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Comment

Courts v. Governors: Prisoners Torn Between States: Who should determine their fate?

I. Introduction

When a prisoner is facing a death sentence in one state and a lesser sentence in another state, should the prisoner be required to complete the lesser sentence before being executed? Is the order of the prisoner's convictions a relevant consideration? Are the personal views of each governor relevant?

This Comment suggests that a prisoner should not be required to complete a sentence other than death before being executed. Furthermore, the order of a prisoner's convictions and the personal views of the governors should not be relevant considerations. However, under the current interpretation and application of the Interstate Agreement on Detainers Act,¹ ("IADA"), these two factors are relevant and often dictate the prisoner's future.²

There are two logical interpretations of the IADA. First, the courts can construe it as remedial, with its main purpose as

1. Interstate Agreement on Detainers Act, Pub. L. No. 91-538, Stat. 1397 (codified as amended at 18 U.S.C. app. § 2 art. I (1994)). For a review on the objectives of the IADA see 18 U.S.C. app. § 2 practice commentary. For a discussion of the history and detailed function of the IADA, see Leslie W. Abramson, *The Interstate Agreement of Detainers: Narrowing its Availability and Applications*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 1 (1995).

2. See discussion *infra* parts III.A., III.B., IV.C.

uninterrupted prisoner rehabilitation.³ The legislative history⁴ of the IADA and relevant case law⁵ support this proposition. Accordingly, a court could reasonably find that when a prisoner is sentenced to death, that prisoner no longer has an interest in, and will not benefit from, programs of treatment and rehabilitation.⁶ Therefore, the return provisions of the IADA would not apply and the prisoner would not be required to serve any sentence prior to execution.⁷ Alternatively, the legislature could amend the IADA by adding a death penalty exception.

This Comment discusses the procedural problems that result when a person commits murder in more than one state and only one of those states sentences him to death. Part II provides the background of the mechanism used to transfer prisoners between states. Part II also summarizes the IADA, its legislative intent and the case law interpreting it. Part III discusses four cases illustrating the IADA's function when prisoners contest their return to one of the jurisdictions where they committed a crime. The controversy that surrounded convicted double-murderer Thomas J. Grasso is also discussed in Part III, including the procedural history in New York, Oklahoma and the federal courts. Part IV analyzes and critiques the Federal District Court's opinion in *Coughlin v. Poe*,⁸ in which New York sought Grasso's return. Part IV also provides a practical interpretation of the IADA. Finally, this Comment concludes with a suggestion to amend the IADA to prevent divergent political views from causing a controversy similar to the one that surrounded *Grasso*.⁹

3. See discussion *infra* part II.B.1.

4. See discussion *infra* part II.A.

5. See discussion *infra* part II.B.1 and note 68.

6. See *Moon v. State*, 375 S.E.2d 442 (Ga. 1988), *cert. denied*, 449 U.S. 982 (1991); *People v. Pitsonbarger*, 568 N.E.2d 783 (Ill. 1990), *cert. denied*, 502 U.S. 871 (1991); *People v. Guest*, 503 N.E.2d 255 (Ill. 1986), *cert. denied*, 483 U.S. 1010 (1987); *Gall v. Commonwealth*, 702 S.W.2d 37 (Ky. 1985), *cert. denied*, 478 U.S. 1010 (1986).

7. See discussion *infra* part III.A.

8. 835 F. Supp. 585 (E.D. Okla. 1993).

9. *People v. Grasso*, 162 Misc. 2d 84 (Sup. Ct. Richmond County 1994).

II. Background

A. Legislative History

1. *The Interstate Agreement on Detainers Act*

The Interstate Agreement on Detainers Act was enacted by Congress in 1970 and adopted by the forty-eight contiguous states and the District of Columbia.¹⁰ The basic purpose of the IADA is to encourage the expeditious and orderly disposition of any and all detainees¹¹ based on untried indictments, informations or complaints outstanding against a prisoner.¹² The party states adopted this purpose because outstanding charges against a prisoner "produce uncertainties which obstruct programs of prisoner treatment and rehabilitation."¹³

Article II of the IADA provides definitions of relevant terms such as "state," "sending state" and "receiving state."¹⁴ Pursuant to Article III of the IADA, the prisoner has the power to make a request for a final disposition of any outstanding charges against him.¹⁵ The official who has custody over the prisoner must issue a certificate noting the prisoner's current status.¹⁶ The prisoner then must include this certificate with his request.¹⁷ After the prosecuting officer of the receiving state

10. 18 U.S.C. app. § 2 art. I.

11. As used in the context of the IADA, a detainee is a "notification filed with institution in which [a] prisoner is serving a sentence, advising [him] that he is wanted to face pending criminal charges in another jurisdiction." BLACK'S LAW DICTIONARY 449 (6th ed. 1990).

12. 18 U.S.C. app. § 2 art. I.

13. *Id.*

14. 18 U.S.C. app. § 2 art. II. Article II states that:

As used in this agreement:

(a) "State" shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending State" shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

(c) "Receiving State" shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

Id.

15. 18 U.S.C. app. § 2 art. III (d).

16. 18 U.S.C. app. § 2 art. III (a).

17. *Id.*

receives these documents, he has 180 days to try the prisoner.¹⁸ According to Article III(e), any such request constitutes a waiver of extradition.¹⁹ It also acts as a consent by the prisoner to return voluntarily to the original place of imprisonment.²⁰ Finally, Article III(e) states that "[n]othing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law."²¹

The power to invoke the IADA is not solely in the hands of the prisoner.²² Article IV also gives the receiving state power to invoke the IADA.²³ Pursuant to Article IV(a), the receiving state is entitled to have a prisoner, against whom it has lodged a detainer, made available upon presentation of a written request for temporary custody.²⁴ Before the request is honored, the governor of the sending state has thirty days, either upon his own motion or that of the prisoner, to disapprove the request.²⁵ Article IV(c) provides that a "[t]rial shall be commenced within one hundred and [sic] twenty days of the arrival of the prisoner in the receiving State"²⁶

Article V(a) provides that after either the prisoner or the receiving state makes a request, the sending state shall offer the receiving state temporary custody to facilitate a speedy and efficient prosecution.²⁷ Temporary custody refers to the time needed to prosecute the outstanding charges.²⁸ Article V(e) requires that "[a]t the earliest practicable time consonant with the purposes of [the IADA], the prisoner shall be returned to the sending State."²⁹ In the meantime, "the prisoner [is] deemed to remain in the custody of and subject to the jurisdiction of the sending State."³⁰ Pursuant to Article VIII, the IADA becomes

18. *Id.*

19. 18 U.S.C. app. § 2 art. III (e).

20. *Id.*

21. *Id.*

22. 18 U.S.C. app. § 2 art. IV.

23. 18 U.S.C. app. § 2 art. IV (a).

24. *Id.*

25. *Id.*

26. 18 U.S.C. app. § 2 art. IV (c).

27. 18 U.S.C. app. § 2 art. V (a).

28. 18 U.S.C. app. § 2 art. V (d).

29. 18 U.S.C. app. § 2 art. V (e).

30. 18 U.S.C. app. § 2 art. V (g).

binding upon a party state when the state adopts it.³¹ Article IX states that the IADA "[s]hall be liberally construed so as to effectuate its purposes."³²

2. *Legislative Intent*

The IADA allows prisoners to obtain prompt resolution of detainers placed against them by other jurisdictions.³³ As a result, prisoners can secure a greater degree of certainty as to their future sentences.³⁴ Without certainty, prisoners frequently do not take advantage of institutional opportunities, and therefore, behavioral problems often result.³⁵ Certainty enables prison authorities to plan more effectively for the prisoners' rehabilitation and return to society.³⁶

Prisoners not afforded this certainty are seriously disadvantaged.³⁷ Since prisoners who are transferred between states often are kept in close custody, they are ineligible for desirable work assignments.³⁸ Additionally, prisoners with outstanding detainers "sometimes [lose] interest in institutional opportunities because [they] must serve [their] sentence[s] without knowing what additional sentences may lie before [them], or when, if ever, [they] will be in a position to employ the education and skills [they] may be developing."³⁹ "Even [prisoners] who participate [in rehabilitation and treatment programs] do so under great psychological disadvantage because they do not know what lies before them, nor whether the skills or education they are obtaining may be applied within a reasonable time."⁴⁰

31. 18 U.S.C. app. § 2 art. VIII.

32. 18 U.S.C. app. § 2 art. IX.

