



House of Commons
Home Affairs Committee

The US-UK Extradition Treaty

Twentieth Report of Session 2010–12

Volume I: Report, together with formal minutes, oral and written evidence

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The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Introduction

1. One of the first commitments made by the Coalition Government was to review the operation of the Extradition Act 2003 and the US-UK Extradition Treaty to make sure that they are even-handed.¹ This commitment was made in the context of widespread political concern about the operation of the UK's extradition arrangements with the USA. Representatives of both Coalition Parties had expressed reservations about the operation of the Treaty while in opposition. Opening an emergency debate called in 2006 by the Liberal Democrats shortly before the extradition of the “NatWest Three”,² Rt Hon Nick Clegg MP said,

We on the Liberal Democrat Benches have objected to the extradition arrangements with the USA ever since the text of the new treaty was published in May 2003. [...] the extradition treaty and its enactment through the Extradition Act 2003 is manifestly unfair to British citizens.³

During the same debate, Rt Hon Dominic Grieve MP (then the shadow Attorney General), expressed reservations about the new standard of information required by the Treaty—which he described in relation to one case as “very scanty indeed”—and described the lack of forum provisions in the 2003 Act as “a serious flaw”.⁴ Rt Hon David Blunkett MP, who was Home Secretary when the Treaty was signed, told us that although the 2003 Treaty was in principle an improvement over previous treaties, “the practice has been very different”.⁵

2. Since the extradition of the “NatWest Three”, there have been several other high-profile cases which have been the focus of public concern. During the course of this inquiry, the Committee took evidence from representatives of several of those involved—Janis Sharp, whose son, Gary McKinnon, has been charged with several counts of damaging computers belonging to the US military;⁶ Ashfaq Ahmad, the father of Babar Ahmad, who has been in prison in the UK for more than seven years while an extradition request from the USA is dealt with;⁷ Elaine and Neil Tappin, the wife and son of Christopher Tappin, who has recently been extradited to the US to face charges for his alleged involvement in the sale of restricted weapons-system components to Iran;⁸ and written evidence from Eileen Clark, who is facing charges for allegedly kidnapping her now-adult children in 1998.⁹ This evidence has given us an insight into some of the difficulties experienced by those facing extradition, as well as their families. But it is important to bear in mind that there is another side to each of these stories and the Committee has not heard any of the evidence

1 The Coalition: our programme for government (Cabinet Office, May 2010), p. 14

2 For evidence from David Bermingham, one of the “NatWest Three”, see Qq 208–279

3 HC Deb, 12 July 2006, col. 1396. Although Mr Clegg referred to “British citizens”, citizenship is largely irrelevant in extradition cases and it is quite common for people to be extradited to the country of which they are a citizen.

4 Ibid, cols. 1410 & 1420. He was referring to the Morgan Crucible Case

5 Q 3

6 Qq 60–78

7 Qq 79–102

8 Qq 417–430

9 Ev 77

against the accused in these cases. In this Report the Committee is concerned with the policy framework within which extradition decisions are made by the courts. The Committee has reached no conclusions about any specific case, either past or present.

3. The Prime Minister himself has acknowledged the difficulties surrounding the McKinnon case in particular. In July 2009, when Mr McKinnon lost his judicial reviews against the Secretary of State and the Director of Public Prosecutions, the then-Leader of the Opposition described himself as being “deeply saddened and disappointed” by the decision and went on to say

Gary McKinnon is a vulnerable young man and I see no compassion in sending him thousands of miles away from his home and loved ones to face trial. If he has questions to answer, there is a clear argument to be made that he should answer them in a British court. This case raises serious questions about the workings of the Extradition Act, which should be reviewed.¹⁰

4. In light of these high-profile, problematic cases, and to give effect to the commitment in the Coalition Agreement, the Home Secretary appointed Rt Hon Sir Scott Baker to carry out a review of the UK’s extradition arrangements in October 2010. Sir Scott, a retired High Court judge, was supported in his work by David Perry QC, who has experience of extradition cases as both a prosecutor and defender, and Anand Doobay, a solicitor whose practice focuses on representing the subjects of extradition requests and who is a trustee of Fair Trials International. The Panel’s Report was published in October 2011.¹¹

5. The Review Panel received 209 written submissions, and held oral evidence sessions in London, Edinburgh, Brussels, the Hague and Washington DC over a total of 12 days. The evidence the Panel gathered remains with the Home Secretary, who has so far refused to publish it, despite our requests for her to do so. **The Committee can see no legitimate reason for the Home Secretary’s refusal to publish the evidence to the Baker Review. The secrecy surrounding the evidence is as frustrating as it is inexplicable and it is not helping to improve low public confidence in this matter. The Committee recommends that the Home Secretary publish it immediately.**

6. The Home Secretary is still considering how to respond to the Baker Report, which makes a number of recommendations for changes to both the US-UK extradition arrangements and the European Arrest Warrant, but does not recommend radical reform of either. The Committee has therefore decided to bring forward this short Report on the US-UK Extradition arrangements as soon as possible. The Committee will return to the issues relating to the European Arrest Warrant, which was also part of our inquiry, in due course.

7. In addition to the evidence published with this Report, the Committee held an informal meeting with Louis B. Sussman, the United States Ambassador, who put the US Government’s position to us a few days before the extradition debate in the House on 5

10 Conservative Party press release dated 31 July 2009, *Grayling says McKinnon extradition is “very disappointing”*.

11 A Review of the United Kingdom’s Extradition Arrangements (following Written Ministerial Statement by the Secretary of State for the Home Department of 8 September 2010). Presented to the Home Secretary on 30 September 2011 (hereafter, “the Baker Report”).

December 2011.¹² During our recent visit to the United States, the Committee held a conference call with Bill Pearson, a former Federal prosecutor with experience of making extradition requests to the UIK, and the Committee held a video conference with senior officials from the United States Department of Justice. Mr Pearson told us that, in US law, “probable cause” was a stronger test than “reasonable suspicion”, an issue which we consider in more detail below.

8. Concern about the operation of the current extradition arrangements between the USA and the UK should not be allowed to obscure the fundamental point that it is firmly in our national interest to have effective, fair and balanced extradition arrangements with the United States and our other international partners. Criminals must not be allowed to evade British justice by fleeing the country; nor should the UK become a safe haven for those who have committed crimes in other territories. The development of the internet and the rise of international terrorism and organised crime mean that extradition is now more important than ever in the fight against crime. While the Committee has serious misgivings about some aspects of the current arrangements, we are firmly convinced that an effective extradition agreement with the USA is appropriate and clearly in our national interest.

The “probable cause” and “reasonable suspicion” tests

9. The US and the UK signed a new Extradition Treaty in March 2003,¹³ replacing a Treaty that had been in effect since 1972 (although the two countries have had treaties since the Jay Treaty which marked the end of hostilities in the American War of Independence).¹⁴ The most significant difference between the 2003 Treaty and its predecessor lies in the Article specifying the documents which must accompany an extradition request.¹⁵ The old Treaty required the request to be accompanied by such evidence as would justify the person’s committal for trial according to the law of the state from which extradition was sought (“*prima facie* evidence”), including evidence that the person requested was the person to whom the arrest warrant referred. The new Treaty requires, for requests made to the United States, “such information as would provide a reasonable basis to believe that the person sought committed the offence for which extradition is requested”.¹⁶ This is known as the “probable cause” test, and was necessary for the Treaty to comply with the Fourth Amendment to the US Constitution when it was signed in 2003 by the then-Home Secretary, Rt Hon David Blunkett MP.¹⁷

10. There is no corresponding requirement in the Treaty for requests made by the United States to the United Kingdom but under the Extradition Act 2003, requests to the UK must

12 The Ambassador’s statement to the Committee is published as an Annex to this Report.

13 Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America (United States No. 1 (2003), Cm 5821.

14 For a history of US-UK extradition arrangements, see Part 3 of the Baker Report .

15 Article 8 of the 2003 Treaty, Article IX of the 1972 Treaty.

16 Article 8(3)(c).

17 “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

be accompanied by information which would justify the issue of an arrest warrant. That standard is the “reasonable suspicion” test.

11. The difference between the “probable cause” and “reasonable suspicion” tests has been a source of controversy. In 2003, the Minister of State in the Home Office, Baroness Scotland of Asthal, was quite explicit about the difference between the two tests during a debate in the House of Lords on secondary legislation made under the 2003 Act. She explained that the probable cause test was “a lower test than *prima facie* but a higher threshold than we ask of the United States.” She went on to argue that, since the UK does not demand *prima facie* evidence from Albania, Turkey or Romania, it would be inappropriate to impose a more stringent test on the USA, adding: “We have to take an objective decision about what standards we believe incoming extradition requests should meet. We do not see how that is affected by the fact that another country cannot, for very good reasons, reciprocate. [...] Complete reciprocity has never been a feature of our extradition arrangements”.¹⁸

12. The Baker Report concluded that there was “no significant difference” between the two tests,¹⁹ although Sir Scott conceded to us that the wording of the Treaty might have given rise to the impression that there was: “If it had all been made absolutely clear in the Treaty, there would not have been this problem”.²⁰ Jago Russell of Fair Trials International argued that there was no good reason for the asymmetry in the Treaty:

You don’t need to look very hard at the treaty to see that there’s a safeguard in that treaty that exists if there is an extradition from the United States but doesn’t exist the other way round, and that, quite rightly, strikes a chord with the British public and seems to be unjust. If there is a safeguard that the United States demands for people being extradited from that country, then they should expect that other countries might feel fit to demand the same safeguard the other way round.²¹

