

## International Criminal Justice

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### Abstract

The implications of the procedural laws when mitigating domestic and international criminal activity includes both domestic and international laws which are based on a lot of the same traditions, including common law, civil law, adversarial systems, and inquisitorial systems. Defendants are read their rights when arrested and before questioning, and are given an opportunity to contact their countries consulate for counsel, as well as given a fair trial, which is a combination of the Adversarial Anglo-American system, and the Inquisitorial European Civil Law tradition.

**Keywords:** Procedural laws; Domestic and international criminal activity; Common law; Civil law; Adversarial systems

### Introduction

The case of Operation Ghost Stories, involves 10 individuals who were part of the Russian Federation who was charged and found guilty with conspiracy to act as an agent of a foreign government [1]. These men went undercover, some with stolen identities, inside the United States in hopes of getting their hands on classified government documents. Under their plea agreements, which completely dropped the charge of money laundering, the individuals had to disclose their real identities and forfeit any assets they accumulated while living in the United States. Also, the United States government decided to exchange these ten individuals with the Russian Federation if the Russian Federation agreed to release four United States citizens held in their facility for alleged contact with other intelligence agencies [2], which they ended up agreeing to.

The implications of the procedural laws when mitigating domestic and international criminal activity includes both domestic and international laws which are based on a lot of the same traditions, including common law, civil law, adversarial systems, and inquisitorial systems. Defendants are read their rights when arrested and before questioning, and are given an opportunity to contact their countries consulate for counsel, as well as given a fair trial, which is a combination of the Adversarial Anglo-American system, and the Inquisitorial European Civil Law tradition. There is a prosecutor that is independent, and a defense attorney who represents the defendant(s) where each side represents them and their cases, show evidence, and can cross examine any witnesses. In the European model, the judges have more authority over the case, including aspects of the investigation, evidence handling, and witness questioning.

There are certain requirements related to the steps in processing a case in the United States' and how they can combat criminal activity within their borders. If the U.S. has a treaty with the country that the defendant is from, this defendant may be released to their home country, either to face the charges there and serve time in their home country, or they may be tried here, serve time here for a certain

amount of time, then serve the rest of their time in their home country. If there is no treaty in place, the countries can then compromise and make deals. In many instances, the United States will trade one or more prisoners in their prisons for other U.S. prisoners that are being held captive elsewhere. These types of deals happen, and are a way to bring U.S. citizens back home. The requirements related to the steps in processing a case impact the United States' ability to combat criminal activity depends on whether the United States has a treaty with the concerning country or not. It also depends on what is written in the Vienna Convention on Consular Relations about the situation and the country as to where the defendant is a national citizen from. States and international organizations may claim jurisdiction over the defendant no matter what country the crimes were committed, as under the Supremacy Clause of our Constitution, treaties are legally binding.

### Literature and Analysis

According to these laws, non-citizens have certain rights, many which are the same for American citizens. Foreign nationals are to be advised that they may contact their home countries consulate after they're arrested. The "receiving state" must let defendant receive counsel of "sending state" by communication or allow a visit. The U.S. allows these non-citizens these rights as they want their own consular access available to their citizens if the "sending state" wishes for access in return. These procedural laws apply to people who are not legal U.S. citizens and these laws are enforced giving the non-citizen a right to the same procedural rights as a U.S. citizen. This includes a right to counsel, right to a jury trial, and our 5th Amendment protection right against self-incrimination. Non-citizens are also protected against any cruel and unusual punishments and their speech cannot be censored. Our Supreme Court has also held that the states cannot discriminate a defendant based on what nationality they are, regardless of whether they are a legal citizen or not.

A criminal's citizenship status can impact the United States' ability to adhere to procedural due process. In the case concerning the Russian Spies in the Operation Ghost Stories case, the criminals charged were not American citizens, all except for Vicky Pelaez, she was in fact a U.S. citizen. The others were Russian nationals who had used stolen identities to portray themselves as American citizens. Since

these individuals did not have dual citizenship either, they would have to be charged as foreign nationals, even though they've lived in the United States as a fake citizen for years. Of course, Vicky Pelaez was charged as an American citizen, because even though she was a Peru national, she was legally a U.S. citizen. Because of these spies being citizens of Russia, by law the United States had to inform Russia as to their capture, and to give the Russians a chance to contact their consulate.

This information affected the United States' ability to apprehend and charge the criminals because even though the United States had the right to detain and charge these individuals with crimes since they were committed on American soil, they were still citizens of Russia. Regardless, it does not matter that these criminals were from another country, they're required to abide by our American laws.