33. H.R. REP. NO. 1018, 91st Cong., 2d Sess. (1970).

34. *Id.* at 2.

35. *Id.* at 5.

36. *Id.* at 2.

37. *Id.* at 3.

38. H.R. REP. NO. 1018, 91st Cong., 2d Sess. at 3 (1970).

39. *Id.*

40. *Id.* at 5.

B. Case Law

1. *Judicial Interpretation of the IADA: Why it was Adopted and its Purposes*

The United States Supreme Court, in *U.S. v. Mauro*,⁴¹ held that the United States is a party to the IADA and may act as either a sending or a receiving state.⁴² The Court further held that a writ of *habeas corpus ad prosequendum*⁴³ is not a detainer within the meaning of the IADA.⁴⁴ In deciding issues related to prisoner transfers, the Court looked into the history of the IADA.⁴⁵ The Court determined that Congress' core concern was its "desire to alleviate the problems encountered by prisoners and prison systems as a result of the lodging of detainees."⁴⁶ Accordingly, the IADA is remedial in character and should be construed liberally in favor of the prisoners.⁴⁷

The Council of State Governments outlined some problems it sought to ameliorate through the IADA.⁴⁸ The Council stated that "prison administrators were 'thwarted in [their] effort[s] toward rehabilitation [because t]he [sic] inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program.'"⁴⁹ The *Mauro* Court further noted that "prisoner[s] [were] often de-

41. 436 U.S. 340 (1978).

42. *Id.* at 354.

43. A writ of habeas corpus ad prosequendum is used by a court "when it is necessary to bring a person who is confined for some other offense before the issuing court for trial." BLACK'S LAW DICTIONARY 709 (6th ed. 1990).

44. *Mauro*, at 361.

45. *Id.* at 349-61.

46. *Id.* at 356. Congress was further motivated to enact the IADA to aid states in obtaining federal prisoners. *Id.* See also *People v. Esposito*, 37 Misc. 2d 386, 392, 201 N.Y.S.2d 83, 88 (Sup. Ct. Queens County 1960) (stating that the people who contributed to the proposals resulting in the enactment of the IADA were primarily concerned with the planning and carrying out of programs for prisoner rehabilitation).

47. *U.S. ex rel. Esola v. Groomes*, 520 F.2d 830, 836 (3d Cir. 1975) (citing *State v. West*, 79 N.J. Super. 379, 384, 191 A.2d 758, 760 (1966); *People v. Esposito*, 37 Misc. 2d 386, 201 N.Y.S.2d 83, 88 (1960)); See also *Cuyler v. Adams*, 449 U.S. 433, 449 (1981) (noting that a primary purpose of the IADA is to protect prisoners who have detainees outstanding).

48. *Mauro*, 436 U.S. at 359.

49. *Id.* (quoting COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION PROGRAM FOR 1957, at 74 (1956)).

Black's Law Dictionary defines "detainer" as a request "filed by criminal justice agency with institution in which prisoner is incarcerated, asking institution

prived of the ability to take advantage of many of the prison's programs aimed at rehabilitation, merely because there was a detainer lodged against [them]."⁵⁰ Moreover, the Council found that the existence of an outstanding detainer caused judges to hesitate to sentence defendants to long prison terms that were otherwise appropriate.⁵¹

Congress drafted the IADA in an effort to eliminate the adverse effects of long term detainees.⁵² These adverse effects include a denial of privileges within the prison, such as placement in training programs and more relaxed work environments.⁵³ Officials frequently lodged detainees against prisoners which would remain in place without any action taken on them.⁵⁴ As a result, prison authorities denied certain privileges to those prisoners, thereby frustrating rehabilitation efforts.⁵⁵

In *United States ex rel. Esola v. Groomes*,⁵⁶ the Third Circuit Court of Appeals determined that the IADA addresses the problems prisoners experience with outstanding criminal charges from another jurisdiction.⁵⁷ The court noted that uncertainty about future sentences causes prisoners psychological strain and inhibits their desire to take advantage of institutional opportunities.⁵⁸ The court concluded that the IADA is remedial in nature and should be construed liberally in favor of

either to hold prisoner for agency or to notify agency when release of prisoner is imminent." BLACK'S LAW DICTIONARY 1302 (6th ed. 1990)).

50. *Mauro*, 436 U.S. at 359.

51. *Id.* at 360.

52. *Id.*

53. *Id.* at 359.

54. *Id.* at 360.

55. *Mauro*, 436 U.S. at 360. Prisoners that have detainees lodged against them are filled with anxiety and apprehension and are often kept in close custody thereby barring them from

'treatment such as trustships, moderations of custody and opportunity for transfer to farms and work camps. In many jurisdictions [he is] not eligible for parole; there is little hope for [their] release after an optimum time period of training and treatment, when [they are] ready for return to society with an excellent possibility that [they] will not offend again. Instead, [they] often becomes embittered with continued institutionalization and the objective of the correctional system is defeated.'

Carchman v. Nash, 473 U.S. 716, 720 (1985)(quoting COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION PROGRAM FOR 1957, at 74 (1956)).

56. 520 F.2d 830 (3d Cir. 1975).

57. *Id.* at 836.

58. *Id.* at 837.

prisoners.⁵⁹ In support of its conclusion, the court pointed to Article IX of the IADA which states that the "agreement shall be liberally construed so as to effectuate its purposes."⁶⁰

When prisoners are uncertain about their future, they lose motivation to rehabilitate themselves.⁶¹ As a result, the entire purpose of the penal system, which is to transform inmates into law-abiding citizens, is defeated.⁶² Thus, the court stated that the purpose of the IADA is to "minimize the adverse impact of a foreign prosecution on rehabilitative programs of the confining jurisdiction."⁶³

The court in *United States v. Harris*⁶⁴ construed the IADA as having two purposes.⁶⁵ Its first purpose is to minimize disruption of prisoner participation in treatment and rehabilitation programs.⁶⁶ Its second purpose is to expedite the disposition of outstanding charges against prisoners.⁶⁷ In accordance with the requirement that the IADA be liberally construed, several courts have employed one or both of the purposes in deciding IADA cases.⁶⁸

59. *Id.* at 836 (quoting *State v. West*, 191 A.2d 758, 760 (N.J. Super. Ct. App. Div. 1966)).

60. *Groomes*, 520 F.2d at 836 n.20 (quoting N.J. STAT. ANN. § 2A:159A-9) (West 1995).

61. *Groomes*, 520 F.2d at 837, n.21.

62. *Id.*

63. *Id.* at 836-37.

64. 566 F.2d 610 (8th Cir. 1977).

65. *Id.* at 612.

66. *Id.*

67. *Id.*

68. See also *Fex v. Michigan*, 113 S. Ct. 1085, 1092 (1993) (Blackmun, J., dissenting) (stating that the primary purpose of the IADA is to provide efficient means for resolving and alleviating the anxiety and apprehension caused by outstanding detainees); *Yellen v. Cooper*, 828 F.2d 1471, 1473-74 (10th Cir. 1987) (holding that the IADA is intended to remedy hardships of prisoners caused by outstanding detainees and the protections of the IADA are designed to advance a prisoner's rehabilitation and to avoid disruptions of that rehabilitation); *Kerr v. Finkbeiner*, 757 F.2d 604, 607 (4th Cir. 1985) (holding that the purpose of the IADA was to protect prisoners from being denied prison privileges and rehabilitation efforts when detainees were filed against them); *United States v. Bryant*, 612 F.2d 806, 809 (4th Cir. 1979) (maintaining that the primary purpose of the IADA is to encourage minimum interference with rehabilitative programs) *cert. denied*, 446 U.S. 920 (1980); *United States v. Palmer*, 574 F.2d 164, 167 (3d Cir. 1978) (noting that the purposes of the IADA are to preserve a defendant's right to a speedy trial and to minimize disruption of a prisoner's rehabilitation); *Rhodes v. Schoen*, 574 F.2d 968, 969 (8th Cir. 1978) (holding that the basic purpose of the IADA is to

2. *States can Lawfully Circumvent the Provisions of the IADA*

a. *The Governor's Power and Options Under the Current Construction of the IADA*

Governors have several options under the IADA.⁶⁹ Pursuant to Articles I and IX, which encourage cooperative procedures, the governors of the sending and receiving states can enter into an executive agreement.⁷⁰ The agreement can provide for the prisoner's return to the sending state only if the prisoner is not sentenced to death in the receiving state.⁷¹ For example, in *Moon*, the court upheld an executive agreement allowing the receiving state to retain custody of the prisoner when he was sentenced to death.⁷²

Article IV(a) of the IADA gives the governor of the sending state the power to disapprove a request for temporary custody.⁷³ The governor of a sending state may opt to retain a prisoner despite a contrary desire by the prisoner or receiving state.⁷⁴ Similarly, a governor can be uncooperative by refusing to enter into an executive agreement.⁷⁵

preserve a prisoner's right to a speedy trial and to "prevent interference with his participation in treatment and rehabilitation programs."); *Camp v. United States*, 587 F.2d 397, 400 (8th Cir. 1978) (holding that sanctions in Article IV(e) of the IADA are intended to prevent excessive interference with a prisoner's rehabilitation); *Gale v. United States*, 391 A.2d 230, 233 (D.C. Cir. 1978) (stating that "the primary purpose of the IAD[A] is to encourage the expeditious disposition of charges pending against a prisoner in another jurisdiction and . . . to minimize the adverse impact of foreign prosecutions on rehabilitative programs . . .").

