

# Mistakes

## Foiled Vesco Extradition

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NEW YORK—U.S. government efforts to extradite Robert L. Vesco from Costa Rica last year were frustrated by technical errors in the extradition procedure and questionable actions by the Costa Rican courts.

According to sources in the Central American republic who have intimate knowledge of the effort to bring the fugitive financier here for trial, the errors permitted the Costa Rican courts to rule against the United States on purely procedural grounds. In addition, those courts chose not to take actions required by the extradition treaty between the United States and Costa Rica.

One indication of the oddities in the extradition effort was a letter given by Costa Rican President Daniel Oduber to Vesco last May 6, the day before Oduber was inaugurated. In that letter he urged Vesco to abide by Costa Rican law and characterized the U.S. extradition bid as "aimed at the extradition failing, which it did."

Vesco, former chairman of International Controls Corp. of New Jersey, who seized con-

See VESCO, A8, Col. 1

### VESCO, From A1

trol of Geneva-based Investors Overseas Services in 1971, was indicted by a federal grand jury here on May 10, 1973. The grand jury charged that he secretly paid \$200,000 in cash to Richard Nixon's re-election campaign in 1972, in return for promises that a Securities and Exchange Commission investigation of his affairs would be halted or sidetracked.

Former Attorney General John N. Mitchell, former Commerce Secretary Maurice H. Stans and New Jersey Republican leader Harry L. Sears also were indicted. Mitchell and Stans were found innocent last April. Sears was granted immunity to testify at their trial. Vesco fled the country in February, 1973, shortly before the secret payment became known publicly.

On June 1, 1973, the same grand jury indicted Vesco for attempted fraud by wire, charging that he tried to have International Controls reimburse him for the money paid to the Nixon campaign, plus \$50,000 more which was contributed openly in 1972. The attempt was rebuffed by Lawrence P. Richardson, who was then president of International Controls.

Shortly after the second indictment, the U.S. attorney's office here requested Vesco's extradition from Costa Rica, where he and his family now live. The request was turned down, on July 23 by the second criminal division of the Costa Rican Supreme Court. In the interval, the extradition effort was filled with unusual—and possibly improper—events.

These events, compiled from sources in Costa Rica and the United States and confirmed by The Washington Post, included the following:

- The extradition was based on an indictment for attempted fraud, although neither the grand jury nor the former officers of International Controls can be sure the fraud was not at least partly completed. Fraud by wire is included in the extradi-

tion treaty; attempted fraud is not.

- The Costa Rican judge refused to order Vesco's arrest, although that is expressly provided in the treaty.

- Documents requested by the judge were never furnished by the United States. A State Department officer made a trip to Costa Rica during the extradition proceedings, but either he did not bring the needed documents with him, or they were never given to the court.

- The U.S. appeal of the lower court's ruling omitted a key date required by procedural rules, permitting the appeals court to dismiss the appeal on technical grounds.

- Although part of the appeals court ruling appeared to open the door for extradition on a charge of completed fraud, a later indictment containing such a charge has never been brought to Costa Rican authorities.

- The United States has never protested the actions of the Costa Rican courts—especially the refusal to arrest Vesco.

Interviews with U.S. officials directly involved in the extradition attempt leave little doubt that, from their end, the effort was pursued vigorously. Sources who attended hearings in San Jose, the Costa Rican capital, say that Viron P. Vaky, who was U.S. ambassador at the time and appeared personally to argue the case, was extremely forceful in his presentations.

Attorneys in the U.S. attorney's office here and in the State Department say that the Costa Rican extradition attempt and a later one, also unsuccessful, in the Bahamas were based on weak cases. The fact that the efforts were made at all, they say, indicates the government's strong desire to have Vesco returned. (Sources in San Jose say Vesco has frequently claimed that the United States does not really want him returned because his testimony would help former President Nixon.)

The extradition request was delivered by Ambassador Vaky to Costa Rican Foreign Minister Gonzalo Facio on June 7, 1973, six days after the indictment was handed down, and sent through channels to criminal court Judge Atilio Vicenzi. It cited Article 2, Paragraph 19 of the extradition treaty, which covers a completed fraud, because there is no provision for attempted fraud.