13. David Bermingham, who was extradited to the USA as one of the “NatWest Three”, told us that the imbalance arose not because the two tests were different but because a person who was sought for extradition from the UK had no opportunity to test the information establishing a “reasonable suspicion” against them in court, whereas a person who was sought for extradition from the USA was entitled to a hearing to test the “probable cause” information.²²

14. Even the Attorney General, now apparently a defender of the Treaty, acknowledged the difficulty of having two tests which were different on the face of it, even if their application was the same in practice:

[...] while there is always an inherently unsatisfactory feeling if you have two different tests to be applied in two different jurisdictions, I think we have to be a little bit careful about suddenly concluding that if that were to be changed, for example, it

18 HL Deb , 16 December 2003,

19 Baker Report, paragraph 7.42.

20 Q 130

21 Q 28

22 Q 213

would lead to some dramatically different outcomes, because I am not sure it would.²³

15. The Committee accepts that there is a body of respectable legal opinion which suggests that there is little or no distinction in practice between the “probable cause” and “reasonable suspicion” tests. Nevertheless, the imbalance in the wording of the Treaty, which sets a test for extradition from the US but not from the UK, has created the widespread impression of unfairness within the public consciousness and, at a more practical level, gives US citizens the right to a hearing to establish “probable cause” that is denied to UK citizens. It is clear that the US Constitution requires that the Treaty include the “probable cause” test for extradition from the USA to the UK. The Committee can see no reason why an identical safeguard should not be granted to those whose extradition is sought in the opposite direction and we believe it would be in the interests of justice for the Treaty explicitly to offer the same protection to people whose extradition is sought from either country. We cannot imagine that the United States Government would not object to British citizens enjoying the same legal safeguards as US citizens. The Committee therefore recommends that the Government seek to renegotiate the US-UK Extradition Treaty to specify that the information requirements be the same in both jurisdictions.

The *prima facie* evidence test

16. Since the abolition of the *prima facie* evidence test, there is no requirement to produce evidence as to the guilt of the accused in order to effect an extradition; there is a requirement only to produce information—which may include information that would not be admissible as evidence in a trial—to pass the reasonable suspicion test. This applies to extraditions both to and from the US although, as we have noted above, the information test is slightly different in the two territories. The Attorney General was quite clear on this point:

The basis of extradition is that there is a *prima facie* case, or probable cause, or at least a case made out, which is deemed to be satisfactory and, under the protection of the European Convention on Human Rights, there is a satisfaction that the trial system of the country to which the person is being extradited and the other circumstances, including the risk of the death penalty and other matters, are such that their human rights will not be infringed.²⁴

17. In extradition cases, it is for the courts in the requesting territory to determine the guilt or innocence of the accused once extradition has been granted. It would be absurd to require a British court to conduct a full trial to establish the guilt of the accused before they can be extradited to stand trial in the USA, nor should the court in the state from which extradition is requested pre-empt the function of the court in the state which is seeking extradition.

23 Q 107

24 Q 109 The Attorney was talking about extradition in the wider sense, not just to the USA, hence the reference to the *prima facie* evidence test which does not apply in US extradition cases.

18. However, it is important to bear in mind that the decision to extradite somebody to the USA is considerably more weighty than the decision to charge them with an offence in this country. Shami Chakrabarti of Liberty put it succinctly:

[...] even if you get a wonderful trial elsewhere in Europe or on the other side of the world, being taken from your home, your job and your community, possibly to another language, whatever it is, is a punishment in itself. We are people, not robots.²⁵

Janis Sharp, whose son, Gary McKinnon, is the subject of an extradition request from the United States, told us,

Extradition is a huge punishment in itself, massive. If people are extradited they're often incarcerated for years before a trial comes. They also can lose their job; they can lose their family; they can lose their sanity; they can lose their life. It's absolutely horrendous. So that is a huge punishment for a person that's potentially innocent.²⁶

19. David Bermingham described the consequences of extradition as “catastrophic”.²⁷ He argued that he and his co-defendants were deprived by their extradition of the ability to defend themselves as they did not have access to evidence and witnesses in the UK that they might have used to mount a defence in the US courts.²⁸ Extradition to the USA also needs to be seen in the context of the US judicial system, in which defendants are far more likely to enter into a plea agreement than in the UK. The Committee was told that US judges have less discretion over sentencing than their British counterparts, and so sentences were largely determined by the nature of the original charges. This gave prosecutors a great deal of power to negotiate a guilty plea in exchange for a lesser charge. The Committee was told that 97% of defendants in the USA plead guilty under pressure from prosecutors.²⁹ After the United States Supreme Court's decisions of 21 March 2012 established constitutional grounds for effective legal representation of criminal defendants in plea bargaining, this situation may improve in future.³⁰ It has also been suggested that those who are extradited to stand trial in the USA were less likely to be granted bail, because the very fact that they had been extradited from overseas would be regarded as evidence that they presented a flight risk.³¹

20. Mr Bermingham told us that the UK is one of only three countries in which the US does not have to produce prima facie evidence for extradition. The others are France, which will not extradite its own citizens to the USA, and the Republic of Ireland, which has a higher forum test than the UK.³² Witnesses from Fair Trials International, JUSTICE and

25 Q 30

26 Q 69

27 Q 255

28 Q 249

29 Q 10 (Gareth Peirce, solicitor to Babar Ahmad) & Q 39 (Julian Knowles of Matrix Chambers).

30 *Missouri v. Frye* and *Lafley v. Cooper*

31 Q 93

32 Ev 72, para 32

Liberty all argued that there should be a *prima facie* evidence test for extradition from the UK.³³

21. Extradition imposes a significant burden on the accused, who might have to spend many months or years living in a foreign country, often in prison, away from their home, family, friends and job. It would be fundamentally unjust to submit an innocent person to such an ordeal, even if they were subsequently acquitted at trial. The Committee does not therefore believe that extradition should take place without some case being made against the requested person and we recommend that the Government seek urgently to re-negotiate the Treaty in order to introduce an evidence test, while balancing issues such as delay and cost.

The issue of forum

22. The question of “forum”—the country in which it is most appropriate for a trial to take place—has been a significant issue in several high-profile US-UK extradition cases. The first of these was the “NatWest Three”, who were extradited to the USA to be charged with defrauding a British bank, which employed them in London. They reported the transactions in question to the Financial Services Authority, which investigated but took no further action, and the Serious Fraud Office decided not to prosecute them. Unusually, they sought a judicial review of the decision not to prosecute them, but were unsuccessful. They were then extradited to face trial in the USA, largely on the basis of material which they had themselves submitted to the FSA in London.³⁴

23. The question of forum has also arisen in relation to other cases where the alleged criminal acts were carried out in the UK. They include among others Gary McKinnon, who is alleged to have hacked into US military computer systems from a computer in the UK; and Richard O’Dwyer, who is alleged to have committed copyright infringements through a website he ran from Sheffield. It has been argued in all these cases that the accused, if they are to be tried at all, should be tried in the United Kingdom.³⁵ The Prime Minister raised the issue of forum with President Obama during his recent visit to the United States and there is now the prospect of further negotiations between the two countries.

24. The growth in international organised crime, including internet-related crime, means that forum will become an increasingly important issue. The Internet provides a vehicle for the commission of crimes where the perpetrator is in one country and the victim is in another.

25. The fact that a person could in principle be prosecuted in the UK is not an explicit bar to extradition. If British prosecutors decide not to charge somebody with an offence, then it is open to US prosecutors to seek their extradition if they believe that the United States has jurisdiction, but it was acknowledged in the case of the “NatWest Three” that there might be circumstances in which the possibility of a UK trial could tip the balance in favour of a

33 Qq 30 ff.

34 Q 248

35 See, for example, HC Deb, 1 December 2009, cols. 975ff; HL Deb, 19 May 2011, col. WA 358; HC Deb 24 November 2011, cols. 147WHff.

conclusion that to proceed with the extradition would amount to a disproportionate interference with the defendant's right to respect for his private and family life under Article 8 of the European Convention on Human Rights,³⁶ and their ability to mount an effective defence.

26. The current practice is that decisions on forum are taken by prosecutors in the jurisdictions concerned. Guidance for handling criminal cases with concurrent jurisdiction between the UK and the USA was agreed by the Attorney General, the Lord Advocate and the Attorney General of the United States in 2007.³⁷ The Guidance applies to "the most serious, sensitive or complex" cases and requires prosecutors in the two jurisdictions to consult closely from the outset, sharing information and evidence to develop a case strategy. In such cases, the decision on where to prosecute will depend on a range of issues including practical matters such as which jurisdiction holds the evidence necessary for a prosecution and a defence.

27. There is a provision in the Police and Justice Act 2006 which amends the Extradition Act 2003 to introduce a forum bar. Section 83A provides that:

(1) A person's extradition to a category 2 territory ("the requesting territory") is barred by reason of forum if (and only if) it appears that—

(a) a significant part of the conduct alleged to constitute the extradition offence is conduct in the United Kingdom, and

(b) in view of that and all the other circumstances, it would not be in the interests of justice for the person to be tried for the offence in the requesting territory.

(2) For the purposes of subsection (1)(b) the judge must take into account whether the relevant prosecution authorities in the United Kingdom have decided not to take proceedings against the person in respect of the conduct in question.³⁸

This provision was inserted by an Opposition amendment in the House of Lords and it has not yet been commenced. The Secretary of State is not required to bring the provision into force unless a resolution to that effect is passed by both Houses of Parliament, though she may do so without such resolutions.³⁹

28. The Baker Report concluded that the forum bar should not be commenced as it would create delay and potentially generate satellite litigation. It would require a British court to consider broad and potentially complex issues, such as whether "a significant part of the conduct" took place in the UK and "all the other circumstances" of the case. It concluded that formal guidance to prosecutors was the best way to handle forum issues.⁴⁰

29.

