Extradition - A Comparison Of Louisiana Law And The Uniform Act

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Interstate extradition of those charged with crime in one state and found in another state is provided for by the Federal Constitution and statutory authority. Implementing state legislation has been universally adopted. Since extradition involves the cooperation of two states, the state extraditing and the state of asylum, it is particularly important to have uniform state procedures. The Uniform Criminal Extradition Act,embracing what were considered the best features of the various state laws, was approved by the National Commissioners on Uniform State Laws in 1926. Subsequent amendments were adopted in 1936. The Interstate Commission on Crime approved the uniform extradition act in 1936 and is cooperating with the Commissioners of Uniform Acts in recommending its adoption by the several states. The Uniform Act has now been adopted by forty-one of the fifty states, including Louisiana’s neighboring states of Alabama, Arkansas, and Texas. A comparison of Louisiana’s extradition law and the Uniform Act is important as pointing the way to possible improvement of Louisiana’s law and bringing it more in line with the procedures of the forty-one adopting states. It is also of immediate practical significance, since when Louisiana authorities are seeking to extradite a fugitive from a state with the Uniform Act the procedures of the state of asylum (the Uniform Act requirements) must be complied with.

A major difference between the Louisiana and Uniform extradition laws relates to the question as to whether it shall be the duty of the Governor to extradite a fugitive, or whether arrest and delivery of the fugitive shall be discretionary with the Governor. Under Article 160 of the Louisiana Code of Criminal Procedure extradition of the accused is discretionary. Section 2 of the Uniform Criminal Extradition Act imposes a

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duty on the Governor to extradite when the conditions of the act are met. Forty of the forty-one states adopting the Uniform Act retain the mandatory duty. The provision of the Uniform Act in this regard is in accord with the spirit and purpose of Article IV, Section 2, clause 2, of the United States Constitution, and of the federal enabling statute. Those provisions declare that it shall be the duty of the state to extradite fugitives from justice. On the other hand, there are strong arguments in favor of retaining Louisiana's present rule under which extradition is discretionary with the Governor, who may deny extradition in the exceptional case where the wanted criminal has effected a complete self-rehabilitation and has established himself as a worthwhile member of the community. Also it can be argued that the Governor should be able to deny extradition where it is sought as a step in high-pressure bill collecting. It was upon these grounds that the Louisiana Legislature has, on at least two occasions, turned down bills which would have adopted the Uniform Extradition Act. The question has been raised as to the constitutionality of providing that extradition shall be at the discretion of the Governor, when both the United States constitutional provision and the federal statute which implements it make it the Governor's duty to extradite. It was answered in Kentucky v. Dennison where the United States Supreme Court held that the federal government has no constitutional authority to compel a state to exercise the duty imposed by the Constitution. The court recognized the existence of a duty, but stated that its enforcement depended on the fidelity of state governors. Louisiana's discretionary extradition, as provided for in Article 160, has not been seriously challenged.

The scope of extradition under the Uniform Act is broader than under Louisiana's Article 160 which applies only to a person who is sought "as a fugitive from justice." The Uniform Act applies to any person charged in the demanding state and found in another state. Section 5 of the Uniform Act authorizes extradition of a criminal who left the demanding state under compulsion, as where he had been extradited to the state of present asylum for trial. Section 6 of the Uniform Act covers the situation of an offender who was not present in the demanding state when the crime was committed, as where a shot was

fired across a state line or the offender performed his part of a crime from outside the state. In these situations the offender would not be a "fugitive from justice," for he has not fled from the demanding state after the commission of his crime.\textsuperscript{7}

Extradition of the escaped prisoner or parole-jumper is more clearly provided for in the Uniform Act than in the Louisiana statute for extradition. Section 3 of the Uniform Act specifically states that the demand may be accompanied by "a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the Executive Authority (Governor) of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole." While the escapee qualifies for extradition as a "fugitive from justice," Louisiana's Article 160 does not designate the papers which are to accompany the demand for his return. To authorize extradition of an escaped convict or parole violator from Louisiana it will probably be necessary to meet the stated general requirement by furnishing a certified copy of a sworn statement of facts by the prosecuting attorney and of the indictment or information which was the basis of the original arrest and conviction.\textsuperscript{8} It will also be necessary to furnish documents showing the fugitive's conviction, sentence, and escape. Since these are not specified in Louisiana's extradition law, Louisiana practice might logically follow the Uniform Act requirements very closely. A special situation is presented where a parolee is in this state under the interstate compact for parole supervision. This compact expressly provides that officials of the sending state may enter and retake the parolee without extradition proceedings.\textsuperscript{9}