The location of these Russian spies did not really impact the United States' ability to adhere to procedural due process, because the United States has dealt with Russians before in their country who have committed crimes. There are procedures in place that have helped these two countries cooperate to try and keep the tensions down amongst them. These Russian spies were stationed all over the East coast, and one on the West coast in Seattle. Anna Chapman lived in New York when arrested, while Juan Lazaro (Mikhail Anatolyevich Vasenkov) and American citizen Vicky Pelaez were both living in Yonkers, NY when arrested. Donald Heathfield (Andrey Bezrukov) and Tracey Lee Ann Foley (Yelena Vavilova) were both arrested in Boston, MA and Richard Murphy (Vladimir Guryev) and Cynthia Murphey (Lidiya Guryev) was arrested in Montclair, NJ. Michael Zottoli (Mikhail Kutsik), Patricia Mills (Nataliya Pereverzeva), and Mikhail Semenko were all living in Arlington, VA when they were arrested. Christopher Metsos (Pavel Kapustin) ran on bail from the small island of Cyprus, while Alexey Karetnikov, who was charged with immigration violations resulted in his consent to be deported, was arrested in Seattle, WA. Three of the suspects in this case have fled and has yet to be captured. Since these spies were so spread out, this made it difficult for the FBI to monitor their movements. Luckily though, most of the spies resided within hundreds of miles from each other. The FBI would have had to file paperwork with each of these states, so that they were also aware of the FBI's presence, and that they in fact had jurisdiction over these criminals.

Several laws were broken both domestically and internationally and because of this, several charges were filed. The crimes associated with these spies included, identity fraud, and money laundering, and failing to register as a representative of a foreign government. The charge of money laundering alone would have given a maximum sentence of up to 20 years for each charge each. The FBI offered a plea bargain that if those charged would plead guilty and agreed to reveal their true identities, then they'd only be charged with failing to register as a representative of a foreign government, and ultimately be deported back to their home country of Russia. The charges of money laundering would ultimately be dropped. The associated consequences in violating these laws was that the U.S. knew they needed to deport these individuals, and in return wished for the Russian government to release some of their own citizens that are imprisoned in Russia. While ten Russian spies were released to Russia from the U.S., the United States only received four of its citizens that were convicted in Russia for espionage. The relationship between America and Russia has been on a fine line since the Cold War, and any un-cooperation when it comes to our citizens committing crimes in other countries could result in more tension between the two countries. So, the United States and Russia try

to make compromises whenever possible, so that both countries end up benefiting in some sort of way.

While analyzing the laws regarding the violations specific to this case, many important facts come to light. The federal charge of conspiring to serve as an unlawful agent of the Russian Federation related to the Foreign Agents Registration Act (FARA) which was enacted in 1938. This act makes it a law that people living in the United States must divulge any relationships they may have with a foreign government, and to keep the U.S. government informed about their finances and activities involved with these foreign governments [3]. These Russian spies failed to register as an agent of the Russian Federalization within the United States. The federal charge of Money Laundering consists of transforming any profits the spies made from their corruption type crimes and transformed them into legitimate assets accumulated by them. Money laundering can be closely linked with financing terrorism as well, and also concerns the final destination of such laundered funds [4]. The money can be structured to be broken down into smaller deposits and can be controlled in offshore accounts to decrease the suspicion from foreign governments [4].

While the Russian spies were not officially charged with identity theft, they very well could have been. All but one person charged used fake identities, some even coming from deceased individuals. Identity Theft is classified as a direct use of someone else's identity to commit crimes, mainly fraud, which all but one spy utilized during their stay in the United States. The Russian spies also did not get charged with espionage, as no classified information was passed on to the Russian Foreign Intelligence Service (SVR), even though that was the spies' main goal. If there was classified information leaked out by these Russian spies though, espionage could have been a charge. They could have possibly been charged with Conspiracy to Espionage, as that was their desired outcome, but they did not receive those charges.

These laws could have produced long prison sentences, allowing the U.S. Government room to compromise and negotiate with the Russian spies and the Russian Government, so that perhaps a plea bargain could be brought forth, preferable to the advantage of the United States Government. The Foreign Agents Registration Act (FARA) helped the FBI decide who they need to be keeping a close eye on. When "citizens" are possibly from another country and staying in the country illegally, and they are also not registered as a foreign agent, it makes receiving any search warrants much easier [5]. Once this FARA law is broken, the FBI can have free reign to spy on whoever they feel they need to and to keep track of these entities that may be foreign spies by any means necessary.

Political factors played a small but yet important role in facilitating or mitigating the crimes involved. The United States and Russia have had a rocky relationship for several decades now, but they're still able to make deals like they did in this case. The U.S. could have easily sent these spies to 25 plus years in a federal prison for their crimes, but instead decided to let Russia handle their punishments in return for four of their American prisoners to be released back to the U.S. This gave the United States the upper hand at the swap, as they had jurisdiction over these individuals. Perhaps down the road, next time the Russian government prosecutes an American, they'll be more likely to try to work out a deal with us. Negotiating between two completely opposite type governments can have a positive impact on both countries, regardless of how they personally run their government. When countries are willing to work with each other and devise

compromises, it can benefit not only both countries, but the international justice system as well.