36 [2007] QB 727, quoted in the Baker Report, p. 206.

37 Available at www.publications.parliament.uk/pa/ld200607/ldlwa/70125ws1.pdf.

38 This section applies to category 2 territories, which includes the USA. Section 19B deals with category 1 territories (those which operate the European Arrest Warrant).

39 Police and Justice Act 2006, Schedule 13, paragraph 6.

40 Op. cit., p. 230.

30. Mr Julian Knowles of Matrix Chambers argued that the US claimed exorbitant jurisdiction in some cases:

The problem with the US arises not just because of the treaty. It arises because of the overzealousness of US prosecutors and their whole approach. There is probably nothing we can do about that but that is a problem. The US also has quite an exorbitant extraterritorial jurisdiction, which is why you get cases like Babar Ahmad's or Gary McKinnon's. It has the power to reach out around the world and—provided there is a very, very tenuous connection with the US—it generally has the power to prosecute.⁴¹

The Baker Report notes that the offences of wire fraud (with which the “NatWest Three” were charged) and mail fraud are defined in US law in such a way that the United States can prosecute if any communications system in the United States is used in any fraudulent scheme. This could mean the US claiming jurisdiction because an e-mail had been routed through a server in that country.⁴²

31. The vast majority of witnesses before the Committee were firmly in favour of introducing the forum bar. Jodie Blackstock of JUSTICE told us that their concern about the Treaty largely rested on forum issues and that there was a real risk of people being extradited to the USA to be tried for things they had done in the UK.⁴³ Shami Chakrabarti of Liberty argued that the forum bar could be introduced without renegotiating the Treaty.⁴⁴ Ms Gareth Peirce, the solicitor to Babar Ahmad, suggested that prosecutors might be making assumptions about forum too early in a case, rather than seriously investigating the possibility of a prosecution in the UK.⁴⁵

32. The current arrangements for determining the forum in which a person should be tried are in our view unsatisfactory. Decisions are made by prosecutors, behind closed doors, without the accused having any opportunity to make representations. It appears to be very easy to engage the jurisdiction of the US courts without ever entering the country, since activity on the internet, including sending and receiving e-mails, can involve the use of communications systems based in the United States, as can use of the US banking system.

33. The fundamental principles of human rights, democracy and the rule of law require that justice is seen to be done in public. The Committee believes that it would be in the interests of justice for decisions about forum in cases where there is concurrent jurisdiction to be taken by a judge in open court, where the defendant will have the opportunity to put his case, rather than in private by prosecutors. Indeed, Parliament has already legislated for that to happen. The Committee therefore recommends that the Government introduce a “forum bar” as soon as possible.

41 Q 38

42 Op. cit., pp. 218–219.

43 Q 29

44 Q 34

45 Q 6

Conclusion

34. In the light of the five month delay to the Baker Report, we welcome the Prime Minister's announcement that UK and US teams will look further at the extradition arrangements but, given widespread public concern regarding the issue and continuing extraditions during this period, we urge the government to act with greater urgency.

35. The Prime Minister's recent visit to the United States emphasised the importance of the special relationship between the two countries. Welcoming the Prime Minister to the White House, President Obama said of the relationship between the US and the UK

We stand together and we work together and we bleed together and we build together, in good times and in bad, because when we do, our nations are more secure, our people are more prosperous, and the world is a safer and better and more just place.⁴⁶

The Committee shares those sentiments, recognising that the extradition Treaty between the UK and the US is an important part of that alliance.

36. The Committee is proposing significant changes to the extradition arrangements between the US and the UK not because we are critical of the American justice system but because we recognise the importance of robust extradition arrangements between our two countries. Such extradition arrangements are now threatened by loss of public confidence in the UK and there is a risk that, with time, that lack of confidence will translate into wider disaffection. We believe that the Government should act now to restore public faith in the Treaty by rebalancing the requirements for the provision of information, urgently opening negotiations about the re-introduction of an evidence test, and introducing a forum bar. The Committee believes that these changes will allow for a fair and balanced system of justice between the US and the UK as regards extradition.

⁴⁶ Remarks by President Obama and Prime Minister Cameron of the United Kingdom at Arrival Ceremony (White House Press Office, 14 March 2012).

Annex: Statement to the Committee by United States Ambassador Louis B. Sussman

Let me start by thanking the committee for meeting with me today on an issue of great importance to the United States.

I welcome this opportunity to make the case for the US-UK Extradition Treaty in its current form. To correct the myths and inaccuracies that have arisen in recent years. And to answer your questions.

Alongside me this morning are Amy Jeffress, the Department of Justice attaché at the Embassy, who will provide any necessary legal expertise— and Robin Quinville, minister-counselor for political affairs.

First and foremost, I want to be very clear that we believe our extradition relationship works, it is fair and balanced, and it promotes the interests of justice in both our countries.

My government strongly supports this treaty.

And I believe that having signed the treaty, and having had it tested both through the British justice system and by independent experts, it is now incumbent on the UK government to stand in support of it.

This is what strong, enduring, bilateral alliances are built on: treaties and agreements that enshrine shared values and give us the legal authority to pursue common goals.

Unfortunately, however, our extradition treaty continues to be widely and wrongly condemned by some in Parliament and in sections of the British media.

In order to ensure that British interests are well protected, the Home Secretary appointed a ‘blue ribbon’ panel of legal professionals to evaluate the United Kingdom’s extradition treaty with the United States.

That panel was led by the esteemed judge Sir Scott Baker and included two highly-respected lawyers.

Both lawyers have significant experience in extradition proceedings: one from representing the accused; the other from representing governments.

As part of its work, the panel invited all interested parties to provide written submissions of their views on the issues. They received more than 200 responses.

In addition, hearings and meetings were held with affected organizations and individuals, including officials from the UK, the US, and European governments.

Anyone holding a grievance with the treaty was given the fullest opportunity to express their concerns and their criticisms.

The panel also spent a week in the United States meeting with senior government officials and attorneys from the Departments of Justice and State who handle extradition matters.

I was briefed on those meetings and I know that the panel members were thoroughly prepared and their questioning—as you may expect from lawyers—was rigorous.

The panel also studied the extradition procedures in both countries—which are described in considerable detail in the final report—and it examined extraditions that have been concluded under the treaty to date.

In short, they conducted an exhaustive, meticulous and considered review.

They gathered substantial evidence and applied solid reasoning. And they reached the only conclusion that could be supported by the facts: that the US-UK treaty is balanced, fair, and needs no changes.

Even so, the myths and inaccuracies persist.

Many were repeated as recently as last week during a Parliamentary debate and its subsequent press coverage.

Accusations from Members of Parliament such as “24 Britons have been extradited to the US under the new arrangements and just one American to Britain”; or claims in the media that the Baker Review’s conclusions came “despite mountains of evidence to the contrary” — are simply not true.

So I would like to take this opportunity to set out some of the facts.

First, it is not the case, as some claim, that it is easier to extradite someone from the UK than from the US

The United States has *never denied* an extradition request from the U.K. under the treaty. The UK has refused on seven occasions.

Second, the standard that each country has to meet to extradite someone is the same.

I would like to repeat that: the standard is the same.

Third, the US does not get special treatment. The UK domestic extradition law is the same for the US, Australia, Canada, Israel, Russia, and Turkey.

Fourth, neither country can ask for an extradition if the crime allegedly committed is not a serious crime in *both* countries.

And fifth, the United States does not seek the death penalty for any individual extradited from the UK.

In last week’s Parliamentary debate, we also heard repeatedly the clarion call: ‘British Justice for British Citizens’.

So let me address that too.

The UK authorities always begin by considering whether or not an individual can and should be tried in the UK instead of being extradited to the US

And under the terms of the treaty, all extradition hearings are held in UK courts — as are subsequent appeals.

It is only when these avenues have been exhausted—when UK prosecutors, the courts, and the Home Secretary have all affirmed that the request is proper—that an extradition goes ahead.

The constant use of skewed arguments and wilful distortion of the facts by some to advance their own agendas remains of great concern to the United States.

It would be wrong to view the extradition treaty through the prism of individual cases where sentiment and emotion can cloud reality and lead to misrepresentation.

Nor should we confuse the US-UK Treaty with concerns surrounding the European Arrest Warrant—a completely different issue than the extradition process in our treaty.

One has nothing to do with the other.

One of the virtues of our system of justice—as with yours—is that we believe firmly that criminal matters must be resolved in court, not in Parliament, nor in the media.

In all cases, I put my faith in the courts—in this country and in my own—to reach the right decisions based on facts, on law, and on evidence, taken in accordance with due process.

I also have total confidence that the UK government will accept the findings of the independent Baker Review and uphold the integrity of the US-UK Treaty.

Thank you for your time. I am happy to take any questions.