It is implicit in both the Louisiana and Uniform extradition laws that the request for extradition shall be made by the Governor of the demanding state. The official papers which accompany the demand must meet the requirements of the law of the state of asylum, and the prisoner is entitled to be released if the papers do not fully satisfy the law.\textsuperscript{10} When the authorities of another state are seeking to extradite a fugitive from Louisiana, Article 160 requires a certified copy of "a sworn state-

\textsuperscript{7} State v. Hall, 20 S.E. 729 (N.C. 1894).
\textsuperscript{8} LA. R.S. 15:160 (1950).
\textsuperscript{9} Id. 15:574.14(3).
\textsuperscript{10} State ex rel. Covington v. Hughes, Sheriff, 157 La. 652, 102 So. 824 (1925).
ment of facts by the prosecuting attorney and of the indictment, information or affidavit pending" in the demanding state. The statement of facts by the prosecuting officer assures the Governor of information which will assist him in determining the propriety of the extradition. A certified copy of the indictment or information shows that the person wanted has been formally charged with a crime in the demanding state, while the affidavit will go to show that a proper basis for a formal charge exists. Section 3 of the Uniform Act, similarly aimed at establishing the official status of the charge in the demanding state, requires that the Governor's requisition be "accompanied by a copy of an indictment found or by an information supported by affidavit..., or by a copy of an affidavit made before a magistrate there, together with any warrant which was issued thereupon...."

Louisiana's Article 160 includes an "information" as a proper basis for an extradition demand. Section 3 of the Uniform Act specifies an "information supported by affidavit." (Emphasis added.) The Federal Extradition Statute, drafted at a time when all major charges were made by grand jury indictment, does not mention the information. This gives rise to a question as to whether extradition is being authorized on something less than is required by the federal law. A commentator in American Jurisprudence states that, "While it has been declared that state laws cannot make any requirements further than those made by the Act of Congress, yet the laws of a state may require the governor to surrender a fugitive on terms less exacting than those imposed by the Act of Congress, and also that the state may provide for cases not provided for by the United States." (Emphasis added.)¹¹ This statement is weakened by the fact that no authority directly in point is cited for the proposition that terms less exacting may be required. To the contrary, the United States Supreme Court has entertained suits to test the legality of extradition proceedings wherein the accused contended that his extradition was unauthorized because the requirements of the Federal Constitution and enabling statute had not been met. In In The Matter of Strauss,¹² the Supreme Court heard and disallowed a contention by the accused that his extradition was not "authorized" because he was not "charged"

¹². 197 U.S. 324 (1895).
within the meaning of Article IV, Section 2, Clause 2, of the United States Constitution. In Hogan v. O'Neill\textsuperscript{13} the accused unsuccessfully complained that the indictment did not charge him with the commission of a crime. The court then determined that there was "adequate ground for his return as a fugitive from justice" under the federal statutes. These two decisions by no means exhaust the jurisprudence on the point, but they are illustrative of the fact that the Supreme Court has entertained appeals wherein it was complained that something less than the federal requirement had been met. By a consideration of the accused's complaint, these cases indicate that the federal enabling statute sets up minimum as well as maximum requirements. To the same effect, but more closely in point as to the sufficiency of an "information," is the early case of Ex parte Hart,\textsuperscript{14} where the United States Circuit Court of Appeals, Fourth Circuit, on appeal from one detained to await extradition, held that an "information" was not equivalent to an indictment or affidavit and would not "authorize" extradition proceedings. The accused was ordered released from custody. Thus the Fourth Circuit has squarely held that the federal statute prescribes a minimum requirement beyond which the state may not extradite.