69. 18 U.S.C. app. § 2 art. I, IX, IV(a).

70. *People v. Pitsonbarger*, 568 N.E.2d 783, 803 (Ill. 1990). An executive agreement in the context of the IADA is an agreement voluntarily entered into by two or more states that have charges outstanding against a prisoner. *Id.* The agreement generally provides for who will have jurisdiction over the prisoner in the instance where the receiving state imposes the death penalty. *Id.*

71. *Id.*

72. *Id.*

73. 18 U.S.C. app. § 2 art. IV (a).

74. *See id.*

75. Letter from Mario Cuomo, former Governor of New York, to David Walters, former Governor of Oklahoma (Oct. 11, 1993). The former governor of New York, Mario Cuomo, refused to enter into an executive agreement with the former governor of Oklahoma, David Walters, and demanded that Grasso be returned to New York to serve a minimum of twenty years in New York prisons. *Id.*

State constitutions also give governors broad powers.⁷⁶ For example, the New York State Constitution provides that:

The governor shall have the power to grant reprieves, commutations, and pardons after conviction, for all offenses except treason and cases of impeachment upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulation, as may be provided by law relative to the manner of applying for pardons.⁷⁷

Reprieves⁷⁸ do not relieve a prisoner of a sentence.⁷⁹ The prisoner must be returned to the sending state regardless of the sentence imposed by the receiving state.⁸⁰ Therefore, a reprieve is not an effective tool for circumventing the return provision of the IADA.⁸¹ A governor of a sending state could, however, commute⁸² the prisoner's sentence, thereby substituting the receiving state's sentence for the sending state's sentence.⁸³ Similarly, a governor may grant a pardon, which is an executive action that sets aside and releases the offender from punishment.⁸⁴ By either granting a pardon or commuting a sentence, the governor of a sending state can effectively release a prisoner to be executed in a receiving state.⁸⁵

76. N.Y. CONST. art. IV, § 4.

77. *Id.*

78. "Reprieve" is defined as:

Temporary relief from or postponement of execution of criminal punishment or sentence. It does no more than stay the execution of a sentence for a time, and it is ordinarily an act of clemency extended to a prisoner to afford him an opportunity to procure some amelioration of the sentence imposed.

BLACK'S LAW DICTIONARY 1302 (6th ed. 1990).

79. *See id.*

80. *See supra* note 78.

81. *See supra* note 78.

82. "Commutation" is defined as "[a]lteration; change; substitution; the act of substituting one thing for another." BLACK'S LAW DICTIONARY 280 (6th ed. 1990).

83. *Id.* Thus, with regard to Thomas Grasso, Mario Cuomo could have commuted Grasso's New York sentence. *See supra* text accompanying note 77.

84. BLACK'S LAW DICTIONARY 569 (6th ed. 1990). Thus, with regard to Thomas Grasso, Mario Cuomo could have pardoned Grasso thereby releasing him from any debt he owed to New York. Upon his release from prison in New York, Grasso would be sent immediately to Oklahoma, pursuant to the IADA, to serve his sentence previously imposed by the State of Oklahoma. 18 U.S.C. app. § 2 art. V. *See supra* text accompanying note 77.

85. 18 U.S.C. app. § 2 art. V. Former Governor Mario Cuomo insisted that Grasso be returned to New York, the sending state. Robert B. McFadden, *Oklahoma Death Row Inmate Is Returned To New York*, N.Y. TIMES, Oct. 31, 1993,

b. *Judicial Alternatives to Governor Intervention*

The sentencing court of a sending state has two options that allow the receiving state to obtain jurisdiction. First, while the prisoner is still in the receiving state, the court could vacate the sentence and then immediately reinstate the same sentence.⁸⁶ As a result, the receiving state would technically have the first conviction and control of the prisoner under the current construction of the IADA. Second, the court could vacate the sentence and then re-sentence the prisoner, allowing its sentence and the receiving state's sentence to run concurrently.⁸⁷ Thus, the prisoner's execution in the receiving state would satisfy the sentence of the sending state.

III. The IADA and Its Inconsistent Results

A. *Cases Where the Courts Found Provisions of the IADA Inapplicable*

In *People v. Guest*,⁸⁸ the defendant, Anthony Guest, was imprisoned in Missouri when Illinois obtained custody over him.⁸⁹ The prisoner still had the following sentences outstanding:

- (1) life imprisonment imposed in 1978 and a consecutive 35-year sentence imposed in 1979, both in Missouri; (2) concurrent terms of 20 years and 11-29 years imposed in 1979 and a consecutive

§ 1, at 49. Governor Cuomo, a strong opponent of the death penalty, claimed he was motivated not by his opposition to the death penalty but rather by "his loyalty to the letter of the law." *Id.*

86. Telephone Interview with John O'Neal, Chief Public Defender (Oct. 10, 1994); John O'Neal represented Grasso in Oklahoma. As Chief Public Defender, Mr. O'Neal spends most of his time fighting to save the lives of people like Thomas Grasso. Grasso, however, disrupted O'Neal's normal routine when Grasso informed O'Neal that he wanted the death penalty and wished to waive any and all rights he may have had to appeal a sentence of death. Since O'Neal personally opposes the death penalty, he was faced with several moral and ethical problems. For a discussion of O'Neal's background and the moral dilemma caused by his representation of Grasso see Matt Siegel, *Defending A Death Wish*, Am. Law., April 1993, at 60. For a further discussion of the ethical problems of John O'Neal and other attorneys similarly situated, i.e., attorneys representing clients that are facing the death penalty, see Joseph W. Bellacosa, *Ethical Impulses From the Death Penalty: "Old Sparky's" Jolt to the Legal Profession*, 14 PACE L. REV. 1 (1994).

87. See *People v. Grasso*, 162 Misc. 2d 84, 85 (Sup. Ct. Richmond County 1994) (the court refused to change Defendant's New York sentence to run concurrently with his Oklahoma sentence).

88. 503 N.E.2d 255 (Ill. 1986).

89. *Id.* at 274.

term of 30 to 35 years also imposed in 1979, both in Tennessee; (3) 15 years to life, plus a consecutive determinate enhancement term of 3 years in California, imposed in 1981, to be served consecutively with the sentences in Missouri.⁹⁰

The State of Illinois subsequently sentenced Guest to die by lethal injection.⁹¹

On appeal, the prisoner argued that he should be returned to Missouri to complete his Missouri prison term pursuant to his "Request for Disposition of Indictments in Illinois and California, and copies of Acceptance by those jurisdictions"⁹² Guest further claimed that failure to honor his request to be returned to Missouri violated his due process and equal protection rights.⁹³ The court held that the return provisions of the IADA do not apply when the receiving state sentences the prisoner to death.⁹⁴ In citing Articles I and V of the IADA⁹⁵, the court said, "[w]e have grave doubts, however, that these provisions were intended to apply where, as here, a sentence of death is imposed by the receiving state."⁹⁶

In *Moon v. State*,⁹⁷ the prisoner shot and killed a person at Brown's Tavern in Chattanooga, Tennessee.⁹⁸ This murder occurred on November 15, 1984.⁹⁹ On November 24, 1984, Moon then traveled to Catoosa County, Georgia where he shot another in the head.¹⁰⁰ Moon then returned to Chattanooga on December 1, 1984, robbed Peeper's Adult Bookstore, and kidnapped yet another person.¹⁰¹ Moon sodomized his captive and

90. *Id.*

91. *Id.* at 275.