December 2011

Conclusions and recommendations

1. The Committee can see no legitimate reason for the Home Secretary's refusal to publish the evidence to the Baker Review. The secrecy surrounding the evidence is as frustrating as it is inexplicable and it is not helping to improve low public confidence in this matter. The Committee recommends that the Home Secretary publish it immediately. (Paragraph 5)
2. Concern about the operation of the current extradition arrangements between the USA and the UK should not be allowed to obscure the fundamental point that it is firmly in our national interest to have effective, fair and balanced extradition arrangements with the United States and our other international partners. Criminals must not be allowed to evade British justice by fleeing the country; nor should the UK become a safe haven for those who have committed crimes in other territories. The development of the internet and the rise of international terrorism and organised crime mean that extradition is now more important than ever in the fight against crime. While the Committee has serious misgivings about some aspects of the current arrangements, we are firmly convinced that an effective extradition agreement with the USA is appropriate and clearly in our national interest. (Paragraph 8)
3. The Committee accepts that there is a body of respectable legal opinion which suggests that there is little or no distinction in practice between the "probable cause" and "reasonable suspicion" tests. Nevertheless, the imbalance in the wording of the Treaty, which sets a test for extradition from the US but not from the UK, has created the widespread impression of unfairness within the public consciousness and, at a more practical level, gives US citizens the right to a hearing to establish "probable cause" that is denied to UK citizens. It is clear that the US Constitution requires that the Treaty include the "probable cause" test for extradition from the USA to the UK. The Committee can see no reason why an identical safeguard should not be granted to those whose extradition is sought in the opposite direction and we believe it would be in the interests of justice for the Treaty explicitly to offer the same protection to people whose extradition is sought from either country. We cannot imagine that the United States Government would not object to British citizens enjoying the same legal safeguards as US citizens. The Committee therefore recommends that the Government seek to re-negotiate the US-UK Extradition Treaty to specify that the information requirements be the same in both jurisdictions. (Paragraph 15)
4. Extradition imposes a significant burden on the accused, who might have to spend many months or years living in a foreign country, often in prison, away from their home, family, friends and job. It would be fundamentally unjust to submit an innocent person to such an ordeal, even if they were subsequently acquitted at trial. The Committee does not therefore believe that extradition should take place without some case being made against the requested person and we recommend that the Government seek urgently to re-negotiate the Treaty in order to introduce an evidence test, while balancing issues such as delay and cost. (Paragraph 21)

5. The fundamental principles of human rights, democracy and the rule of law require that justice is seen to be done in public. The Committee believes that it would be in the interests of justice for decisions about forum in cases where there is concurrent jurisdiction to be taken by a judge in open court, where the defendant will have the opportunity to put his case, rather than in private by prosecutors. Indeed, Parliament has already legislated for that to happen. The Committee therefore recommends that the Government introduce a “forum bar” as soon as possible. (Paragraph 33)
6. In the light of the five month delay to the Baker Report, we welcome the Prime Minister’s announcement that UK and US teams will look further at the extradition arrangements but, given widespread public concern regarding the issue and continuing extraditions during this period, we urge the government to act with greater urgency. (Paragraph 34)
7. The Committee is proposing significant changes to the extradition arrangements between the US and the UK not because we are critical of the American justice system but because we recognise the importance of robust extradition arrangements between our two countries. Such extradition arrangements are now threatened by loss of public confidence in the UK and there is a risk that, with time, that lack of confidence will translate into wider disaffection. We believe that the Government should act now to restore public faith in the Treaty by rebalancing the requirements for the provision of information, urgently opening negotiations about the re-introduction of an evidence test, and introducing a forum bar. The Committee believes that these changes will allow for a fair and balanced system of justice between the US and the UK as regards extradition. (Paragraph 36)

Formal Minutes

Tuesday 27 March 2012

Members present:

Keith Vaz, in the Chair

Nicola Blackwood
James Clappison
Michael Ellis
Lorraine Fullbrook

Alun Michael
Steve McCabe
Mark Reckless
Mr David Winnick

Draft Report (The US-UK Extradition Treaty), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 20 read and agreed to.

Paragraph 21 read as follows.

Extradition imposes a significant burden on the accused, who might have to spend many months or years living in a foreign country, away from their home, family, friends and job. It would be fundamentally unjust to submit an innocent person to such an ordeal, even if they were subsequently acquitted at trial. We do not therefore believe that extradition should take place without some case being made against the requested person and we recommend that the Government seek to re-negotiate the Treaty in order to reinstate the *prima facie* evidence test.

Amendment proposed, in line 5, to leave out from “seek” to the end of the paragraph and add “urgently to re-negotiate the Treaty in order to introduce an evidence test, while balancing issues such as delay and cost.”—
(Nicola Blackwood)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 6

Noes, 1

Nicola Blackwood
Michael Ellis
Lorraine Fullbrook
Steve McCabe
Alun Michael
Mark Reckless

Mr David Winnick

Amendment agreed to.

Paragraph 21, as amended, agreed to.

Paragraphs 22 to 36 read and agreed to.

Annex agreed to.

Motion made, and Question put, That the Report be the Twentieth Report of the Committee to the House.

The Committee divided.

Ayes, 6

Noes, 1

Nicola Blackwood Michael Ellis
Lorraine Fullbrook
Steve McCabe
Alun Michael
Mark Reckless
Mr David Winnick

Resolved, That the Report be the Twentieth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Tuesday 17 April at 10.40 a.m.]

Witnesses

Tuesday 30 November 2010	<i>Page</i>
(published on 16 March 2011 as HC 644-i)	
Rt Hon David Blunkett MP	Ev 1
Jago Russell , Chief Executive, Fair Trials International, Jodie Blackstock , Senior Legal Officer, EU: Justice and Home Affairs, JUSTICE, Shami Chakrabarti , Chief Executive, Liberty	Ev 5
Janis Sharp , Mr Gary McKinnon’s mother; Karen Todner, Managing Director, Kaim Todner Solicitors, was in attendance	Ev 10
Tuesday 18 January 2011	
(published on 16 March 2011 as HC 644-ii)	
Ms Gareth Peirce , Solicitor to Mr Babar Ahmad, and Mr Ashfaq Ahmad	Ev 14
Mr Julian Knowles , Matrix Chambers	Ev 17
Tuesday 20 December 2011	
Rt Hon Sir Scott Baker , Chair, Extradition Review Panel	Ev 25
Tuesday 10 January 2012	
David Bermingham	Ev 33
Tuesday 21 February 2012	
Michael Turner	Ev 42
Tuesday 28 February 2012	
Judge Riddle , Senior District Judge, Westminster Magistrates’ Court	Ev 47
Rt Hon Sir Menzies Campbell CBE QC MP	Ev 53
Elaine Tappin , wife of Christopher Tappin (British citizen currently subject of extradition proceedings), and Neil Tappin , son of Christopher Tappin	Ev 58
Rt Hon Dominic Grieve, QC MP , Attorney General, and Keir Starmer, QC , Director of Public Prosecutions	Ev 60

List of previously printed written evidence

(published on 16 March 2011 as HC 644-ii)

1	Correspondence from the Home Secretary to the Chair	Ev 21: 23
2	Ashfaq Ahmad	Ev 21
3	Ms Gareth Peirce, Birnberg Peirce & Partners	Ev 23

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4	Correspondence between the Home Secretary and the Chair	Ev 68: 82
5	Clare Montgomery	Ev 69
6	David Bermingham	Ev 69: 74: 75
7	Julie O'Dwyer	Ev 76
8	Eileen Van Sant-Clark	Ev 77
9	Correspondence between the Chair and the Prime Minister	Ev 80
10	Correspondence between Damian Green, Minister for Immigration	Ev 81

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

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Second Report	Policing: Police and Crime Commissioners	HC 511
Third Report	Firearms Control	HC 447
Fourth Report	The work of the UK Border Agency	HC 587
Fifth Report	Police use of Tasers	HC 646
Sixth Report	Police Finances	HC 695
Seventh Report	Student Visas	HC 773
Eighth Report	Forced marriage	HC 880
Ninth Report	The work of the UK Border Agency (November 2010-March 2011)	HC 929
Tenth Report	Implications for the Justice and Home Affairs area of the accession of Turkey to the European Union	HC 789
Eleventh Report	Student Visas – follow up	HC 1445
Twelfth Report	Home Office – Work of the Permanent Secretary	HC 928
Thirteenth Report	Unauthorised tapping into or hacking of mobile communications	HC 907
Fourteenth Report	New Landscape of Policing	HC 939
Fifteenth Report	The work of the UK Border Agency (April-July 2011)	HC 1497
Sixteenth Report	Policing large scale disorder	HC 1456
Seventeenth Report	UK Border Controls	HC 1647
Eighteenth Report	Rules governing enforced removals from the UK	HC 563
Nineteenth Report	Roots of violent radicalisation	HC 1446

Tuesday 20 December 2011

Members present:

Keith Vaz (Chair)

Nicola Blackwood
James Clappison
Michael Ellis
Dr Julian Huppert

Steve McCabe
Alun Michael
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: **Rt Hon Sir Scott Baker**, Chair, Extradition Review Panel.

Q128 Chair: In this final session of the Committee's hearings today, we will be covering three different subjects—extradition, the UKBA and, finally, policing. We begin our session as part of our inquiry into extradition, which has been ongoing for a number of months. We welcome to the dais Sir Scott Baker. Sir Scott, thank you very much for coming. We have been on tenterhooks for the past few months with our inquiry—unable to conclude until you have completed your deliberations. I know that you also have members of your team here today.

Sir Scott Baker: We found it very helpful to read the report of your earlier sessions. That has informed our conclusions.

Q129 Chair: Excellent. But it must be a disappointment for you and members of your panel that, having laboured over this review for some months, the Government have basically said that your report is only there for guidance. They are not going to implement it; they are not going to act on it. Both the Attorney-General and the Immigration Minister were very clear: it is just another piece of work to inform the Government as to where they should take things further. Is it a disappointment to you that they did not warmly welcome it and implement what you suggested?

Sir Scott Baker: My understanding is that they are going to respond in due course, but not immediately. We always understood that there would be some time while they considered the report. When we embarked on the exercise, we realised that there were very strong feelings in different directions and that whatever we said would not please everybody, so I cannot say that we are disappointed. We feel we have done a thorough job, and that the report really speaks for itself. Anything I say today must be taken in the context that all the detail and analysis is in the report, and one cannot really do better than read that.