If it is assumed, and this issue is far from clear, that state extradition laws must conform to the minimum requirements of the federal enabling statute, a further question is presented. Is an "information" equivalent to an indictment or affidavit as a basis for extraditing? In conflict with the holding of the Fourth Circuit in Ex parte Hart is a statement by the Supreme Court in the case of Matter of Strauss. As against the contention that the word "charged" employed in Article IV, Section 2, Clause 2, of the United States Constitution means a formal document which may be made the basis of trial, the Supreme Court held that the "affidavit" required by the federal enabling statute contemplates any sworn statement made before a magistrate and need not be adequate to support a trial. In construing the meaning of the word "charged," the court made the following observation, "Why should the state be put to the expense of a grand jury and an indictment before securing possession of the party to be tried? It may be, as counsel urge, that persons are sometimes wrongfully extradited, particularly in cases like the

\textsuperscript{13} 255 U.S. 52 (1921).
\textsuperscript{14} 63 Fed. 249 (4th Cir. 1894).
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present; that a creditor may want only to swear to an affidavit charging a debtor with obtaining goods under false pretenses. But it is also true that a prosecuting officer may either wantonly or ignorantly file an information charging a like offense. But who would doubt that an information, when that is the statutory pleading for purposes of trial, is sufficient to justify an extradition?" 15 It is inherent in the United States Supreme Court's opinion in the Strauss case that the federal requirements are met by any form of charge which may be authorized by law in the demanding state. The term indictment may very logically be interpreted, in its generic sense, as describing any mode of formal accusation. The fact that the extradition may be based upon an affidavit shows that the charge need not be based upon a grand jury's investigation. The state court decisions are at variance as to whether the information alone is equivalent to an indictment, 16 or whether a supporting affidavit is necessary to render it a proper charge for extradition purposes. 17 It is submitted that a supporting affidavit adds very little to the information, which is already a very strong document.

An "affidavit" is included as an alternate means of showing that the person demanded is wanted for a crime. Under both Louisiana's Article 160 and the federal extradition statute 18 the affidavit has the same authoritative effect as an indictment or information. Section 3 of the Uniform Act requires that the copy of an affidavit must be accompanied by "a copy of any warrant issued thereupon." The affidavit contemplated by the federal enabling act is probably an accusation which will be a sufficient basis for the issuance of a warrant of arrest, rather than as the basis for a trial. In defining the word "charged," as used in the federal statute, the United States Supreme Court declared in Matter of Strauss that, "In the strictest sense of the term a party is charged with a crime when an affidavit is filed, alleging the commission of the offense and a warrant is issued for his arrest, and this is true whether a final trial may or may not be had upon such charge. It may be, and is true, that in many of the states some further proceeding is, in the higher grade of offenses at least, necessary before the party can be

15. 197 U.S. 324, 332 (1905).
put upon trial, and that the proceedings before an examining magistrate are preliminary, and only with a view to the arrest and detention of the alleged criminal; but extradition is a mere proceeding in securing arrest and detention.”

The word “affidavit” may be employed in Louisiana’s Article 160 to mean an official charge that will serve as the basis for the final trial of petty offenses. This limited meaning is indicated by the discharge provisions of Article 167, which provides for the prisoner’s release if the indictment, information or affidavit accompanying the Governor’s requisition “is fatally defective as a criminal charge” under the law of the demanding state.

When the Governor is satisfied that the extradition papers are in order he may issue a warrant for the arrest of the wanted criminal. This warrant may be recalled at any time “for cause by him (the Governor) deemed sufficient.” The warrant is directed to “any peace officer of the parish in which such fugitive may then be,” and orders the officer to deliver the fugitive to the representative of the demanding state who is “designated in the warrant.” Louisiana’s general arrest law, authorizing a person to summon assistance in making a lawful arrest, is broad enough to apply to the officer who is executing the Governor’s warrant issued in aid of extradition. Section 9 of the Uniform Extradition law specifically provides that the officer entrusted with the execution of the Governor’s warrant shall have authority to command assistance in making the arrest.

Louisiana’s Article 160 does not specify the recitals of the Governor’s warrant. Section 7 of the Uniform Act states that the Governor’s warrant “must substantially recite the facts necessary to the validity of its issuance,” thus raising a problem as to the effectiveness of a warrant whose recitals were insufficient. In a Colorado case the court took the view that a warrant which failed to recite these facts was “wholly ineffectual for any purpose,” and dismissed the accused. In considering a similar problem on habeas corpus proceedings, the