Concerning American law, when a foreign national is accused of a crime under our jurisdiction, the United States must advise the accused that they have a right to contact their foreign governments consulate for advice, and to request a visit from the “sending state”, which in this case would be Russia [6]. This right to contact the consulate is not always offered by the U.S. though, and is dependent on whether the U.S. has a treaty with the other country involved, which it doesn't with the Russian government. Under the Supremacy Clause of the United States Constitution, these treaties are legally binding [6]. This is relevant as the United States wants the same rights to its citizens as it gives to other foreign nation's citizens while imprisoned in our prisons. The relationships between countries concerning the right to a consulate is controlled by the Vienna Convention on Consular Relations (VCCR) [6]. The United States government has been trying to work with Russia, and even though the United States does not have a treaty with Russia, they did allow these spies to communicate with the Russian consulate located in the United States, so yes, the law enforcement officials did do their job, and they did it well.

The law enforcement agency's ability to mitigate these types of crimes were conducted with great care, but that's not always the case on every case brought forth. Regarding this case, the FBI is well trained, resourceful, and capable of capturing individuals that commit federal crimes in our country. On the other hand though, the government doesn't always follow the rules set by its treaties with other countries. An example of this is when the Mexican government sued the United States when we refused to advise its citizens upon arrest that they had a right to contact a Mexican government consulate [6], and I'm sure this happens often as there are a huge number of illegal Mexicans currently in our country.

Regarding the investigation with American organizations, both the FBI and the CIA were involved in this investigation. The CIA was keeping close tabs on the Russians in Russia that were communicating with the spies, while the FBI kept tabs on the Russian spies themselves in the U.S. The Ireland Department of Affairs ran an investigation into the use of the Russian's cloned Irish passports, leading the Republic of Ireland to expel its Russian diplomats from their embassy located in Ireland [7]. The island of Cyprus used its police force to arrest one of the spies, Christopher Metsos while he was trying to flee to Hungary, but was later released on bail, and later disappearing [7]. The United Kingdom revoked Anna Chapman's citizenship, along with her passport privileges [7]. Most of the Russian spies were delivered to the Russian Federation in Moscow. The SRV charged their own spy Col. Alexander Poteyev, in absentia, for desertion and high treason but he fled the United States before he could be arrested by the FBI.

Each country involved has their own set of laws and jurisdictions. Unless a treaty or agreement is in place, the countries are only capable of charging and arresting the criminals when they are found to be in their country (jurisdiction). When a treaty is created in a monistic country, it then becomes incorporated into their domestic law system automatically. But in a Dualist type country, the parliament must pass the rules of a treaty into law [1]. Therefore, the limitations slightly depend on what the type of a country's laws are, whether there's a treaty involved with the other countries involved, and whether countries involved are trying to claim jurisdiction to the crime itself. Some countries do conduct criminal investigations in other countries, but this is normally either known by that country's government, or granted, or in complete secrecy, without the government's knowledge.

U.S. law was not facilitated within all the agencies involved in this case. The only country that acknowledged America's laws was when one of the Russian spies, wanted by the American FBI fled to Cyprus, where the government arrested Christopher Metsos, an individual who was wanted by the FBI. The United States government reciprocate's their laws, often making deals with other countries where the other country's prisoners are exchanged for American prisoners, so that the criminals may serve their time in their own countries. Many countries use this tactic to try to keep civil ties with other countries, and as to not cause tension between the countries. There was a cooperative relationship between the U.S. and other international law enforcement agencies, but only to an extent. The other countries involved in this case only cooperated when they felt the criminals broke their own country's laws, not because the United States needed these individuals brought to justice.

## Conclusions

The United States cooperated with these organizations but is very hesitant on involving other countries into their investigations and hesitant on helping other countries prosecute American's that commit crimes in other countries. The U.S. does not accept the international justice system as something that they are willing to cooperate with; as the U.S. likes to make sure that their citizens have their rights intact no matter what country the citizen visits, nor what crime is committed. Unless of course there's something in it for the United States government.

Whether we aid in apprehending and enforcing justice with foreign organization depends on whether we have a treaty with that particular country, or if there's a mutual agreement between the two countries as to whether extradition is most likely to occur. If a country willing to extradite an American criminal so that they may serve their time in an American jail, then the U.S. is most likely to return that favor as well. It really depends on the relationship with the country's, and what situations are going on between the countries at the time of the crimes. It is necessary to coordinate and cooperate with these agencies because these international agencies have the power to bring nations together to fight for one common goal, and that is of putting known criminals behind bars so they will not be able to commit more crimes in the future. Some countries don't want a group of individuals telling them what their laws should and shouldn't be, but if the International Criminal Justice system continues to grow and become refined as to what works, and what isn't working, it can only grow into a very important agency. When countries work together, they're able to bring more criminals to justice and this can be accomplished more effectively.

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