Q130 Chair: Of course. But the criticism of the report is that this is really for lawyers. If there is going to be uncertainty in the future, it only benefits lawyers in extradition cases. As far as the public is concerned, there is still complete bafflement as to the different words that are used—for example, in the US/UK Treaty. Although you say that there are no significant differences between the wording—the difference between “probable cause” and “reasonable suspicion”, which was, of course, *prima facie* evidence—there remain differences. Is that right?

Sir Scott Baker: We do not think that, in practice, there is any significant difference between the tests. We think that there have been a number of misapprehensions and that there still are a number of misapprehensions. This all really started from the drawing up of the Treaty. If it had all been made absolutely clear in the Treaty, there would not have been this problem.

Q131 Chair: Of course. So you accept that clarity was actually missing from this Treaty—if it was very clear? The public do not understand. Of course, with respect to colleagues here, I am not an extradition lawyer and it is many, many years since I practised in the courts. Mr Ellis, of course, is our most recent practising lawyer, and Mr Reckless.

From the point of view of the public, these are different words and they mean different things: “probable cause” and “reasonable suspicion” are different. As Lord West said in his letter to *The Guardian* when he was the Minister responsible, one is about suspicion while the other is about belief. In normal, ordinary language, if you suspect something it is quite different from believing something, surely?

Sir Scott Baker: Let me start by making the point that the Treaty gave the test for extradition from the United States, but was silent as to the test from the United Kingdom. Although you would need to ask the draftsman why that was done, the strong indication is that at that time the Extradition Act was still a Bill, and it was not clear what was going to be in the Act when Parliament passed it. What now is the position is that you couldn't put a sheet of tissue paper between the test in the Act and the test the other way for extradition from the United States.

Q132 Chair: But surely in ordinary language, as opposed to in lawyers' language, a suspicion is different from a belief. If you suspect that something is going on, that is quite different from believing that something is going on.

Sir Scott Baker: Not, in fact, when you look at the tests, because the tests are the same as for a domestic arrest warrant in each of the two jurisdictions. The American test has the underlying basis of probable cause, which reflects the fourth amendment to the United States constitution.

Q133 Chair: So that is for the convenience of the American constitution.

Sir Scott Baker: We don't have a concept precisely like that, but when you examine what it means, it means, in both instances, reasonable suspicion.

Q134 Chair: What do you say of the criticism by Lord Goodhart, an eminent jurist himself, who says that different states in the United States have different levels of dealing with people, with bail granted in some states but not in the others, while not criticising the whole of the US judicial system? It depends on which state this comes from. He is quite clear, is he not? Have you looked at what Lord Goodhart has said, both in the House of Lords and outside it?

Sir Scott Baker: We have looked at a great deal of material—everything that has been said about this, I think—but it certainly wasn't our experience, when we went to the United States and spent a week there examining these matters in great detail with the Justice Department, that there is any significant difference in different parts of the United States.

Q135 Chair: So Lord Goodhart is wrong, is he?

Sir Scott Baker: Yes.

Q136 Chair: Finally, from me, as far as the politicians who signed this Treaty are concerned, the Home Secretary who signed the Treaty and negotiated it, David Blunkett, was very clear to me when I asked him, before he gave evidence to this Committee, that as far as he was concerned the British Government gave away too much when they signed the Treaty—that it wasn't a matter of equality. What would you say about that?

Sir Scott Baker: That is not how it has worked in practice. A very significant point is that no one has drawn our attention to any single case at any stage, since the Treaty was signed and implemented by the United States in 2007, in which it would have made any difference whether you applied the American test or the United Kingdom test. The result would still have been the same.

Q137 Chair: So the criticism being expressed by people such as the lawyers for Babar Ahmad and his family, those who support Gary McKinnon, and others, should just be dismissed as froth.

Sir Scott Baker: We examined this in great detail and explained why we do not think that there is any substance in it. As far as the Gary McKinnon case is concerned, and I obviously cannot get involved in great detail about it because it is still under consideration, the case has drawn attention to, in our opinion, one defect, and only one, in the current extradition legislation. It is this: the Secretary of State is now considering matters that arose after completion of all the court proceedings and, as I understand it, a further human rights issue has been raised.

We do not think that the Human Rights Act was ever anticipated as biting on the Home Secretary in such circumstances, but it does because she is technically a public body under the Act. We think that if a human rights issue is raised after the conclusion of the court proceedings, the right place for it to be decided is back in the courts, on the same basis as is done in other civil proceedings when something unexpectedly arises

that suggests that the original decision might have been wrong.

That would have the advantage of resolving the issue one way or the other much more speedily, and it would also avoid the endless further steps of the Secretary of State being judicially reviewed if she makes a decision one way by one party or the other way by the other party. It also takes the Secretary of State out of the political arena on issues of this kind.

Chair: That was very helpful. Dr Huppert has a supplementary question.

Q138 Dr Huppert: I want to check that you are aware that you are disagreeing with a number of other comments that have been made by quite senior people. I will pick up two of them. You are presumably aware that in 2003, when the order was passed, the then Home Office Minister said that *prima facie* evidence would not have to be supplied. She said: "By contrast, when we make extradition requests to the United States we shall need to submit sufficient evidence to establish 'probable cause'. That is a lower test than *prima facie* but a higher threshold than we ask of the United States, and I make no secret of that." Are you saying that the Home Office Minister who passed this was wrong?

Sir Scott Baker: The position changed in 2007 when the United States ratified the Treaty and moved away from requiring evidence and on to information. We describe this in a little table in the report, which you have no doubt seen.

Q139 Chair: Going back to what Dr Huppert has said. When Baroness Scotland made that statement to the House, was that correct?

Sir Scott Baker: I am not sure that I would accept it was correct—I am looking at the position now.

Q140 Dr Huppert: I am intrigued that you are not sure whether what the Home Office Minister said was correct.

Sir Scott Baker: We deal with it in the report. I would not like to detract from what is already in the report.

Q141 Dr Huppert: You are presumably also aware of the fact that the Joint Committee on Human Rights, which I used to serve on and which has a number of eminent lawyers—definitely not counting myself—also did its own study fairly recently. It concluded that there was a clear difference. It stated: "The Government should increase the proof required...so as to require sufficient evidence to establish probable cause". It recommends "that the Government urgently renegotiate this article of the...extradition treaty". Are you disagreeing with the Joint Committee on Human Rights as well?

Sir Scott Baker: Absolutely. If you introduce a "probable cause" test, the English courts would first have to construe what it means. It is an American expression. I would think that the English courts would be likely to follow the American jurisprudence and would conclude that it means precisely the same thing as the English test at the moment of "reasonable suspicion", but I cannot second-guess what would happen.

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Q142 Dr Huppert: So they might interpret it differently. There might in fact be a difference between the two tests.

Sir Scott Baker: I would not have thought so, but I am not the judge who is going to try the case. That is my view and how I would look at it. As far as the other human rights committee point is concerned, there is an underlying concern that is expressed sometimes openly, but quite often not expressed, and that is that different rules for extradition ought to apply for British citizens, subjects and persons who have lived here for a long time.

But the pass, if I may put it that way, was sold years ago—in the 1920s, I think. Ever since then, we have extradited our own citizens just like everybody else. Furthermore, most other countries are now adopting the same practice. Indeed, the Americans told us—if my recollection is right—that they were not negotiating any new treaties with states that did not extradite their own citizens.

Q143 Mark Reckless: You say that you do not want to detract from anything that is in your report.

Sir Scott Baker: Yes.

Q144 Mark Reckless: Yet in your report you say that there are no significant differences between “probable cause” and “reasonable suspicion”. However, if I heard you correctly, you are now saying that “probable cause” means the same as “reasonable suspicion”, and you would expect a court to rule that they are precisely the same.

Sir Scott Baker: You are splitting hairs. The point is that the words are slightly different, but in practice the result is the same. I again make the point that we could not find any case where the result would have been any different.

Q145 Mark Reckless: With respect, I am not splitting hairs. You included the word “significant” in your report and there is surely a difference between “no difference” and “no significant difference”.

Sir Scott Baker: Any difference that has any relevance, then.

Q146 Mr Winnick: I apologise in advance—I am going into the Chamber to catch Question Time. Can I take you up on a point that you made when you responded to the Chair? You said that the Act removes the Government from political controversy and gives it to the courts. That has not actually happened in practice. The cases that the Chair mentioned to you have aroused a great deal of controversy. There was a debate on 15 July 2009. It is ongoing. The American ambassador has been here to put his country’s case, as one would expect an ambassador to do. As far as political controversy is concerned, that has not actually happened, has it? To put it differently: as far as political controversy is concerned, it has continued.

Sir Scott Baker: The 2003 Act created a significant shift away from the Secretary of State to the courts. There is obviously good reason why the courts should, as it were, take the flak, rather than the Secretary of State.

Chair: We understand what you have said, but Mr Winnick said that has not happened.

Mr Winnick: I think my English was okay, but thank you very much.

Chair: Yes, it hasn’t happened, has it? President Obama discussed it with David Cameron. As Mr Winnick said, the Gary McKinnon case is now before the Home Secretary. Whatever the intention of the Act, it has just not happened.

Q147 Mr Winnick: I think I actually said that, Chair. If my English was not adequate to your legal standards, I must apologise.

Sir Scott Baker: The only reason why it has not happened is that the courts have completed their part of the exercise; it is back with the Secretary of State now. There would not be all these problems creating issues between the two sides if it were not for the fact that there is a human rights issue that it falls to the Secretary of State to decide. If that had gone back to the courts, which is the way we think it should happen in future, the court would have the armoury of powers to say, “I want this material from you, that material from you, and I will make a decision as to whether, in the circumstances, you have now got an article 8 right that trumps extradition.”