19. 197 U.S. 324, 331 (1905).
21. La. R.S. 15:160 (1950). Cf. under Section 7 of the Uniform Criminal Extradition Act, the warrant may be directed to “any peace officer.”
22. La. R.S. 15:160 (1950); Uniform Criminal Extradition Act, § 8, provides for delivery to “the duly authorized agent of the demanding state.”
Supreme Court of Alabama held that a warrant which failed to recite the facts necessary to the validity of its issuance would not render the accused illegally held if the warrant was actually based on a sufficient requisition demand by the Governor of the demanding state. The approach taken by the Alabama court is sound. The recital of facts in the warrant should be treated as directory in nature, rather than as mandatory for the validity of the warrant of arrest. The validity of the warrant is dependent upon the existence of a sufficient and valid requisition demand, rather than the completeness of its recitals. Possibly the best solution is to specify the nature of the recitals, but to add that an incomplete statement of facts should not invalidate the warrant if a proper basis for its issuance existed.

The rights of a person arrested, pursuant to the Governor's warrant, to an extradition hearing are fully spelled out in the Louisiana law. Article 164 states that he shall be taken before a committing magistrate (usually a district judge, although a city judge could hold such a hearing) who will inform the prisoner of the charge against him in the demanding state, and will inquire as to his willingness to return to that state for trial. If the prisoner replies that he consents to return for trial, Article 165 provides for his immediate delivery into the custody of the agent of the demanding state. Corresponding Section 25A of the Uniform Act requires that a written waiver be executed before the judge, thus providing a desirable record of the willingness of the prisoner to return to the demanding state to stand trial.

A hearing to test the validity of the extradition must be promptly held when the accused does not consent to return to the demanding state. The Louisiana hearing procedure, set out in Articles 166 and 167, is much simpler than the comparable Uniform Act provisions. Section 10 of the Uniform Act requires an additional step, i.e., an application by the accused for a writ of habeas corpus. The issues at the Louisiana extradition hearing are set out in Article 167. The Uniform Act does not state these issues, apparently assuming that the grounds for objecting to the extradition may be adequately gleaned from other provisions of the act. Under Louisiana's Article 167 the papers accompanying the requisition must be in order. The copy of the

indictment or information must be certified by the Governor of the demanding state, and must also constitute a valid criminal charge under the laws of that state. It is a further ground of discharge that the requisition of the Governor of the demanding state, or the Louisiana Governor's warrant of arrest issued pursuant thereto, "is defective or improperly executed." The prisoner is also entitled to be released if there has been a mistake in identity, i.e., if he is not "the person mentioned in the warrant, requisition, and indictment, information or affidavit." An alibi-type of ground for discharge is provided by the requirement that the prisoner must have been in the demanding state at the time of the alleged offense unless the crime was one where presence in the state was not essential to the crime. Outside of the above-noted ground of discharge, which is sort of a combination of alibi and impossibility, the guilt or innocence of the accused is not an issue at the extradition hearing. Unless one of the specified grounds for discharge is established, the prisoner is to be delivered to the agent of the demanding state.

It will often be necessary to provide temporary local confinement for the prisoner who is being extradited and returned to the demanding state, or for a prisoner who is being brought through the state after extradition proceedings in another state. The Uniform Act provides fully for this situation—stating the duty to provide local confinement, the continuing authority of the officer in charge, and his responsibility for the expenses of keeping the prisoner. Louisiana's extradition law does not cover these matters, with local assistance being dependent upon the voluntary cooperation of local jail officials. The original Uniform Extradition Act of 1926 did not contain the provision for local confinement of a prisoner who is being taken through the local state after extradition in a third state for return to the state of his crime. This provision safeguards against the misuse of state facilities by providing that the officer in charge of the prisoner must produce "satisfactory written evidence" of the fact that the prisoner being transported through the state has been officially extradited. Local recognition of the foreign extradition procedure is afforded by the express provision that, "Such

28. Accord: Uniform Criminal Extradition Act, § 7, provides that the Governor "shall sign a warrant of arrest, which shall be sealed with the state seal."
29. Id. § 12.
prisoner shall not be entitled to demand a new requisition while in this state."