92. *Id.* at 274.

93. *Guest*, 503 N.E.2d at 274.

94. *Id.*

95. *Id.* at 274. Article I states that it is the policy of the party states and purpose of the IADA to encourage the expeditious and orderly disposition of outstanding charges that produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Article V provides that "[a]t the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state." 18 U.S.C. app. § 2 art. V.

96. *Guest*, 503 N.E.2d at 275 (emphasis added).

97. 375 S.E.2d 442 (Ga. 1988), *cert. denied*, 449 U.S. 982 (1991).

98. *Id.* at 445.

99. *Id.*

100. *Id.*

101. *Id.*

threatened to kill him if he refused to submit.¹⁰² On December 2, 1984, while Moon was in Gatlinburg, Tennessee, he offered a ride to Darryl Ehrlanger and her fiancé Thomas DeJosa.¹⁰³ Just outside of Gatlinburg, Moon tried to drag Ehrlanger out of the car.¹⁰⁴ When DeJosa attempted to help her, Moon shot him.¹⁰⁵ Moon subsequently ended DeJosa's life by shooting him three more times.¹⁰⁶ On December 14, 1984, the Tennessee police arrested Moon.¹⁰⁷

In February of 1987, Moon began serving a life sentence in Tennessee.¹⁰⁸ The district attorney handling the Georgia case filed detainers and a request for temporary custody pursuant to the IADA.¹⁰⁹ The governors of Tennessee and Georgia signed an agreement providing for Moon's return to Tennessee if Moon did not receive the death penalty in Georgia.¹¹⁰

Georgia sentenced Moon to death for murder.¹¹¹ Moon argued that the IADA required his return to Tennessee to complete his sentences before execution in Georgia.¹¹² However, the Supreme Court of Georgia found that nothing in the IADA requires the invalidation of the agreement signed by the respective governors.¹¹³ Thus, Georgia was permitted to retain Moon and proceed with his execution.¹¹⁴

In *People v. Pitsonbarger*,¹¹⁵ the prisoner, Jimmy Ray Pitsonbarger, admitted killing two residents of Illinois.¹¹⁶ Pitsonbarger further admitted that after the killing, he also killed a man in Columbia, Missouri.¹¹⁷ From Missouri, Pitsonbarger drove to Reno, Nevada where he solicited a prostitute, Mary

102. *Moon*, 375 S.E.2d at 445.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Moon*, 375 S.E.2d at 445.

108. *Id.* at 446.

109. *Id.*

110. *Id.*

111. *Id.* at 444-45.

112. *Moon*, 375 S.E.2d at 447.

113. *Id.*

114. *Id.*

115. 568 N.E.2d 783 (Ill. 1990), *cert. denied*, 502 U.S. 871 (1991).

116. *Id.* at 787.

117. *Id.* at 788.

Lou Quayle.¹¹⁸ Quayle testified that Pitsonbarger raped her, tried to strangle her, and ultimately shot her in the head.¹¹⁹ Shortly thereafter, Pitsonbarger surrendered to the Nevada police.¹²⁰

Illinois obtained custody of Pitsonbarger pursuant to the IADA,¹²¹ and subsequently sentenced him to death.¹²² Pitsonbarger argued that under the IADA, Illinois had temporary custody of him only for the purpose of a trial.¹²³ Moreover, Pitsonbarger argued that he should be returned to Nevada to complete his life sentence.¹²⁴ However, the governors' agreement provided for Pitsonbarger's return to Nevada only if he did not receive the death penalty in either Illinois or Missouri.¹²⁵ The Supreme Court of Illinois stated that a prisoner who received the death penalty in a receiving state no longer had an interest in programs of prisoner treatment and rehabilitation provided by the sending state.¹²⁶ Accordingly, the Supreme Court of Illinois, relying on *Guest*¹²⁷ and *Moon*,¹²⁸ held that the return provisions of the IADA do not apply when the receiving state has imposed the death penalty and when the sending and receiving states have signed an executive agreement.¹²⁹ Thus, Illinois was permitted to retain custody of Pitsonbarger and to proceed with his execution despite the fact that he did not complete his Nevada prison term.¹³⁰

In *Gall v. Commonwealth*,¹³¹ Eugene Williams Gall protested his return to Kentucky, the sending state, where he was sentenced to death.¹³² Originally, Kentucky officials transferred Gall to Ohio to stand trial for rape and abduction charges.¹³³

118. *Id.*

119. *Id.*

120. 568 N.E.2d at 788.

121. *Id.* at 802.

122. *Id.* at 786.

123. *Id.*

124. *Id.*

125. 568 N.E.2d at 803.

126. *Id.* at 802-03.

127. *Guest*, 503 N.E.2d at 255.

128. *Moon*, 375 S.E.2d at 442.

129. *Pitsonbarger*, 568 N.E.2d at 803.

130. *Id.*

131. 702 S.W.2d 37 (Ky. 1985), *cert. denied*, 478 U.S. 1010 (1986).

132. *Id.* at 43.

133. *Id.*

Gall claimed that the transfer violated the IADA because he did not have an opportunity to petition the governor of Kentucky to disapprove Ohio's request for temporary custody.¹³⁴ As a result, Gall claimed that Kentucky lost jurisdiction over him, and therefore was not allowed to proceed with his execution.¹³⁵

The Supreme Court of Kentucky agreed with Gall that his transfer violated the IADA.¹³⁶ The court disagreed, however, that Kentucky lost jurisdiction over Gall solely because of the violation.¹³⁷ The court stated that pursuant to Article V(7) of the IADA, the prisoner is deemed to remain in the custody of the sending state.¹³⁸ Gall's case did not invoke the primary purpose of limiting transfers which is to "prevent the interruption of the rehabilitative function of the penal system."¹³⁹ Since Kentucky sentenced Gall to death, he will not benefit from rehabilitation.¹⁴⁰ Therefore, the purpose behind limiting transfers is inapplicable.¹⁴¹

B. *The Thomas Grasso Controversy*

Some people said, "He did a New York crime; he should do the New York time."¹⁴² While others said, "Give it to him; maybe even torture him a little bit."¹⁴³

On December 24, 1990, Thomas Grasso murdered Hilda Johnson, an eighty-seven year old Oklahoma woman.¹⁴⁴ Grasso went to the victim's home with an intent to rob her.¹⁴⁵ When Grasso entered Ms. Johnson's home, he choked her with an extension cord taken from her Christmas tree.¹⁴⁶ He hit the vic-

134. *Id.*

135. *Id.*

136. 702 S.W.2d 37 (Ky. 1985). Also, Gall was not allowed the opportunity to file a writ of habeas corpus under the Uniform Criminal Extradition Act. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* at 44.

140. *Id.*

141. 702 S.W.2d at 44.

142. *No Right To Die*, *NEWSDAY*, May 15, 1993, at 20.

143. Graham Rayman, *Death Divides Them; Execution pits brother vs. brother*, *NEWSDAY*, Oct. 12, 1993, at 3.

144. *Grasso v. State*, 857 P.2d 802, 804 (Okla. Crim. App. 1993).

145. *Id.*

146. *Id.*

tim with an iron and a piece of wood, then he took a few dollars and a television set that he later pawned for \$125.¹⁴⁷

On July 3, 1991, he murdered Leslie Holtz, an eighty-two year old man in New York.¹⁴⁸ Grasso had been smoking crack cocaine and wanted to get money to buy more drugs.¹⁴⁹ When Grasso entered the hall of the Staten Island boarding house where he lived, he noticed that Mr. Holtz was entering his own room.¹⁵⁰ When Mr. Holtz opened the door, Grasso pushed him inside and choked him with the cord from the television.¹⁵¹ Grasso continued to choke the victim until he was dead.¹⁵² The victim was found in a kneeling position, with face and head trauma and an electrical cord wrapped five times around his neck.¹⁵³

On April 21, 1992, Grasso pled guilty to murder in the second degree and was sentenced to twenty years to life imprisonment.¹⁵⁴ He began serving his sentence at the Sing Sing Correctional Facility in Ossining, New York.¹⁵⁵ On July 8, 1992, the District Attorney of Tulsa County, Oklahoma, filed a detainer against Grasso and requested temporary custody of him.¹⁵⁶ The District Attorney filed the detainer pursuant to an information¹⁵⁷ filed against Grasso on August 15, 1991, charging him with first degree burglary and first degree murder.¹⁵⁸

The Superintendent of the Sing Sing Correctional Facility, notified Grasso of the Oklahoma information and advised him of his right to request a final disposition of that information.¹⁵⁹ Grasso made such a request on July 14, 1992.¹⁶⁰ Pursuant to Article III(e) of the IADA, Grasso's request acted as a "consent

147. *Id.*

148. *People v. Grasso*, 162 Misc. 2d at 88-89.