Q148 Mr Winnick: Perhaps I can now ask, without being interrupted unless absolutely essential, do you feel that the present controversy that is occurring is unnecessary and irrelevant, and the position now should be left as it is?

Sir Scott Baker: It is not irrelevant because there is obviously a serious human rights issue that needs to be resolved. I do not know what the facts are on either side of that. All I do know is that the case went through the courts. Lord Justice Stanley Burnton—

Q149 Chair: By “the case”, you mean what?

Sir Scott Baker: The McKinnon case. He concluded that it was unarguable that the case should be heard in England. At that stage, none of the bars to extradition operated. Now there is the new human rights issue. I don’t pretend to know what the answer is to that.

Chair: Michael Ellis will pursue that and other points.

Q150 Michael Ellis: Sir Scott, good morning. I welcome your report, which seems a very professional and thorough—as well as rather lengthy—work.

Sir Scott Baker: Apologies for the length.

Q151 Michael Ellis: Not at all. You have come to the pretty unambiguous conclusion—it seems to me, having read the report—that there is no imbalance between the United States and the United Kingdom when it comes to the extradition arrangements between those two countries. Is that right?

Sir Scott Baker: Correct.

Q152 Michael Ellis: In fact, I think there is a point to be made that, if anything, it is somewhat more difficult for the United States to secure extradition from the United Kingdom than vice versa. Is that a fair assessment?

Sir Scott Baker: Yes.

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Q153 Michael Ellis: Partly because of the cost and delays in the English system, as opposed to the United States?

Sir Scott Baker: One matter that really troubles me is the delay in a lot of these cases. It is not just to the individual and not just to the system. Something needs to be done to remedy that.

Q154 Michael Ellis: For that reason of delay, and perhaps one or two others, you feel that there may in fact be more difficulty for the United States in securing extradition from the United Kingdom. If there is an imbalance, it favours the United Kingdom.

Sir Scott Baker: If anything, but I don't think it is terrifically significant. There are very serious delays, and we get our people from there a great deal quicker than they get theirs from us. One of the problems is that many of them have gone on to the European Court of Human Rights, which then stops extradition with a section 39 notice, and doesn't get on to decide the case for years afterwards.

Q155 Michael Ellis: There has been no shortage of pundits and talking heads who have referred to the alleged differences between "reasonable suspicion" and "probable cause". In fact, the case law in both countries indicates, does it not, that there is no difference between those two terms?

Sir Scott Baker: Precisely. Absolutely.

Q156 Michael Ellis: There is a semantic difference: that is to say, the words are different, but the legal interpretation is identical.

Sir Scott Baker: Correct.

Q157 Michael Ellis: Is it or is it not the case that in both jurisdictions, for there to be a lawful warrant of arrest to be executed, the test is the same in the United Kingdom as it is in the United States?

Sir Scott Baker: That is precisely so. It is the test for the issue of a domestic arrest warrant each way.

Q158 Michael Ellis: And you have seen in your year-long study of this matter, with a report that comes close to 500 pages, no single example of a case—since 2007, when the treaties came into operation—where there would be any difference between the two countries.

Sir Scott Baker: That is correct, and we've looked pretty carefully too. I make one other point, which is that the United States routinely provides a great deal more information than the basic information necessary when seeking extradition from this country. We have looked at numerous cases and, frankly, I was quite surprised at the very great detail of information that they provide.

Q159 Michael Ellis: You mean that the Treaty requires the United States to provide a certain amount of information, but the United States routinely and voluntarily goes beyond that and provides more information.

Sir Scott Baker: Very often, they tell us in great detail what a lot of the evidence is.

Q160 Chair: On the question of what Mr Ellis said about talking heads and commentators, do you disagree with the Deputy Prime Minister, the Prime Minister and the Attorney-General in their interpretation?

Sir Scott Baker: I am not going to be drawn into the political debate. We have produced a report that speaks for itself, and I think it would be entirely inappropriate for me to get drawn into that debate.

Michael Ellis: I was not referring to them, of course; I was referring to others.

Mr Winnick: Mr Ellis put the point of view of the American ambassador very well indeed.

Michael Ellis: I put my own point of view, Sir Scott, as I am sure you can well realise—

Mr Winnick: A spokesperson for the US.

Michael Ellis:—having read the report.

Q161 Chair: Order. Can we move on?

Sir Scott Baker: I would quite happily answer more questions—

Chair: I think we have had enough. Mark Reckless.

Q162 Mark Reckless: Sir Scott, I am still unclear. It is very clear that, for you, "probable cause" and "reasonable suspicion" are absolutely the same; you have said that now in three different ways. I am interested, however, that your report still says there are no "significant" differences. Could that be because there was potentially a difference of opinion between those involved in advising you?

Sir Scott Baker: Absolutely not. You talk of advising us; we are three independent members, and we are not appointed by the Home Office. We are independent, appointed by the coalition to look into these matters and resolve these issues, and we are not answerable to anybody, except to produce our report for the coalition. We all started out with entirely independent minds as to the conclusions that we might reach. We are united in all the conclusions that we have reached.

Q163 Mark Reckless: In investigating whether "probable cause" and "reasonable suspicion" were the same, as you so clearly—at least individually—conclude, you say you spent a week in the US and you spoke with the Justice Department. Did you also travel around the United States and look at the application on the ground?

Sir Scott Baker: No. We spent the week in Washington and we went round various courts and saw a large number of people in Washington.

Q164 Mark Reckless: Aren't the legal systems of different states, or even different federal appeals jurisdictions, rather different across the US?

Sir Scott Baker: There are differences, but I think we picked up all that was necessary from those that we saw in Washington.

Q165 Nicola Blackwood: Sir Scott, can we talk about the panel's recommendations on the forum bar? You have objected to the introduction of the forum bar on the grounds that it would slow the system down and increase costs by creating what you term "satellite litigation".

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I am sure you are aware that that recommendation diverges from the express rule of Parliament, which passed the forum amendment in 2006, although it is yet to come into force. Could you explain why matters relating to the forum bar could not be considered alongside other matters considered in an extradition case, so that it would not extend the time taken within that case?

Sir Scott Baker: The forum bar would be an additional bar to extradition, and it would have to be considered by the court at the appropriate time. However, the first question is what is the forum bar—this additional bar—intended to protect against? That is something that is quite difficult to analyse. I think the underlying feeling of many people is, “Well, it is British citizens who shouldn’t be extradited with the same ease as non-nationals,” but that is not what the background is.

Q166 Nicola Blackwood: My understanding was of a principle that, where actions take place wholly or in substantial part in the UK, it is not unreasonable to suggest that a judge should be able to decide or rule that a case should be tried, in the interests of justice, in the UK.

We are living in a time when more and more crimes are being conducted over the internet and they may cross jurisdictions in more and more cases; we see a number of crimes that could be tried in a number of jurisdictions. Those are the sorts of cases that we are talking about. We are not discussing the nature of the defendant; we are talking about the nature of the crime. Could you explain why those sorts of cases would not be appropriate to be considered in a forum bar situation?

Sir Scott Baker: Yes. Because those issues need to be considered at a much earlier stage in the process, when the prosecutors get together and decide in a case that crosses national boundaries where they think it would be most suitable for the case to be heard. The prosecutors have much more ready access to relevant information, and much earlier in the process, than the courts would do. For example, they know about the desirability of the prosecution taking place with all the defendants in one jurisdiction if possible, witness availability and willingness to travel, witness protection—a very important matter—avoidance of delay and victim interests.

Q167 Nicola Blackwood: Yes. But what happens if the prosecutors disagree?

Sir Scott Baker: If the prosecutors disagree, there are two different situations. As far as part one is concerned and the European arrest warrant, there are some things called the Eurojust guidelines, which set out all the matters that ought to be taken into account. The prosecutors nearly always do agree in the end. Inevitably, there will have to be some give and take. If they do not agree, they go to Eurojust in The Hague, and the matter is arbitrated between them. The Eurojust guidelines and arrangements are, at the moment, discretionary rather than mandatory, but that is what actually happens.

As far as the United States are concerned, there are guidelines drawn up between the Attorney-General,

the Lord Advocate and the Attorney-General for the United States for dealing with these problems, and thus far there has never been, as far as I am aware, a disagreement. What you will see in our report is that we recommend that this process be dealt with much more openly and transparently. There need to be clear and detailed guidelines, and those guidelines should include the significance to be attached to nationality or residence when making a decision to prosecute.

Chair: Thank you. I think Mr Reckless has a very quick point and then it will be Steve McCabe.

Q168 Mark Reckless: You referred again to the issue of nationality, but do you not also recognise that there are concerns about aggressive extra-territorial application by US prosecutors?

Sir Scott Baker: We dealt with that in the report. I think paragraph 6.47 and the preceding paragraphs deal with it.

Q169 Mark Reckless: Could you deal with it here as well?

Chair: Do not read out the paragraphs. Just a quick summary would suffice.

Sir Scott Baker: Yes. First of all, exorbitant jurisdiction, as we set out, is not as exorbitant as some people think. These days, with the internet and so forth, the tentacles of countries have to spread much wider than they previously did. Secondly, as is clear from the authorities, exorbitant jurisdiction, if it does go too far, would trigger a human rights bar and therefore the person would not be extradited.

Q170 Mark Reckless: Sir Scott, you express great confidence in the prosecutors getting together to make this decision, but are not prosecutors in the US and some European countries subject to political influences in a way that prosecutors here are not?