The arrest and temporary detention of a fugitive pending the arrival of formal extradition papers is fully provided for in both the Louisiana law\textsuperscript{30} and the Uniform Act.\textsuperscript{31} Under Article 168 of the Louisiana Code of Criminal Procedure a warrant for the temporary detention of the fugitive is to be issued "when any person shall be charged on the oath of any credible person, before any committing magistrate, with being a fugitive from the justice of any other state." The person arrested is entitled to a hearing in open court, and is to be committed to await extradition only if the judge is "of the opinion that the accused is a fugitive from justice."\textsuperscript{32} This right to a hearing in open court serves as a protection against improper and unfounded detention. If the accused is not afforded this examination, he may obtain relief by promptly applying for a writ of habeas corpus to test the legality of his detention. However, if a regular requisition for his surrender is subsequently made, the fact that his prior detention was illegal shall not preclude his extradition to the demanding state.\textsuperscript{33}

Louisiana's Article 168 and the comparable Uniform Act provision\textsuperscript{34} are identical in limiting the period of temporary detention to thirty days. In In re Commissio\textsuperscript{35} the Louisiana Supreme Court held that where the accused had already been imprisoned for thirty days under insufficient extradition papers, the temporary detention provision could not be employed as a means of holding him for an additional period of time. This decision made it abundantly clear that, regardless of the filing of successive affidavits, the accused cannot be held awaiting proper extradition papers for a period longer than thirty days. The constitutionality of temporary detention provisions, though none is found in the federal extradition law,\textsuperscript{36} was settled by the United States Supreme Court in Burton v. New York Cent. R.R.,\textsuperscript{37} where Justice Brandeis made the following statement: "These provisions of the constitutions

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\item \textsuperscript{30} LA. R.S. 15:168 (1950).
\item \textsuperscript{31} Uniform Criminal Extradition Act, § 13.
\item \textsuperscript{32} In re Mitchell, 205 N.C. 788, 172 S.E. 350 (1934).
\item \textsuperscript{33} Ex parte King, 139 Me. 203, 28 A.2d 582 (1942) (absence of examination); La Sasso v. McLeod, 137 N.J.L. 45, 56 A.2d 430 (1948) (illegal arrest).
\item \textsuperscript{34} Uniform Criminal Extradition Act, § 15.
\item \textsuperscript{35} 214 La. 1055, 39 So.2d 729 (1949).
\item \textsuperscript{36} 18 U.S.C. § 3182 (1948).
\item \textsuperscript{37} 245 U.S. 315, 318 (1917).
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and federal statutes (relating to interstate rendition) do not deal with arrest in advance of a requisition. They do not limit the power of a state to arrest, within its borders a citizen of another state for a crime committed elsewhere; nor do they prescribe the manner in which such arrest be made. They are matters left wholly to the individual states. Whether the asylum state shall make an arrest in advance of requisition, and if so, whether it may be made without a warrant, are matters which each state decides for itself. Such has been the uniform practice, sanctioned by a long line of decisions and regulated by legislation in many of the states.” The Uniform Act goes even further than Louisiana’s Article 168 and permits arrest without a warrant “upon reasonable information” that the accused stands charged with a major crime. The constitutionality of this arrest procedure was affirmed in Commonwealth ex rel. Huey v. Dye, where the Pennsylvania Court stressed the fact that the arrest provision required that the person arrested be taken before a magistrate where his answer would be heard, just as if he had been arrested on a warrant.

Release on bail is particularly hazardous in extradition situations. The accused has already fled from the state of his crime and the probabilities of his jumping bail are much greater than in the arrest of a local criminal for trial. The bail provisions of the Uniform Act are limited to arrests for temporary detention to await a requisition for extradition, and further provide that the prisoner “may” be admitted to bail. Louisiana’s Article 169 provides generally that the fugitive “shall be entitled to be discharged on bail until there is a judgment declaring him a fugitive from the justice of such state or territory.” Louisiana’s broad bail provision may have been dictated by a belief that our constitutional right to bail applies to those held pend-