149. *Grasso v. State*, 857 P.2d 802, 809 (Okla. Crim. App. 1993).

150. *Id.*

151. *Id.*

152. *People v. Grasso*, 162 Misc. 2d at 89.

153. *Id.* at 88.

154. *Id.* at 85.

155. *Coughlin v. Poe*, 835 F. Supp. 585, 587 (E.D. Okla. 1993).

156. *Id.*

157. "[A]n accusation exhibited against a person from some criminal offense, without an indictment." *BLACK'S LAW DICTIONARY* 1302 (6th ed. 1990).

158. *Poe*, 835 F. Supp. at 587.

159. *Id.*

160. *Id.*

to be returned to the original place of imprisonment.”¹⁶¹ New York officials subsequently transferred Grasso to Oklahoma where he would stand trial on the Oklahoma charges.¹⁶²

On September 28, 1992, Grasso pled guilty to murder¹⁶³ in Oklahoma and requested the death penalty.¹⁶⁴ The Oklahoma court sentenced Grasso to 500 years imprisonment on the robbery conviction and death by lethal injection on the murder conviction.¹⁶⁵ Grasso made a motion to expedite sentence review and expressed his desire to waive the mandatory right to appeal so his execution would not be delayed.¹⁶⁶ On November 23, 1992, the Oklahoma Court of Criminal Appeals stayed the execution date of December 4, 1992, pending its mandatory sentence review.¹⁶⁷ However, the court ultimately found that the death penalty was properly imposed and Grasso knowingly, intelligently and voluntarily waived his right to a direct appeal.¹⁶⁸ Accordingly, on July 15, 1993, the Oklahoma Court of Criminal Appeals affirmed Grasso’s death sentence.¹⁶⁹

On August 5, 1993, New York filed suit in the United States District Court for the Eastern District of Oklahoma.¹⁷⁰ New York sought a declaratory judgment to support its position that Oklahoma must return Grasso to New York.¹⁷¹ Grasso’s execution date was set by the Oklahoma Court of Criminal Appeals for October 19, 1993.¹⁷²

New York argued that the purpose of the IADA is the “expeditious and orderly disposition of the outstanding charges.”¹⁷³ New York claimed that the purpose was satisfied, since

161. 18 U.S.C. app. § 2 art. III(e).

162. *Poe*, 835 F. Supp. at 588.

163. *Id.*

164. *Grasso v. State*, 857 P.2d at 805.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* at 810.

169. *Poe*, 835 F. Supp. at 588.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* at 590.

Oklahoma prosecuted Grasso.¹⁷⁴ Thus, Oklahoma was required to return Grasso to New York under Article V(e) of the IADA.¹⁷⁵

Oklahoma argued that the IADA was designed to benefit the prisoner by facilitating the prisoner's "treatment and rehabilitation,"¹⁷⁶ pursuant to Article I of the IADA.¹⁷⁷ Oklahoma further stated that because it imposed the death penalty, Grasso no longer had an interest in New York's prisoner treatment and rehabilitation programs.¹⁷⁸ Thus, Oklahoma concluded that the return provisions of the IADA did not apply.¹⁷⁹

The United States District Court for the Eastern District of Oklahoma adopted a "plain language" analysis of the IADA and quickly rejected Oklahoma's argument.¹⁸⁰ The court upheld the principle that a court's function is to interpret the law as enacted by the legislature and not to legislate from the bench.¹⁸¹ The court noted that the plain meaning of a statute controls when the words are clear and unambiguous except in "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters."¹⁸²

174. *Poe*, 835 F. Supp. at 590.

175. *Id.*

176. *Id.*

177. 18 U.S.C. app. § 2 art. I. *See supra* note 95.

178. *Poe*, 835 F. Supp. at 590.

179. *Id.*

180. *Id.*

181. *Id.* at 589.

182. *Poe*, 835 F. Supp. at 589 (quoting *UTE Distribution Corp. v. U.S.*, 938 F.2d 1157, 1162 (10th Cir. 1991), *cert. denied*, 504 U.S. 904, 112 S. Ct. 2273, 119 L. Ed 2d 200 (1992) (quoting *Griffin v. Oceanic Contractors, Inc.* 458 U.S. 564, 571, 102 S. Ct. 3245, 3250, 73 L. Ed.2d 973 (1982))). A fundamental canon of statutory construction is that statutory interpretation begins with the language of the statute itself. *Pennsylvania Dep't of Public Welfare v. Davenport*, 495 U.S. 552, 557-58 (1990). If the language of the statute is unambiguous, then the plain language controls the interpretation of the statute. *Ute Distribution Corporation v. United States*, 938 F.2d 1157, 1162 (1991). Although the language of a statute is unambiguous, its plain meaning will not control if "the literal application of [the] statute will produce a result demonstrably at odds with the intentions of its drafters. . . ." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982). Accordingly, the intentions of the drafters would control in that situation. *Id.* The courts have reserved some power for themselves to adopt a restricted rather than a literal meaning of the words where accepting the literal meaning "would thwart the obvious purpose of the statute." *Id.* (quoting *Commissioner v. Brown*, 380 U.S. 563, 571 (1965)). Therefore, "interpretations of a statute which would produce absurd re-

The IADA states that temporary custody means custody of a prisoner only for the purpose of permitting prosecution of the outstanding charges.¹⁸³ The court, strictly construing the IADA stated that temporary custody does not mean custody for the "purpose of service or execution of sentence in the receiving state."¹⁸⁴ The court held that the IADA required Oklahoma to return Grasso to New York to complete the New York sentence before Oklahoma could proceed with Grasso's death sentence.¹⁸⁵

The court further noted that Grasso could not waive his return to New York, because the "question of jurisdiction and custody of prisoners is essentially one of comity¹⁸⁶ between the member states and not a personal right of prisoners."¹⁸⁷ The court did, however, acknowledge that the IADA's emphasis on "cooperative procedures" authorized New York to enter into an agreement with Oklahoma to waive the return of Grasso.¹⁸⁸ As a result of the court's holding, Grasso's execution was stayed eleven hours before it was scheduled to occur.¹⁸⁹ When informed that his execution would not proceed as planned, Grasso responded, "My whole day is totally ruined."¹⁹⁰

Oklahoma relied on *Guest*,¹⁹¹ *Moon*,¹⁹² and *Pitsonbarger*¹⁹³ to support the position that it could retain jurisdiction over Grasso because Oklahoma sentenced him to death.¹⁹⁴ In those cases, the receiving state obtained custody of the prisoner pursuant to the IADA and subsequently sentenced him to death.¹⁹⁵

sults are to be avoided if alternative interpretations consistent with the legislative purpose are available." *Griffin*, 458 U.S. at 575.

183. *Poe*, 835 F. Supp. at 590.

184. *Id.* at 591.

185. *Id.*

186. "Comity" is defined as "[c]ourtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will." BLACK'S LAW DICTIONARY 267 (6th ed. 1990).

187. *Poe*, 835 F. Supp. at 592.

188. *Id.* at 592-93.

189. Sam Howe Verhovek, *For Murderer, a 'Tomb' Before His Death*, N.Y. TIMES, Jan. 13, 1995, at B5.

190. *Id.*

191. *People v. Guest*, 503 N.E.2d 255 (Ill. 1986).

192. *Moon v. State*, 375 S.E.2d 442 (Ga. 1988).

193. *People v. Pitsonbarger*, 568 N.E.2d 783 (Ill. 1990).

194. *Poe*, 835 F. Supp. at 591. Grasso also took the position, agreeing with Oklahoma. See generally *Coughlin v. Poe*, 835 F. Supp. 585 (1993).