(Foreign Minister Facio is a member of a San Jose law firm which has done extensive amounts of work for Vesco-controlled companies. Jose Figueres, who was president at the time, is a personal and business associate of Vesco.)

Article 11 of the extradition

treaty provides that a fugitive is to be arrested on the sworn declaration of the requesting country, in this case the United States. The requesting country then has 60 days in which to present evidence to back up its claim.

On June 8, Vaky appeared in court to ask for Vesco's arrest. That afternoon Vicenzi ruled that the supporting papers would have to be produced before he would order the arrest, an apparent violation of the treaty. Among the documents he asked for were an authenticated copy of the arrest order issued in New York and affidavits that formed the basis for the arrest order. Neither of these is required by the treaty until after the arrest.

On June 14, Vaky was back in court, asking the judge to reconsider his ruling on the arrest. The next day, he sent a cabled copy of the arrest order to Foreign Minister Facio, who authenticated it and sent it to the court. That same afternoon, June 15, Judge Vicenzi refused to reconsider his ruling, and he threw another roadblock in the way, by describing his ruling as "procedural." Under Costa Rican law, rulings on purely procedural questions cannot be appealed.

On June 20, the United States appealed Vicenzi's original decision denying the arrest of Vesco and his characterization of the second ruling as procedural. It was then that the key date was left out of the papers, making them technically improper.

Article 576 of the Costa Rican code of criminal procedure says, in part, that the appeal shall state "with exactness" the date and nature of the resolution which the lower court has refused to revoke and the date of the most recent notification of the denial to revoke and amend the resolution. The date omitted was the most recent notification—June 14.

As a result, on June 22, the appeal was thrown out of court—the decision was handed down at 7:45 a.m.—on the grounds that it did not contain one of the required dates. The three appeals court judges thus never had to rule on whether Vesco should be arrested.

Twenty minutes after the appeals ruling, Judge Vicenzi issued an order dismissing the entire case.

This action, too, was appealed, and it was here that the court opened the door for possible extradition on charges more clearly defined in the treaty itself.

(On June 25, newspapers in San Jose carried pictures of Joseph Sullivan, desk officer for Costa Rica at the State De-

partment in Washington, in both extradition attempts say Costa Rica with Ambassador the case was not pressed in Vaky and President Figueres. Costa Rica because its chances The newspapers speculated were lessened by the loss in that Sullivan had brought documents for the Vesco case— Nassau.

By refusing to arrest Vesco —and insisting that the United States make its case before the arrest—the Costa Rican court negated one of the most important parts of any extradition treaty. With as much as 60 days notice of possible arrest, it is not likely that any fugitive would remain in a country long enough to see how the case goes.

In its ruling, handed down on July 23, the appeals court ignored the preliminary step of arrest provided in the treaty and went instead to the actual surrender of a fugitive to the United States, saying the various documents must be presented "in order to grant extradition."

Later in the ruling, however, the court said "fraud committed by means of telegraph is covered by the treaty and sanctioned by Costa Rican law. In both—the treaty and the law—fraud is referred to in generic terms, thereby covering any means which may be used to carry it out, whether that be use of the telegraph, or radio, or television, etc."

On July 20—three days before the ruling—the New York federal grand jury handed down a sealed indictment charging Vesco with defrauding International Controls of \$50,000 in order to buy stock in Investors Overseas Services—in other words, a completed fraud. The United States has never tried to extradite Vesco from Costa Rica on that charge. Instead, it was sent to the Bahamas—then the financial base of the Vesco empire—where it was rejected. Government officials who handled

Last March 20, the Costa Rican legislature, under pressure from outgoing President Figueres, passed a new extradition law which gives the president the power to decide which requests should be approved. Commonly known as the "Vesco law," the act drew fire from members of the Costa Rican Supreme Court, leading some attorneys in San Jose to speculate that it would be declared unconstitutional if it were tested in court.

The legislature is currently considering a move to repeal the Vesco law, an effort which has received Supreme Court sanction. The government of Daniel Oduber, however, has introduced a watered-down version of the repeal which some observers believe would continue to shield Vesco against extradition. Oduber is a long-time protege and hand-picked successor of Figueres.

Staff members in the U.S. attorney's office here refuse to say whether any further extradition efforts are contemplated or under way.