38. Uniform Criminal Extradition Act, § 14, limiting such arrests to cases where the accused is charged “with a crime punishable by death or imprisonment for a term exceeding one year.” In Picking v. Pennsylvania R.R., 151 F.2d 240 (3d Cir. 1945), arrest of a fugitive from justice, not charged with a crime for which he might be imprisoned for more than a year, on a “detainer” telegram was held to constitute a violation of this section.
40. Uniform Criminal Extradition Act, § 14, provides that the person arrested must be taken before a judge “with all practicable speed.”
41. Id. §§ 15, 16.
42. La. Const. art. I, § 12, which reads in part: “All persons shall be bailable by sufficient sureties, except the following: 1. Persons charged with a capital offense, where the proof is evident or the presumption great. Persons convicted of felonies ... (unless sentence of less than five years is imposed).”
ing extradition proceedings. This view, however, is not supported by the sparse decisions in point. In Waller v. Jordan\(^{43}\) the Arizona Supreme Court declared that, "It should be remembered that this provision [a provision like Louisiana's Article I, Section 12] and all others of our constitution relating to criminal proceedings have application only to those crimes over which the state authorities have jurisdiction by virtue of their having been committed in the state." (Emphasis added.) In further support of the view that the constitutional right to bail applies only to those held for criminal prosecution in the state is Meltzer v. United States\(^{44}\) holding that until a defendant is in the court of the indictment, the right to bail does not apply. Louisiana's broad bail authorization will not, however, result in wholesale releases of those arrested for extradition purposes. The court will consider the fact that the prisoner is a fugitive from justice in fixing the amount of the bail.

Where the wanted criminal is already imprisoned and awaiting trial for a Louisiana crime, the Louisiana Governor may withhold extradition until the local prosecution is completed and the sentence served.\(^{45}\) Where the crime in the demanding state is a more serious one, the Governor may feel that prompt extradition is appropriate. Pursuant to his authority to refuse extradition, he may condition surrender of the accused upon the Governor of the demanding state entering into a re-extradition agreement. Such agreements are authorized and provided for in Section 5 of the Uniform Act. Under this procedure the original surrender of the prisoner to the demanding state is pursuant to Louisiana's regular extradition proceedings and requirements. The subsequent return of the prisoner to Louisiana will be based entirely upon the agreement of the Governor of the demanding state, and will not be subject to regular extradition requirements and formalities.

A serious question has been raised by several decisions as to a possible conflict between a statutory provision granting the Governor power to extradite persons already under criminal prosecution in the state, and state constitutional provisions calling for a separation of powers between the legislative, execu-

\(^{43}\) 58 Ariz. 169, 173, 118 P.2d 450, 452 (1941).
\(^{44}\) 188 F.2d 913 (9th Cir. 1951).
tive, and judicial branches of government. The issue is whether executive surrender of a person presently under criminal prosecution in a state would transgress the powers of the judiciary. In an early Massachusetts opinion, the court stated that it would violate the separation of powers requirement to allow the Governor to extradite a person imprisoned in that state at the time of attempted extradition. The court noted that it had been decided that a person released on bail could be extradited on the theory that the judiciary had given up custody of the accused. This dictum distinction appears to have been recognized in a number of other cases. In Hobbs v. State the Texas court held that the Governor had no power to arrest the jurisdiction of the court by the issuance of a warrant for extradition where the accused was held under criminal prosecution in the state of Texas. The court, however, did not indicate whether this lack of authority stemmed from the absence of statutory power or from constitutional limitations. The later Texas case of Ex parte McDaniel recognized the Hobbs case as law, but did not elaborate on the holding. In upholding a statute which provided that the Governor could not extradite a person held under criminal prosecution in the state the Oregon Supreme Court indicated by way of dictum that the Governor lacked power to extradite in such a situation. Such action, according to the opinion, would constitute a violation of the separation of powers requirement of the state constitution. A 1947 Ohio Court of Common Pleas decision held that the Governor had no authority to extradite a person serving a five-year sentence on probation. In a rather confusingly written opinion the court cited In re Opinion of Justices, and seemed to indicate that the extradition of a person under probation would be a violation of the separation of powers requirement. The precise rationale of this decision is uncertain, however. On the other hand, the power of the Governor to extradite persons against whom local prosecutions are pending has been recognized since the adoption of the Uniform Act by the