195. See *supra* part III.A.

The prisoners argued that the IADA required their return to the sending state to complete their sentences before execution.¹⁹⁶ The courts disagreed.¹⁹⁷

"The rationale of the courts in rejecting the prisoners' arguments was two-fold."¹⁹⁸ First, the courts determined that Article V(e) of the IADA does not apply when the prisoner is sentenced to death in the receiving state.¹⁹⁹ Second, the courts in *Moon* and *Pitsonbarger* relied on the fact that the sending and receiving states entered into "cooperative arrangements regarding the custody of the prisoners."²⁰⁰ Therefore, the court distinguished these cases because Oklahoma and New York did not enter into a cooperative arrangement.²⁰¹

Oklahoma, however, still sought custody of Grasso.²⁰² To do so it needed either a waiver by New York of its right to have Grasso returned under the IADA or a commutation of the New York sentence.²⁰³ Mario Cuomo, the governor of New York, refused to take any action that would give Oklahoma custody of Grasso.²⁰⁴ Grasso then requested the New York sentencing court to set aside the New York sentence and reinstate it to run concurrent with or consecutive to the Oklahoma sentence.²⁰⁵

The sentencing court gave great deference to the governor's decision and refused to alter it without a showing of constitutional infirmity.²⁰⁶ The court noted that legal disputes should "be decided upon sound legal reasoning and not influenced by the pressure of public sentiment."²⁰⁷ The court further acknowledged the dichotomy between the public policies surrounding the death penalty in both New York and Oklahoma.²⁰⁸ Finally, the court stated that re-sentencing "would be tantamount to fa-

196. See *supra* part III.A.

197. See generally *People v. Guest*, 503 N.E.2d 255 (Ill. 1986), *People v. Pitsonbarger*, 568 N.E.2d 783 (Ill. 1990), *Moon v. State*, 375 S.E.2d 442 (Ga. 1988).

198. *Poe*, 835 F. Supp. at 592.

199. *Id.*

200. *Id.* For discussion of *Guest*, see *Poe*, 835 F. Supp. 585, 592 n.4 (1993).

201. *Id.* at 85-86.

202. *People v. Grasso*, 162 Misc. 2d at 85.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.* at 85-86.

207. *People v. Grasso*, 162 Misc. 2d at 86.

208. *Id.* at 89.

cilitating State-sponsored suicide in direct contravention of [New York's] clear policy considerations regarding the death penalty."²⁰⁹

On November 8, 1994, George Pataki was elected governor of New York. During his campaign, he held a news conference outside the boarding house where Leslie Holtz was murdered.²¹⁰ There, Pataki promised to send Grasso back to Oklahoma to face execution for the murders he committed.²¹¹ On January 11, 1995, eleven days after Pataki took office, Grasso was en route to McAlester prison, the site of Oklahoma's death row,²¹² and on March 20, 1995 at 12:22 a.m., Grasso was executed by lethal injection.²¹³

IV. Analysis

A. *Interpretation of the IADA*

The courts in *Guest*, *Moon*, and *Pitsonbarger*, held that the return provision laid out in Article V of the IADA should not apply when a prisoner is sentenced to death in the receiving state.²¹⁴ The rationale for those holdings was that once a prisoner receives the death penalty, he no longer has a recognizable interest in treatment and rehabilitation programs.²¹⁵ The *Gall* court applied Article V, but in that case the prisoner was sentenced to death by the sending state.²¹⁶ The *Gall* court noted that the purpose of the IADA is to limit transfers, thereby preventing the interruption of rehabilitation programs.²¹⁷ Thus, it held that when a prisoner is sentenced to death, the rationale of limiting transfers to prevent interruptions in rehabilitation no longer applies.²¹⁸

209. *Id.*

210. Kevin Sack, *New York Transfers Killer To Oklahoma To Await Execution*, N.Y. TIMES, Jan. 12, 1995, at B8.

211. *Id.*

212. *Id.*

213. John Kifner, *Inmate is Executed in Oklahoma, Ending N.Y. Death Penalty Fight*, N.Y. TIMES, Mar. 20, 1995, § A, at 1, col. 3.

214. See *supra* part III.A.

215. See *supra* part III.A.

216. See *supra* discussion of *Gall* part III.A.

217. See *supra* discussion of *Gall* part III.A.

218. See *supra* discussion of *Gall* part III.A.

The Oklahoma District Court in *Poe*²¹⁹ adopted a "plain language" analysis and held that a sending state retains jurisdiction over a prisoner although the receiving state sentenced him to death.²²⁰ The court stated that "[t]he eradication of the adverse side-effects attendant to a detainer is merely the by-product of the achievement of the purpose of the Act—disposal of untried charges."²²¹ Essentially, the court viewed the IADA's function of facilitating prisoner treatment and rehabilitation programs as merely incidental to the Act's purpose of disposing of untried charges.²²²

The drafters of the IADA, however, wanted a statute that would facilitate programs of prisoner treatment and rehabilitation.²²³ In fact, the interruptions in prisoner rehabilitation caused by outstanding detainers were the motivating force behind the enactment of the IADA.²²⁴ The drafters found that prisoners who were uncertain about their future were at a great psychological disadvantage in terms of rehabilitation.²²⁵ Accordingly, the intention of the drafters was to create a statute for the benefit of the prisoners.²²⁶

The Supreme Court of the United States supports the intention of the drafters.²²⁷ In *U.S. v. Mauro*,²²⁸ the court noted that a core concern behind the enactment of the IADA was Congress' "desire to alleviate the problems encountered by prisoners and prison systems as a result of the lodging of detainers."²²⁹ The IADA is a remedial statute and must be construed liberally in favor of prisoners.²³⁰

Consequently, the court in *Poe* should have recognized that a purpose of the IADA is to facilitate prisoner treatment and rehabilitation. Both the legislative history of the IADA and

219. *Coughlin v. Poe*, 835 F. Supp. 585 (E.D. Okla. 1993).

220. *Id.* See also *supra* part III.B.

221. *Poe*, 835 F. Supp. at 591.

222. *Id.*

223. See *supra* part II.A.2.

224. See *supra* part II.A.2.

225. See *supra* part II.A.2.

226. See *supra* part II.A.2.

227. See *infra* notes 221-22 and accompanying text. Also, see generally *U.S. v. Mauro*, 436 U.S. 340 (1978).

228. 436 U.S. 340 (1978).

229. *Id.* at 356.

230. See *supra* note 68.

case law support this proposition.²³¹ In accordance with the legislative intent behind Article IX and the holding of *U.S. v. Mauro*, the IADA should be construed liberally to further its remedial purpose.²³²

Similarly, the court in *Poe* could have relied on basic principles of statutory construction. A court should not adopt the literal meaning of the words of a statute if that meaning "would thwart the obvious purpose of the statute."²³³ Moreover, "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available."²³⁴

Despite the availability of alternative interpretations of the IADA, the Oklahoma District Court chose to disregard them.²³⁵ The court could have found that the purpose of the IADA was to facilitate programs of prisoner treatment and rehabilitation²³⁶ and therefore, when Oklahoma sentenced Grasso to death, that purpose was frustrated. Alternatively, New York should have waived its right to have Grasso returned.²³⁷

Grasso and Oklahoma, however, were not without recourse to have Grasso returned to Oklahoma. Grasso petitioned the Richmond County Supreme Court to vacate the New York judgment and reinstate the New York sentence to run either concurrent with or consecutive to the Oklahoma sentence.²³⁸ As part of his reasoning, Grasso argued that it would be cruel and unusual punishment to force him to serve his New York sentence before execution.²³⁹ The court correctly rejected this argument.²⁴⁰ It stated that a sentence of twenty years to life is not

231. See *supra* parts II.A.2, II.B.1.

232. 18 U.S.C. app. § 2 art. IX. (providing that "[the IADA] shall be liberally construed so as to effectuate its purposes."). *Id.*

233. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (quoting *Commissioner v. Brown*, 380 U.S. 563, 571 (1965)).

234. *Griffin*, 458 U.S. at 575.

235. 835 F. Supp. 585 (E.D. Okla. 1993).

236. See *supra* note 68 and accompanying text.

237. *Poe*, 835 F. Supp. at 592.

238. *People v. Grasso*, 162 Misc. 2d at 85.

