

### 13. The Cavallo Case and the Future of Universal Jurisdiction

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The future of “universal jurisdiction” -- the legal principle that allows the courts of any country to try perpetrators of certain horrendous crimes no matter where they were committed.-- may be decided not in Spain or Belgium where most of the indictments have been brought, but by the Mexican Supreme Court. That Court will soon decide whether to extradite to Spain Ricardo Miguel Cavallo, an Argentine citizen accused of participating in over 200 cases of torture and disappearances during that country’s “dirty war” in the 1970s. Like General Augusto Pinochet, Cavallo has been charged by Spanish Judge Baltazar Garzón with genocide, terrorism, and torture.

Cavallo worked at Argentina’s notorious Navy Mechanics School -- called ESMA after its Spanish initials -- run by a special task force under the command of Argentine military junta leader Admiral Emilio Massera. Some 5000 of Argentina’s “disappeared” were held here. Cavallo’s jobs included locating and picking up those tagged for arrest by the machinery of terror, and later supervising the “Fish Tank,” a part of the camp where those prisoners deemed susceptible to “reeducation” worked as slave laborers repairing stolen electronic booty, clipping newspapers, or keeping the camp clean. Ironically, because Fish Tank prisoners were not killed, there were more ESMA survivors to testify against Cavallo than there would have been had he worked elsewhere.

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One of the tasks Cavallo oversaw was the fabrication of false identification papers so that military agents could travel freely. After he returned to civilian life, Cavallo turned this set of skills into a career. His initial capital came from money victims allege he and other Navy officers garnered from the Argentine terror machine practice of forcing detainees and their families to sign over deeds to property and bank accounts. With this stake, he and his associates established a business, TALSUD, that obtained contracts with the governments of Bolivia, El Salvador, Paraguay, Uruguay and Zaire to create a variety of national licensing and vehicle registration services. In 1999 a consortium headed by Talsud was awarded a contract to establish a national vehicle registry for Mexico.

Automobile trafficking is a serious criminal problem in Mexico. The government estimates that some two million of the country’s fourteen million vehicles were smuggled from the United States. Mexicans regularly worry about car theft and feel that police or other officials offer little recourse if their vehicles are stolen. In the 1990s succeeding Mexican administrations embraced privatization as a solution to Mexico’s economic ills, and in 1998, President Ernesto Zedillo convinced the Mexican Congress that it could cut costs and make it more difficult for stolen cars to be traded on the black market by creating a national automobile registry that would be contracted out to private entrepreneurs.

The new enterprise, named RENAVE (the Spanish acronym for National Vehicle Registry), was controversial. It increased the fees Mexicans paid to register their cars, and in the waning days of the PRI government many ordinary Mexicans suspected corruption. Moreover, registration entailed giving a lot of personal information to the government. Skeptics of every political stripe speculated that the whole operation was just a cover to facilitate the work of car theft rings. It also would be handy for money launderers who could register

non-existent cars and then claim to sell them to explain their sudden wealth. Many state and local governments refused to participate.

Raul Ramos Tercero, Deputy Minister of Mexico's Ministry of Commerce and Industrial Development (SECOFI) was responsible for running a fair and open public tender before awarding the RENAVE contract. Long before Cavallo's identity was revealed, competitors who lost out to the TALSUD consortium cried foul. They claimed the process did not comport with the requirements of Mexico's constitution, that ministers from other key cabinet ministries who sat on RENAVE's board did not attend the session at which the winning consortium was selected, and that the TALSUD consortium was not the low bidder. Ramos retorted that while TALSUD may not have been the lowest bidder, it was the most innovative. The TALSUD-led consortium was the only competitor to propose using smart card technology to identify vehicles and maintain a continuously updated database that not only could track a car's ownership history, but increase the likelihood of collecting on tax payments and fine revenues.

To counter public and political resistance, SECOFI enlisted Cavallo to appear in a series of television ads extolling the virtues of RENAVE. Someone tipped off the editor of the respected daily Mexican newspaper *Reforma* to look into the past of TALSUD and its director. José Vales, *Reforma's* Buenos Aires correspondent, began digging and in the archives of the Center for Legal and Social Studies (CELS), an Argentine think-tank started by human rights activists, he found an old photo of someone named Miguel Angel Cavallo, taken in the 1970s by Victor Basterra, who had worked in the false I.D. shop while an ESMA prisoner. The photo also had a number: -- 6,275,013 -- that matched the Argentine identification card Ricardo Miguel Cavallo had used to obtain his residency permit in Mexico. Vales then reviewed the lists of known perpetrators that appeared in several books

published in the mid-1980s in Argentina. He found one that listed a Miguel Angel Cavallo, alias Serpico, or Marcelo, or Ricardo. After checking the photo with other former ESMA prisoners, all of whom identified Cavallo, *Reforma* decided to break the story of his true identity

On the day the story broke, the head of the Mexican branch of INTERPOL, Juan Miguel Ponce Edmonson, read the *Reforma* story. Knowing that Spain was interested in trying senior Argentine military officers responsible for dirty war crimes, he decided to check the flights leaving that day for Argentina. He found that there was only one, via Cancun, and that Cavallo's name was on the passenger list. Cavallo had used a false name in Mexico and he was a serious flight risk. That was enough to arrest and hold him for 48 hours. Ponce ordered a deputy to intercept the flight in Cancun and detain him.

Word of Cavallo's arrest in Mexico provoked a flurry of phone calls and e-mails between Spain, Mexico, and Argentina. It was the 24<sup>th</sup> of August, a Friday during the height of Europe's summer vacation season. Judge Garzon, like most of the lawyers involved in the Argentine and Chilean cases in Spain, was out of town. But after a tense twelve hours, Judge Ruíz Polanco, the substitute judge on duty, signed a warrant for Cavallo's arrest and faxed it to Mexico.