Chair: A quick answer—a yes or no—would be perfect.

Sir Scott Baker: I do not know the full details of what happens in other countries, but from our inquiries we have been able to see that the prosecutors here are well able to deal with the situation.

Q171 Chair: But United States prosecutors campaign for election, do they not?

Sir Scott Baker: Some do, but some do not. I do not see how it makes any difference.

Q172 Steve McCabe: Can I just go back to this question of the forum bar? The general view of your committee is that it would add delay to the process.

Sir Scott Baker: Yes.

Q173 Steve McCabe: You cite the Westminster magistrates court as having said that, of all the cases that they looked at, they could not see any that would be better tried in the UK. What I am curious about is that, if they were able to come to that conclusion, presumably they must have considered all the facts—the kinds of facts you would have consider as part of the forum bar—otherwise they could not have come to that judgment. How does it follow, therefore, that

considering it would add to delay? I do not understand that.

Sir Scott Baker: They would have to go through the exercise of looking at all the circumstances in each case, which they currently do not do.

Q174 Steve McCabe: But didn't they have to do that to come to the conclusion that none of the cases would have been appropriate for the forum bar? Wouldn't they have had to have done that to add any validity to that argument?

Sir Scott Baker: They did not go through the forum bar, because it was not implemented.

Q175 Steve McCabe: No, I appreciate that they made a judgment on it. I am asking how they could have arrived at that judgment.

Sir Scott Baker: They took a broad view. They heard the cases and they could see whether there was what looked like a serious argument that they should be tried in this country.

There is one other point about the forum bar that needs to be made, which is that it is directed to circumstances in which somebody should not be extradited. You cannot force prosecutors to prosecute in this country. That is a prosecutorial decision. If you are not careful, you finish up with a forum bar that results in somebody who ought to be prosecuted somewhere not being prosecuted at all.

Chair: Thank you. I just say to colleagues that we need to make progress now. That was not directed at you, Dr Huppert.

Q176 Dr Huppert: We have heard a number of fairly astonishing comments, which we need to reflect on, but I won't go through all of them. Your solution to the forum issue, as I understand it, is formal public guidance for prosecutors.

Sir Scott Baker: Yes.

Q177 Dr Huppert: Do you really think that that could provide a safeguard equivalent to what Parliament passed in 2006?

Sir Scott Baker: Yes.

Q178 Dr Huppert: Why?

Sir Scott Baker: Because the prosecutor is in a much better position to take all these matters into account. If the prosecutor fails to follow the guidelines, he is amenable to judicial review. Also, we would only envisage that that would happen in rare circumstances, because it is unlikely that the prosecutors would not follow the guidelines.

Q179 Dr Huppert: So can you explain why it is better for these issues to be resolved by a prosecutor alone, rather than by a court, for example?

Sir Scott Baker: Because the venue needs to be decided much earlier in the process. That is the first point.

Q180 Dr Huppert: But if it has not been, if you have a prosecutor in the US who stands for election on a mandate of chasing after particular crimes and you cannot reach that agreement, should there not be a

safeguard in a court? Your argument that there has not been an issue that has come up is no reason to get rid of the safeguards.

Sir Scott Baker: There are the human rights bars, which we think are perfectly adequate. We think that guidance to the prosecutors would be the answer.

Q181 Mark Reckless: You express great confidence in prosecutors. May I ask what the balance of your work was in your period at the Bar in terms of prosecution versus defence?

Sir Scott Baker: Roughly equal. I started life as a practitioner on the Oxford circuit and prosecuted and defended in equal measure. I went up the system as a QC and did fewer criminal cases, but still prosecuted or defended. As a judge, I have tried numerous serious criminal cases.

Q182 Mark Reckless: On the European arrest warrant, there seemed to be a close balance in the early years—in 2004, 24 were extradited to the UK and 23 from the UK, and there were similar numbers in 2005. Yet since 2006–07, there have been no more than 100 extraditions to the UK, but more than 300 every year from it. Why is that?

Sir Scott Baker: Because some countries, Poland in particular, are not exercising proportionality in issuing European arrest warrants. If you look at the figures, Poland is far and away the country that issues the most. Others issue significant numbers, but, by and large, most countries abide by proportionality, and we have dealt with that in detail in the report.

Q183 Mark Reckless: In your report, you express great confidence that these issues are going to be dealt with—for instance, with Poland—but if they are not, can we continue to apply the European arrest warrant?

Sir Scott Baker: It was not within our remit to assume that the framework decision was going to be torn up, therefore we got to work on our report with the background that the framework decision was there, and we were asked to look at the existing safeguards. Only a limited amount can be done without making changes to the framework decision, but what can be done, we think, can be done by co-operation between Member States and greater input from the Commission.

Q184 Mark Reckless: You have made a very important point. Because you understood your remit to be that of the framework decision, however bad you considered the operation of the European arrest warrant to be, you would not have recommended that we do anything contrary to the framework directive.

Sir Scott Baker: In fact, we think it works broadly satisfactorily. As far as proportionality is concerned, if an answer cannot be achieved by co-operation, the framework decision ought to be changed, and we make that point in our report.

Q185 Alun Michael: May I deal with this point about proportionality? Should the proportionality test be applied in the courts of the issuing Member State, the one that is requesting extradition; the executing

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Member State, the one from which it is sought; or both?

Sir Scott Baker: No, it must be in the issuing Member State, because that state has all the relevant considerations. For example, a particular kind of theft might be particularly critical in one Member State but not in another.

Q186 Alun Michael: That is an important distinction to be clear about. Even if there were a new legislative instrument at EU level, is there a risk that the proportionality test could be transposed differently into the laws of different Member States in such a way that the application would not be consistent?

Sir Scott Baker: I should hope not. The Commission is endeavouring to achieve consistency by setting out in its handbook all the criteria that should be taken into account. We recite those in the report—I won't take up time by going through them all now.

Q187 Alun Michael: But there are inconsistencies in the way that it is applied.

Sir Scott Baker: At the moment there are, certainly, and they ought to be remedied.

Q188 Alun Michael: You say that the Stuttgart court has been able to apply a proportionality test to the execution of a warrant in a way that would not be open to the UK courts. Can you clarify that? Does it mean that Member States can, effectively, operate a unilateral proportionality test? If so, should the UK be applying the test in a different way or be applying different criteria?

Sir Scott Baker: It is a very complicated question, which we deal with in 5.131 to 5.145 in the report. It is very difficult to summarise an answer, but suffice it to say that there are constitutional aspects in German law that do not apply elsewhere.

Q189 Alun Michael: Should the constitutional tests that are available in the German court be applied in a different way in the UK? Should we be filling a gap there?

Sir Scott Baker: We could not do that, because our constitution is different—those aspects are peculiar to Germany.

Q190 Nicola Blackwood: You have stated that you are satisfied with the removal of the dual-criminality test for the 32 offences in the framework decision list, and that there is not a risk that the different definitions of offences in different Member States' domestic law might lead to a person being extradited for an act that is not an offence under UK law.

In particular, you stated that you are unaware of difficulties arising in practice from the controversial abolition of the rule, but you are aware that other framework states have, in legislating domestically to entrench the framework decision, expressly excluded extradition for certain offences. In Belgium, for example, they have excluded abortion from the murder offences. Could you explain why you do not think it would be appropriate to do that under UK law?

Sir Scott Baker: Surrender from the United Kingdom in these circumstances can only occur if none of the conduct occurred in the United Kingdom. We take the view that if you are in another state you should apply by the rules and laws of that other state. So if holocaust denial is an offence in Germany and you go to Germany and deny the holocaust, we do not really see any reason why you should not be extradited from this country to answer that offence there.

Q191 Michael Ellis: May I just take a step back? You were asked about your own career in terms of prosecution and defence. Your panel was also constituted by David Perry QC and Anand Doobay. Is that correct?

Sir Scott Baker: Correct.

Q192 Michael Ellis: I see that Mr Doobay, for example, spent recent years representing the subjects of extradition requests, as well as Mr Perry, who has also acted for requesting states. Is that correct? Do you feel your panel was sufficiently balanced?

Sir Scott Baker: I said that I was only prepared to do the job if I had a panel that was balanced, that I could work with and that covered everything.

Q193 Michael Ellis: On the European arrest warrant, there is an apparent lack of proportionality. Do you accept that?

Sir Scott Baker: Indeed.

Q194 Michael Ellis: Do you go so far as to say that, if the contracting parties cannot agree between themselves to change the practice and, therefore, correct this lack of proportionality, the framework agreement itself should be subject to alteration?

Sir Scott Baker: I do, but we also see the difficulty that, once you start chipping away at the framework decision, if you are not careful the whole thing falls apart. I do not see why it should, but we do feel that broadly the EAW system has worked satisfactorily. We do not think that the fact that there have been a handful of cases where there have been very serious problems should detract from looking at the whole picture.

Q195 Michael Ellis: I appreciate that one has to look at the wider picture, but, notwithstanding that, if there are cases of injustice because of a lack of proportionality, that in itself has a deleterious effect, a negative effect, on the public perception of the operation of justice when it comes to the European arrest warrant.

Sir Scott Baker: Precisely so.

Q196 Mark Reckless: Is this David Perry who is part of your panel the same Mr Perry who so expertly advised the CPS, and through them the Met, that, in order to prosecute for phone hacking, you have to prove the message was intercepted before the recipient picked it up?

Sir Scott Baker: I do not hold the details of Mr Perry's practice immediately in my mind, but I can ask him if you like.

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Q197 Chair: Are you the same David Perry?

David Perry QC: I do not accept the premise of your question.

Q198 Chair: No, but you are the same David Perry.