239. *Id.*

240. *Id.* at 86.

cruel or unusual and a subsequent death sentence does not alter that conclusion.²⁴¹

B. *A Practical Interpretation of the IADA*

The three leading cases, *Guest*,²⁴² *Moon*,²⁴³ and *Pitsonbarger*,²⁴⁴ dealing with issues similar to those in *Poe*,²⁴⁵ each permitted the receiving state to retain custody of the prisoner when the receiving state sentenced him to death.²⁴⁶ In each case, the receiving state sentenced the prisoner to death, while the sending state imposed a sentence other than death.²⁴⁷ Despite a violation of the IADA, the court in *Gall*²⁴⁸ allowed the sending state to require Gall's return for execution.²⁴⁹

Unlike Grasso, defendants *Guest*, *Moon*, and *Pitsonbarger* all wanted to return to their sending states to complete their term sentences before returning to their receiving states to face execution.²⁵⁰ Similarly, *Gall* wanted to stay in the receiving state to serve his term sentence before execution.²⁵¹

The former governor of New York, Mario Cuomo, believed that life imprisonment is a more severe punishment than a death sentence.²⁵² Despite the large number of capital defendants who elect execution at some point during their imprisonment, few stand by their decision.²⁵³ Contrary to Cuomo's

241. See also *Cobb v. State*, 260 S.E.2d 60, 69 (Ga. 1979) (rejecting a prisoner's argument that the death penalty would constitute cruel and unusual punishment, as applied to him, because he would be compelled to serve his "50-year minimum sentence in the Florida penal system before the death sentence could be carried out, and he could not attempt to contest the legality of the Florida convictions without exposing himself to the possibility that, if he were successful, he would immediately be put to death.").

242. *People v. Guest*, 503 N.E.2d 255 (Ill. 1986).

243. *Moon v. State*, 375 S.E.2d 442 (Ga. 1988).

244. *People v. Pitsonbarger*, 568 N.E.2d 783 (Ill. 1990).

245. *Poe*, 835 F. Supp. 585 (E.D. Okla. 1993).

246. For a discussion of the three cases, see *supra* part III.A.

247. See *supra* part III.A.

248. 702 S.W.2d 37 (Ky. 1985).

249. *Id.* For further comment, see *supra* part III.A.

250. See *supra* part III.A.

251. 702 S.W.2d 37, 45 (Ky. 1985).

252. *Cuomo Says Grasso Makes Case for Him*, NEWSDAY, Oct. 16, 1993, at 21.

253. *Welsh S. White, Defendants Who Elect Execution*, 48 U. PITT. L. REV. 853 (1987). See also *Lenhard v. Wolff*, 444 U.S. 807 (1979); *Gilmore v. Utah*, 429 U.S. 1012 (1976); *Rees v. Peyton*, 384 U.S. 312 (1966)(per curiam); *Hays v. Murphy*, 663 F.2d 1004 (10th Cir. 1981); *State v. Brewer*, 826 P.2d 783 (Ariz. 1992); *Franz v.*

belief, some prisoners fight to be sent to the state where they are not facing a death sentence because they would rather live in prison than die.²⁵⁴ Similarly, other prisoners do not contest their return to a jurisdiction where they must serve a prison term.²⁵⁵ Thomas Grasso was the exception.

In addition to cooperating with a fellow governor by allowing Grasso to stay in Oklahoma, Mario Cuomo could have viewed this situation as an opportunity to save the taxpayers of New York some money. The Commissioner of the New York State Department of Correctional Services said, "Grasso's incarceration [would] not cost New Yorkers an extra cent" because "[o]ne inmate [would] not affect the hiring or firing of one correction officer or civilian employee."²⁵⁶ The estimated cost to keep Grasso in prison for one year would have been \$24,300 or approximately \$486,000 for twenty years.²⁵⁷ Additionally, there are several other inmates living in New York prisons, also at a cost of \$24,300 per inmate per year, who immediately upon completion of their New York prison term will be sent out of state for execution.²⁵⁸ The cost to New York taxpayers to house ten prisoners for twenty years, for example, is \$4,860,000. Accordingly, New York's policy of retaining prisoners that are to be executed upon their transfer from the New York penal system to the penal systems in other states costs New York millions of dollars.²⁵⁹

Arkansas, 754 S.W.2d 839 (Ark. 1988); *People v. Chadd*, 621 P.2d 837 (Cal. 1981); *Davis v. Austin*, 492 F. Supp. 273 (N.D. 1980); *State v. Dodd*, 838 P.2d 86 (Wash. 1992).

254. See *supra* part III.A.

255. New York retains several prisoners that are to be executed upon their release from the New York prison system. For example: Cam Ly, who was convicted of murder and sentenced to death in Pennsylvania, was returned to New York to finish his prison term and then returned to Pennsylvania in 1988 to await execution; Kevin Mathews will be sent out of state for execution upon completion of his New York prison term; William Branshaw and Ernest Laurencio will both be sent to Florida for execution upon completion of their New York prison terms; and Joseph Fischer, who is not eligible for parole in New York until 2004, will be sent to Oklahoma for execution upon completion of his New York prison term. Thomas A. Coughlin, III, *Why Tom Grasso Belongs Behind New York Bars*, *NEWSDAY*, Oct. 29, 1993, at 68 [hereinafter Coughlin].

256. Coughlin, *supra* note 255.

257. Dennis Cauchon, *N.Y. Stops Okla. Execution Wants To Imprison Killer*, *USA TODAY*, Oct. 19, 1993, at 1A.

258. See *supra* note 255.

259. See *infra* part IV.C.

Death penalty opponents, however, argue that the delays in execution, costs thereof, and dangers of executing an innocent person greatly outweigh any benefit obtained by the death penalty.²⁶⁰ Common in death penalty cases are substantial delays caused by the appeal process.²⁶¹ In many states, the cost to execute one prisoner is often three times the cost to house one prisoner for life.²⁶² Moreover, the danger of executing an innocent person is too great a risk to justify imposing the death penalty upon anyone.²⁶³

Although these arguments are powerful, they do not apply to the Thomas Grasso controversy. First, the only delays caused by the appeal process were due to a mandatory review because Grasso waived any and all rights he had to appeal his death sentence.²⁶⁴ Second, the cost of Grasso's execution falls entirely upon Oklahoma.²⁶⁵ Third, Grasso admitted that he committed both murders,²⁶⁶ and therefore, there was no risk of executing an innocent person.

C. *The Current IADA v. an Amended IADA*

Equipping the IADA with a death penalty exception will take away a governor's unfettered discretion to manipulate a prisoner's fate based on his or her personal beliefs. Under the current construction of the IADA, as Thomas Grasso's case illustrates, a prisoner's punishment can change based solely upon the current governor.²⁶⁷ For example, former Governor Mario Cuomo, an opponent of the death penalty,²⁶⁸ refused to cooperate with the governor of Oklahoma, David Walters, and

260. Michael D. Hintze, *Attacking The Death Penalty: Toward A Renewed Strategy Twenty Years After Furman*, 24 COLUM. HUM. RTS. L. REV. 395, 410-14 (1993).

261. *Id.* at 411-12.

262. *Id.* at 413.

263. *Id.* at 399.

264. Grasso v. State, 857 P.2d 802, 805 (Okla. Crim. App. 1993).

265. If Grasso remained in New York, the cost of maintaining him in prison would be \$24,300 per year. By executing him, Oklahoma incurs no further cost of imprisonment but is required to pay for the execution.

266. Grasso v. State 857 P.2d 802, 804 (Okla. Crim. App. 1993).

267. See generally Coughlin v. Poe, 835 F. Supp. 585 (E.D. Okla. 1993).

268. While Governor of New York for twelve years, Mario Cuomo vetoed capital-punishment bills twelve times. Liz Trotta, *N.Y. Resists Death Penalty Trend; Lawmakers Want It, but Two Governors Have Held Out*, WASH. TIMES, July 27, 1994, at A3.

required Grasso to serve a minimum of twenty years in New York.²⁶⁹

Former Governor Cuomo claimed “[p]oliticians should not overrule judges and interstate compacts.”²⁷⁰ However, overruling was not necessary. First, Chief Judge Seay explicitly authorized New York to waive any rights it had with regard to Grasso.²⁷¹ Second, the IADA directs the states that have adopted the IADA to cooperate with each other in order to effectuate the purposes of the IADA.²⁷² Cooperation between member states is achieved by the respective governors entering into executive agreements.²⁷³ When the residents of New York elected George Pataki on November 8, 1994, there was a change in the New York governor and a subsequent change in the view of the death penalty. As a result of that political change, Grasso’s sentence changed dramatically.

1. *Current Status and Operation of the IADA*

A few examples will illustrate the problems and inconsistent results of a plain reading of the IADA.

Scenario 1:

State A, the sending state, does not have the death penalty.

State B, the receiving state, does have the death penalty.

X commits murder in both states.

State A convicts X of murder and sentences X to life imprisonment.

Pursuant to the IADA, State B obtains temporary custody of X, convicts X of murder and sentences X to death.