47. Taylor v. Taintor, 83 U.S. (16 Wall.) 396 (1872); Roberts v. Reilly, 118 U.S. 80 (1886); People v. Klinger, 319 Ill. 275, 149 N.E. 799 (1925); In re Harris, 300 Mass. 180, 34 N.E.2d 504 (1941); Carpenter v. Lord, 88 Ore. 128, 171 Pac. 577 (1918).
49. Ex parte Bell, 75 N.E.2d 188 (Ohio 1947).
Illinois,\textsuperscript{52} New York,\textsuperscript{53} and Pennsylvania\textsuperscript{54} courts. These decisions are somewhat weakened by the fact that there was no discussion, in any of them, of the separation of powers requirement. In a New York case\textsuperscript{55} arising before the promulgation of the Uniform Act, the court held that it was properly an executive function, to determine whether to surrender a person accused in New York but demanded by another state. Such an extradition was held not to be a transgression of judicial authority. Which line of jurisprudence the Louisiana Supreme Court would follow on this question is, of course, conjectural. Possibly the Governor could avoid any challenge of his surrender of the wanted criminal as an interference with the judicial department of the state\textsuperscript{56} by securing the consent of the district attorney if a prosecution is pending,\textsuperscript{57} or of the trial court after conviction. In addition to assuring the validity of the extradition, such a procedure would appropriately recognize the interest which the district attorney and the court have in compliance or non-compliance with the demand for extradition.

The converse situation, where Louisiana is seeking to extradite a fugitive who is presently held for trial in another state, is rendered difficult by the fact that Louisiana's law does not authorize the Governor to enter into re-extradition agreements; and by the further fact that the person brought involuntarily into this state to stand trial could not be extradited back since he would not be a "fugitive from justice."

The duty of instigating extradition proceedings, for recovery of a Louisiana criminal who has escaped into another state, is on the district attorney of the parish desiring to prosecute.\textsuperscript{58} His application to the Louisiana Governor for an extradition requisition should fully set out the name of the accused, the crime charged against him, the circumstances of its commission, and the probable whereabouts of the accused in the state of asylum. While Louisiana's extradition law is silent as to the contents of the district attorney's application, the above listed information will be needed by the Governor in determining the

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  \item \textsuperscript{52} People v. Bradley, 383 I1. 437, 50 N.E.2d 517 (1943).
  \item \textsuperscript{53} People v. Adam, 74 N.Y.S.2d 57 (1947); Seiler v. Warden of City Prison, 102 N.Y.S.2d 969, 199 Misc. 570 (1951).
  \item \textsuperscript{54} Accobacco v. Burke, 162 Pa. Sup. 592, 60 A.2d 426 (1948).
  \item \textsuperscript{55} People v. Hogan, 69 N.Y.S. 475, 34 Misc. 85 (1901).
  \item \textsuperscript{56} LA. CONST. art. II, § 2, requiring a separation of departmental powers.
  \item \textsuperscript{57} The district attorney is a judicial officer under LA. CONST. art. VII, § 58.
  \item \textsuperscript{58} LA. R.S. 15:170 (1950). Accord: Uniform Extradition Act § 231.
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propriety of issuing the requested extradition requisition. In order to insure adequate information and to promote uniformity as to the contents of applications for extradition, Section 231 of the Uniform Act specifies the information which must be furnished when the application is made. It also requires a certification that "the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim." In states having the Uniform Act, failure to include the specified information and certification may result in the Governor's refusal to act, but it will not serve as a technical basis for invalidating an application or the Governor's requisition pursuant thereto. This has been consistently borne out by the jurisprudence. A federal court has held that a Virginia requisition was not invalidated because of a failure to state the specific date of the offense charged. 59 A New Hampshire decision held that rendition of the accused was not invalidated by the fact that the requisition papers did not contain a personal description of the accused or other identification than his name and the date and place of the crime. 60 The provision requiring a prosecutor's application to state the approximate time, place, and circumstances of the commission of the crime was also liberally construed by the Michigan court. 61

The Uniform Act also specifies the documents which, along with verified copies of the application, must be filed in duplicate. 62 This permits local filing of one set of papers, and provides another set of documents to be authenticated by the Governor and forwarded with his requisition to the state of asylum. Despite the absence of statutory requirements in Louisiana, local district attorneys should make sure that their application provides adequate information and is accompanied by the papers which must be filed with the Louisiana Governor's requisition. Those necessary papers are determined by the extradition law of the state of asylum, which will be the Uniform Act in forty-one out of fifty states.

Neither the Louisiana law nor the Uniform Act imposes a duty on the Governor to make a demand for extradition in every

62. Uniform Criminal Extradition Act § 23(111): "The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed."
case where an application is filed by the local district attorney. Usually the Governor will issue a requisition, upon a proper showing with proper accompanying papers; but the Governor has discretion in determining the propriety of extradition proceedings. The existence of executive discretion in this matter is desirable, for it allows the Governor to determine the merits of extradition under the facts of the individual case. If, for example, the accused has made a new and respectable life elsewhere, and has thus demonstrated the extent of his rehabilitation, extradition may not be desirable.