Once he was in jail, rumors and conspiracy theories began to swirl around the Cavallo *affaire*. The most widely-shared involved a vendetta by the "dinosaur" old guard of the PRI that wanted to pay back then-president Ernesto Zedillo for loosening up the political system and thereby losing the election for the PRI. An alternative theory held that Cavallo was incidental to a fight over RENAVE among Zedillo's ex-cabinet ministers, some of whom bitterly opposed privatizing more public services. Cavallo's arrest was intended to sink RENAVE. A third variant was that the whole matter was a fight between rival car theft rings,

one of which had ties to Cavallo.

The rumors and conspiracy theories got a boost in the weeks following Cavallo's arrest. Deputy Minister Raul Ramos Tercero, reacting to political unwillingness to participate in RENAVE, claimed that powerful interests with much to lose if their lucrative car smuggling operations were interrupted were behind popular opposition to RENAVE. Days after Cavallo's arrest, Interpol's agent in Cancun, who carried out the arrest, was himself arrested on car theft charges. On September 6, Raul Ramos Tercero's body, with razor cuts to his throat, wrists and legs, was found on a forested hillside on the outskirts of Mexico City. While the death was ruled a suicide, some of the language in the notes left skeptics wondering whether the cause of Ramos' death was being covered up as well.

The fallout from Cavallo's arrest challenged President Zedillo's lame duck administration. Competitors who lost out in the bidding claimed they had informed the Mexican government of Cavallo's past at the time the contract was awarded to the TALSUD-led consortium. Although the government claimed that it had done an adequate background check on Cavallo's business experience and had received letters supporting his reputation from the Argentine and Salvadoran governments, the Mexican government took over RENAVE and canceled the consortium's contract. In doing so it became liable for millions of dollars in damages to the consortium and vulnerable to lawsuits from other bidders as well.

Meanwhile, officials in Zedillo's Foreign Affairs ministry were torn about how to respond to Spain's extradition request. Many were uncomfortable about the potential implications for Mexican sovereignty and its relations with Argentina if Cavallo were extradited. At the same time, coming on the heels of the Pinochet case, no one wanted Mexico to be seen as harboring a Southern Cone torturer. To decide how to proceed, they turned

to the calendar. Under the terms of Mexico's extradition treaty with Spain, Spain had sixty days to explain the basis of its extradition request. Cavallo then had three days to lodge any objections before the request then went before a federal judge for a judicial opinion on whether it met the treaty's requirements. Such an opinion necessarily would take time. That opinion, however, was not binding on the Foreign Ministry, which could override it and make its own determination. The Ministry's word was final, unless the defendant appealed to the courts on constitutional grounds. Zedillo's Foreign Ministry quickly determined that the judicial decision would not be handed down until power had transferred to Vicente Fox and the PAN. They decided to step aside and leave matters to Mexico's courts. If there was to be any political fallout, it would come after they were out of office.

Once the formal request for extradition arrived from Spain, Mexican Judge Jesús Guadalupe Luna Altamirano, took up the case and in December 2000 issued a 345 page opinion to allow Cavallo's extradition on the charges of genocide and terrorism, based on an extensive discussion of international law and legitimacy of universal jurisdiction. He denied jurisdiction for the torture charges on statute of limitations grounds. He found that at the time the offense was committed the normal criminal statute of limitations applied.

In February 2001, Vicente Fox's Foreign Minister, Jorge Castaneda, approved Cavallo's extradition. In addition to backing Judge Luna's decision to allow the genocide and terrorism charges, Castaneda reinstated the torture charges, thereby allowing the case to go forward in Spain on the easier-to-prove grounds of torture. The Foreign Ministry decision refers extensively to both Mexico and Spain's treaty commitments in the human rights area, but it rests, at heart, on an interpretation of Mexican criminal law involving the cumulation of offenses for purposes of calculating the statute of limitations.

Cavallo then filed a habeas corpus type of writ, known as *amparo*. *Amparo* is a mainstay of Mexican law that provides for judicial review of allegations that the state has violated an individual's constitutional rights. Cavallo hired a new team of lawyers, including an Argentine criminal law specialist with close ties to the Argentine Navy. He began telling the press that if he went to Spain, he would take others down with him: it was not clear whether he meant his ex-military comrades in Argentina or his Mexican business associates, or both. After an intermediate court upheld Judge Luna's ruling, the *amparo* case is now before the Mexican Supreme Court.

If the Mexican Supreme Court decides to extradite Cavallo to Spain for trial, it will mark the first time any country has extradited a defendant solely pursuant to this legal principle, and could provide a substantial precedent for other countries. On the other hand, if the Court determines that he cannot be extradited, the decision – depending on how it is worded – could be a serious blow to the efforts of advocates and non-governmental human rights activists who are trying to persuade governments around the globe to adopt and use this jurisdictional theory. Universal jurisdiction, they argue, is the best means to ensure that torturers, *genocidaires*, and other rights violators at least suffer the stigma of being indicted by a court of law and the inconvenience of being restricted in their ability to travel. It also increases the likelihood that they will be tried and punished either in the courts of the country seeking extradition, or in the domestic courts in the country where the human rights abuses took place. As the Pinochet case demonstrates, no peaceful, democratic nation wants to appear incapable of rendering justice in cases in which its courts have primary jurisdiction. Even countries with amnesty or immunity laws are likely to find the legal means to try their own wrongdoers rather than face the embarrassment of their trial abroad.