Attorney Stephen Boyles was amused by Jaffe’s statement, saying “I can’t believe he was serious.” *Id.*

¹⁰³ *For U. S. Bounty Hunters, National Boundaries Are Little or No Restraint*, Wash. Post, May 15, 1987, at A23.

was in itself state action.¹⁰⁴ But even under the new agreement, when an abductee is returned to Canada, there is no legal basis for dismissing pending state charges against the person. Rather than giving rights against the underlying criminal charges, the letters provide that the Canadian Government will, upon request, hold a person kidnapped and subsequently returned to Canada under provisional arrest pending proper extradition proceedings.¹⁰⁵ Thus, under the new understanding, if Jaffe had been returned to Canada before his first trial, on request he would have been held by Canadian officials while Stephen Boyles' office learned how to complete the proper forms.¹⁰⁶ The original land sale charges against him would probably have been unaffected. Both letters contain the boilerplate limitation that the understanding "is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges of private parties."¹⁰⁷

Thus, Jaffe's position seems to be the same as before the protocol amending the Treaty. Without proof of state action in violation of the treaty, he cannot invoke the treaty to support a habeas corpus petition. Further, the treaty would only support a challenge to a particular assertion of jurisdiction; it would not defeat the charges pending against him in Florida. Absent some friendly signal from the Putnam County State Attorney's Office, it appears Mr. Jaffe should avoid vacationing in Florida.

Kristofer R. Schleicher

¹⁰⁴ No court has ruled on the effect of the amendment in this regard.

¹⁰⁵ See *supra* note 9.

¹⁰⁶ There is still the question of whether violation of the Land Sales Act was an extraditable offense under the old treaty. Under the amended treaty, the violations would be extraditable offenses, being punishable with imprisonment longer than one year. See *supra* note 19 and accompanying text.

¹⁰⁷ See *supra* note 9.