When the Louisiana Governor issues a requisition for the return of a fugitive from justice, Article 171 of the Code of Criminal Procedure states that he shall “appoint some suitable person” to present the demands, to receive the fugitive if delivered by the state of asylum, and to convey him to the sheriff of the parish where the offense was committed. Section 22 of the Uniform Act similarly provides for the designation of an agent to receive the demanded fugitive, but does not specifically charge such agent with the duty of presenting the Governor’s requisition for extradition. This is a very minor difference, since the agent appointed to receive the fugitive will normally also be entrusted with the duty of presenting the Governor’s demand. Under Louisiana’s extradition law the expense of returning the prisoner “shall be paid by the parish in which the offense is charged to have been committed.”63 This is a cost of instituting the prosecution which may be logically placed upon the parish of the crime. The Uniform Act, however, predicates responsibility for these charges on the seriousness of the crime. If the crime is one punishable in the state penitentiary, the state must pay the extradition expenses; otherwise the parish is charged with payment. This looks like a distinction without much difference.

It is well and logically settled that the state has unlimited criminal jurisdiction over a person who has been brought back into the state pursuant to a requisition for his extradition. Once the accused is returned to the state he is subject to trial for any and all crimes he may have committed in this state. The requisition for extradition states the offense for which the return of the accused is demanded, but does not limit the state’s jurisdic-

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tion upon his return. In Lascelles v. Georgia, the United States Supreme Court held that the person extradited has no privilege or immunity to be exempt from trial for other crimes than the one designated in the requisition, without first having an opportunity to return to the state from which he was extradited. The Supreme Court pointed out that in a previous decision a Kentucky fugitive from justice, who had been kidnapped from the state of asylum and returned to Kentucky, was held for trial on a criminal charge. Justice Jackson logically concluded that if a kidnapped fugitive could be constitutionally tried in the state of his crime, it would be quite illogical to deny full criminal jurisdiction over a fugitive who has been returned through extradition proceedings. The decision concludes with the very practical statement that "it would be a useless and idle procedure to require the State having custody of the alleged criminal to return him to the State by which he was surrendered up in order to go through the formality of again demanding his extradition for the new or additional offenses on which it desired to prosecute him. . . . Our conclusion is that, upon a fugitive's surrender to the State demanding his return in pursuance of national law, he may be tried in the state to which he is returned for any other offense than that specified in the requisition for his rendition." The rule of the Lascelles case is codified in Section 26 of the Uniform Act. Louisiana's extradition law does not state this rule, but it is a logical and well-settled principle that will undoubtedly be applied by the courts of this state.

Different policy considerations come into play when individual plaintiffs may seek to have a defendant charged with crime and brought into the state in order that they may serve him with process in civil actions. In order to prevent such abuse of extradition procedures, Section 25 of the Uniform Act grants the person extradited an immunity from process in civil actions "arising out of the same set of facts as the criminal proceedings" for which he was extradited, until he has been convicted. If acquitted, the accused must be given "reasonable opportunity" to return to the state from which he is extradited. It has been held, under this immunity from service provision, that a judgment obtained through service of process on an individual before

64. 148 U.S. 537, 543 (1893).
66. Bubar v. Dizbar, 240 Minn. 26, 60 N.W.2d 77 (1954), holding that a plea of guilty was equivalent to being "convicted" and that service might then be made.
he had reasonable opportunity to leave the jurisdiction was void. The Louisiana's law fails to provide protection against such possible abuse of extradition procedures.

The Louisiana State Law Institute is presently engaged, pursuant to a special legislative mandate, in preparing a revision of the Code of Criminal Procedure. In revising the extradition laws careful attention will of course be paid to the Uniform Act — both in the interest of promoting uniformity with the procedures of other states and also to secure the advantages of its more complete coverage of certain matters. However, it would not be advisable to adopt the Uniform Act lock, stock, and barrel. There are some situations, such as the extradition hearing, where the present Louisiana procedure is simpler and more expeditious. Many sections of the Uniform Act, while stating sound rules, are cumbersomely and confusingly stated. Then, too, there are policy questions, such as the advisability of continuing Louisiana's present discretionary rendition by the Governor, which must be carefully analyzed and determined by the Council of the Law Institute.