Result: X must complete his term of life imprisonment in State A before execution in State B. The order of the convictions dictates which state obtains jurisdiction absent an executive agreement to the contrary.

It must be noted, however, that the order may be meaningless. Although State A, the sending state, does not have the

269. Kevin Sack, *New York Transfer: Killer to Oklahoma to Await Execution*, N.Y. TIMES, Jan. 12, 1995, p.1.

270. Robert D. McFadden, *Killer from Oklahoma Applauds Cuomo’s Defeat, and Waits*, N.Y. TIMES, Nov. 13, 1994, § 1, at 48.

271. *Poe*, 835 F. Supp. at 593.

272. See *supra* part II.A.1.

273. See *supra* part III.A.

death penalty, the governor of State A may personally favor the death penalty and agree with the governor of State B, the receiving state, to allow X to remain in State B for execution. Conversely, the governor of State A may oppose the death penalty and demand X's return. Thus, X may or may not be executed, depending upon the personal views of the governor of the sending state.

In any event, X can seek judicial intervention. The courts of State A can "technically" give State B the first conviction by vacating X's conviction and immediately reinstating it. Alternatively, the courts of State A could vacate X's sentence and then order X's sentence imposed by State A to run concurrently with State B's sentence. Therefore, the result demanded by a plain reading of the IADA can be changed indiscriminately.

Scenario 2:

State A, the sending state, does not have the death penalty.

State B, the receiving state, does have the death penalty.

X commits murder in both states.

State B convicts X of murder and sentences X to death.

Pursuant to the IADA, State A obtains temporary custody of X, convicts X of murder and sentences X to life imprisonment.

Result: State B retains jurisdiction over X and can execute X. X will not serve time in State A.

The IADA in its current condition creates a race to conviction. The state that obtains the first conviction and, as a result, becomes the sending state under the IADA, is in the "driver's seat" and indiscriminately can manipulate X's ultimate fate. The governor of State B could make an agreement with the governor of State A to have X serve State A's sentence prior to execution in State B. However, that is an unlikely result. If the general purpose of the IADA is the facilitation of prisoner treatment and rehabilitation programs, then State B will consider that purpose as frustrated once state B sentences X to death. Alternatively, if the purpose of the IADA is the expeditious and orderly disposition of charges outstanding against a prisoner, then State B will consider that purpose satisfied when X stands trial in State A. Although State B rightfully will retain jurisdiction over X and proceed with X's execution, it does so based

solely on the timing of the respective convictions. This creates the race to conviction.

As illustrated above, each scenario produces a different result. In the first scenario, the personal views of the governor of the sending state dictate the result. In the second, the timing of the convictions creates a dissimilar outcome. Why should X receive a different sentence when X commits the same crimes and receives the same trials and sentences? Moreover, why should X's fate depend on the personal views of subsequent governors of the sending state? This paper suggests that X's ultimate sentence should not rest upon either. A judge and jury should determine X's sentence. The magnitude of X's sentence should be the determinative factor regarding jurisdiction over the prisoner.

2. *A New Approach: The Death Penalty Exception*

Equipping the IADA with a death penalty exception would provide consistent results in the sentencing and execution of prisoners. Furthermore, an exception would remove governors' unfettered discretion to manipulate a prisoner's sentence based on their personal views. The IADA should be amended to provide that when a state sentences a prisoner, it retains jurisdiction over the prisoner as long as the prisoner is sentenced to death.

What about the debt that the prisoner owes for the crimes committed in the other state? There are two responses to this question. First, under the current construction of the IADA, a prisoner need not serve any other sentences.²⁷⁴ As illustrated in Scenario Two, a prisoner who is sentenced to death in a sending state and then receives a lesser sentence in a receiving state will not serve time in the receiving state.²⁷⁵ Second, the death penalty is the greatest punishment that the penal system can impose, and, therefore, it subsumes all other lesser sentences.

Implementing a death penalty exception would provide a default provision. When a state imposes the death penalty, it automatically retains jurisdiction over the prisoner. The order of the convictions no longer would be relevant once a prisoner is

274. See *supra* discussion of *People v. Pitsonbarger* part III.A.

275. See *supra* part III.A.

sentenced to death. If neither state sentences the prisoner to death, then the exception does not apply. Moreover, the exception would remove the danger that a prisoner's ultimate fate may be manipulated by a governor's personal views regarding the death penalty. This proposal would cure the current ailments of the IADA.

A few examples will illustrate how the IADA would operate if it contained a death penalty provision.

Scenario 1:

State A, the sending state, does not have the death penalty.

State B, the receiving state, does have the death penalty.

X commits murder in both states.

State A convicts X of murder and sentences X to life imprisonment.

Pursuant to the IADA, State B obtains temporary custody of X, convicts X of murder and sentences X to death.

Result: The death penalty exception is activated and jurisdiction over X defaults to State B.

Thus, the term of life imprisonment is subsumed into the death penalty and State B can carry out X's execution without requiring X to complete his sentence first in State A.

Scenario 2:

State A, the sending state, does not have the death penalty.

State B, the receiving state, does have the death penalty.

X commits murder in both states.

State B convicts X of murder and sentences X to death.

Pursuant to the IADA, State A obtains temporary custody of X, convicts X of murder, and sentences X to life imprisonment.

Result: The death penalty exception is activated and jurisdiction over X defaults to State B.

In both scenarios, X will not serve time in State A but rather will remain in State B to await execution. The results in scenarios 1 and 2 are consistent with each other. Neither result depends on the timing of the convictions nor on the personal views of the governor of the sending state. The results are based upon the fact that X received the greatest punishment that the penal system can impose, the death penalty. Thus, the results are based upon a meaningful and predictable measure, as opposed to the timing of the convictions or the personal views of the cur-

rent governor. The death penalty exception is not a radical amendment. The results of the two scenarios are acceptable under the IADA and provide a logical and consistent means of ensuring uniformity.²⁷⁶

But is a death penalty exception relevant to New York in light of its recent acceptance of the death penalty?²⁷⁷ Is a death penalty exception relevant if all the states adopt the death penalty as a form of punishment? The answer to both questions is yes. A death penalty exception would still be relevant and useful to determine which state would retain jurisdiction of a prisoner who committed crimes in more than one state. Furthermore, a death penalty exception removes these jurisdictional issues from gubernatorial discretion. Therefore, the exception would prevent personal ethics and values from determining a prisoner's fate as illustrated in the Grasso case.²⁷⁸

V. Conclusion

Generally when a person commits murder in more than one state and one of those states imposes the death penalty, there is no controversy between the various states provided that the governors' views are similar. When governors do not agree on policy issues such as the death penalty, animosity results. The dispute between former governor David Walters and former governor Mario Cuomo in their battle over the custody of Thomas Grasso illustrates such animosity. Although Grasso requested the death penalty and resolutely wanted to die, Governor Cuomo insisted that Grasso serve his twenty years to life, at the expense of the New York taxpayers, before going to Oklahoma to face execution.

276. The results created by adding a death penalty exception are acceptable under the current IADA because a prisoner will not serve a term sentence imposed upon the prisoner by any receiving state when the prisoner was sentenced to death in the sending state. A death penalty exception would provide the same result when a prisoner is sentenced to death in a receiving state, i.e., the prisoner will not serve any of the term sentences imposed upon the prisoner by the sending state or any other jurisdiction.

277. Kevin Sack, *New York Transfer: Killer to Oklahoma to Await Execution*, N.Y. TIMES, Jan. 12, 1995, p1.

278. See *Coughlin v. Poe*, 835 F. Supp. 585 (E.D. Okla. 1993); see also *supra* part III.B.

The current construction and interpretation of the IADA allow different variables to manipulate a prisoner's ultimate sentence. Those variables are the order of the prisoner's convictions, the personal views of each governor, and the governors' willingness to cooperate with one another. The latter two variables are based largely upon political views and pressures and should not be factors that determine a prisoner's ultimate sentence.

Therefore, a death penalty exception is necessary for the IADA to produce consistent results and to eliminate governors' unfettered discretion in this area. The death penalty exception automatically will provide that when a state sentences a person to death, that state retains jurisdiction over the prisoner regardless of the order of the prisoner's convictions, the personal views of the governors, and the governors' cooperation. This new approach will serve the purposes of the IADA and provide consistent results based on the sentence the prisoner receives rather than on the arbitrary order of convictions and the personal views of the governors.

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* This comment is dedicated to my wife Sherry whose love and support helped to ease the pressures of law school.