David Perry QC: Well, I am a David Perry who practises at the Bar.

Q199 Chair: Okay, fine. I think that clarifies it for you. I am sure we can write to Mr Perry, if we need to, on phone hacking, which is not relevant here. Thank you very much for that, Mr Reckless.

There is no question of challenging the bona fides of members of your panel, Sir Scott—these are questions that Select Committees ask when seeking to look at the way in which panels operate. It is standard practice for us to do this kind of questioning. You say that you have prepared your report for the coalition, and you have heard what the Attorney-General has said—I mentioned it at the start of your evidence—and he does not regard your report as being definitive. The report is just guidance as far as the Government are concerned. That was repeated by the Immigration Minister.

Further to that, as soon as your report was concluded, the Deputy Prime Minister, who is obviously an integral part of the coalition, set up his own review to review your review under Sir Menzies Campbell, who is also a very eminent Queen's Counsel. Judging from what Sir Menzies has said to the House in a debate in Westminster Hall—you may or may not have seen the *Hansard*—he is very critical of your review. It must be very disappointing that as soon as your review has been prepared for the coalition, parts of the coalition are very unhappy with what you have said.

Sir Scott Baker: Well, I think I read somewhere that Sir Menzies Campbell said that he did not feel it was necessary to read the report. So there we are. We think the report speaks for itself. I think that it is inappropriate for me to get involved in the political debate. We have produced a report. We have set out the arguments—

Q200 Chair: No, of course. I am not seeking to draw you into the debate. Please understand that. I am just seeking to say that you have made a point that you prepared a report for the coalition. The coalition is obviously not pleased with this report because one crucial part of the coalition has decided to have another review in order to challenge what you have said. Taking that with what the Attorney-General has said and what the Prime Minister said as Leader of the Opposition, it must be a disappointment.

Sir Scott Baker: I don't have any disappointment. I simply produced a report and it is up to the politicians to do what they want with it at the end of the day. We think our recommendations are right otherwise we would not have made them.

Q201 Chair: Finally, I wonder whether you can assist the Committee. The Committee has been trying for the last year to track down Judge Workman. Judge Workman is the extradition judge.

Sir Scott Baker: No, he is not. He was.

Q202 Chair: He was, indeed. But when we first started to try to find him, he was the extradition judge.

Sir Scott Baker: Yes.

Q203 Chair: He is now no longer the extradition judge and we were very keen, as part of the extradition review, to ask him to give evidence to this Committee. Do you know where we can find him? Short of putting an advert in the *Daily Mail*, do you know how we could find Judge Workman?

Sir Scott Baker: I would have thought, ring up the Westminster magistrates court and ask where he lives.

Q204 Chair: Oh, we have tried. We have been unsuccessful, I'm afraid. You cannot just ring up the courts and ask for the home address of judges.

Sir Scott Baker: I don't know where he lives but he readily gave evidence to us.

Q205 Chair: Excellent. So we can pursue that in our way. Sir Scott, thank you so much for coming. We may have other questions that we will write to you about, but we are most grateful. One final point: as part of your review, you did not actually meet Janis McKinnon or any representatives of the Babar Ahmed case?

Sir Scott Baker: That is correct, but we had a great deal of material from everybody, including them. Janis McKinnon sent reams of material in and the suggestion that we don't understand the plight of persons sought to be extradited is not accepted.

Q206 Chair: So although you will manage to go to Washington for a week, you were not able to call in people like David Bermingham, from the NatWest Three, who will be giving evidence to this Committee next January? You were not able to call in the McKinnon team, you were not able to call in Babar Ahmed's team?

Sir Scott Baker: They were all invited to give evidence and many of them did.

Q207 Chair: In writing?

Sir Scott Baker: Yes, in writing and if there were issues that we wanted to explore further and we thought we could get assistance, we did. But we were looking not at individual cases, except in so far as they informed the general extradition system.

Chair: Sir Scott, this Committee is extraordinarily grateful to you for coming in. Thank you very much.

Tuesday 10 January 2012

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert

Steve McCabe
Alun Michael
Mr David Winnick

Examination of Witness

Witness: **David Bermingham** gave evidence.

Q208 Chair: Order. I bring the Committee to order and welcome Mr Bermingham, who has come to give evidence to us today. I refer all those present to the Register of Members' Financial Interests, where the interests of all members of the Committee are noted. I ask everyone, including myself, to switch off their telephones, so that we are not interrupted.

This is one of the last sessions that the Committee will be holding in our inquiry into extradition. We had hoped that the American ambassador would be giving evidence this morning as well, but he is not able to attend, so we will have him at a formal session even though we have seen him in private.

Mr Bermingham, you are an old hand at this. I have been looking at the transcript of your evidence to the Joint Committee on Human Rights, so you can take it that members of the Committee are aware of the evidence that you have given there. The Committee and I would like to concentrate on the Scott Baker report and the conclusions of the learned judge, but also on issues that you think ought to be raised as a result of what you have seen so far. Thank you for your written evidence, which we all found extremely helpful.

You have not, as you pointed out to our sister Committee, stood trial for this particular crime. You entered a plea bargain, so, from your point of view, you have been through the extradition process. Looking at the two jurisdictions—the United States jurisdiction and our own in this country—do you think that they are comparable and compatible for someone who has decided to go over there and to plead guilty to an offence?

David Bermingham: At the risk of misunderstanding the question, may I ask whether you mean the two trial systems or the two criminal justice systems?

Q209 Chair: I think that the treaty—you have probably become an expert on the treaty, having had an opportunity to look at it as much as we have on this Committee—talks about a mutual confidence. You have to have confidence in a country that you are going to extradite your citizens to. Do you think that that mutual confidence is properly placed or is it misplaced? Is there anything in the system that you witnessed in America that made you feel that, if the trial had taken place here rather than there, or if the system had operated—you did not stand trial—here rather than there, you would have had a fairer hearing?

David Bermingham: Yes. I do not think that there is any doubt that, had we been in the UK, we would

have gone to trial. There would have been no circumstance whatsoever in which there would have been any form of plea bargain. Ours was a case that should have gone to trial, and had we been in the UK, it would have done. There are several differences between the two jurisdictions, and, as I said in my evidence to the Joint Committee on Human Rights, I am neither anti-American nor anti-extradition. I want to put those cards on the table first and foremost.

However, there has undoubtedly, over the course of the last 20 years, been a very, very radical shift not necessarily in any of the constitutional protections that are afforded to citizens in the US, which are obviously not the same here, as none of those have changed, but in the way in which their criminal justice system works in practice. That has altered radically, and it started about 20 years ago with the imposition of the federal sentencing guidelines. What they did was create a matrix system by which if somebody is convicted, their sentence can and will be calculated. This is done outside of the judge's discretion by the probation office in consultation with the prosecutors on the case. What that does, by reference to a matrix, is create results that can be astronomic. For instance, if you take the case of Bernard Madoff, he is serving a sentence of 150 years in prison. There is no parole in the federal system. They will carry him out of prison in a box. There are no two ways about it. That is as a consequence of the federal sentencing guidelines. They create this.

Q210 Chair: Is that also as a consequence of the plea bargain system? You make the point in your evidence to us that 98% of cases in the US system result in a plea bargain.

David Bermingham: That is wholly correct. The starting point is with the federal sentencing guidelines, which give a prosecutor in almost all categories of cases—not all, because some cases are very straightforward, such as offences against the person—but anything that involves a degree of complexity, such as cybercrime or white collar-type offences, the ability to charge multiple counts. Merely by the act of charging multiple counts, he produces a jeopardy for the defendant; if he goes to trial and loses, that can be hundreds of years in prison. The prosecutor can say to somebody, "Look. If I charge you with all these offences, this is the jeopardy that you face. If, on the other hand, you want to plead guilty to one of those offences"—I will give an example of one of the Enron defendants. Andy Fastow was charged originally with

98 counts, which, in aggregate, would have produced a sentence of about 350 years in prison. Even if he had only been convicted on 10% of those, he would have spent the rest of his life in prison. Alternatively, he could plead guilty, as he did, to one count. They waived 97 of the counts that were in the indictment to get him to plead guilty to one, and he was ultimately sentenced to six years in prison. The problem that you have is that, on a very human level, people are now enormously incentivised by the disproportionality that there this in sentencing.

Q211 Chair: Basically, you enter a plea bargain, because the alternative is so drastic.

David Bermingham: It is catastrophic.

Q212 Chair: Is that what happened to you? Is that what you are saying to this Committee?

David Bermingham: We took a very rational decision. There are other aspects that go into it. Some of them bore on us and some bear on other people. For instance, the costs of going to trial in America can run to millions of dollars, and these are non-refundable even if you win. The mere fact of saying, "I will go to trial," will almost certainly bankrupt 99% of people. It just will.

The other thing about it is that in many, many cases, particularly white-collar cases, what the US Government does is charge a conspiracy. They will then find one of the co-defendants and say, "If you plead guilty and co-operate against the others, we will give you no prison time or days in prison." That happened in Houston, where we were about to be extradited to, in the case of Jamie Olis. There were three defendants who were all charged on the same sheet with the same offence, and two of them agreed, on the advice of their counsel, to enter into plea and co-operation agreements. One of them was sentenced to 30 days, and the other was sentenced to 12 months. They both gave evidence against Mr Olis, who said, "No. I did not do any of this." He was sentenced to 24 years in prison. When you look at that, you see that all three of them were charged originally with the same thing.

Q213 Chair: Let us look at the issue of probable cause and reasonable suspicion. You have followed the proceedings in the House and the various debates that we have had recently and, indeed, at the time of the first concerns that were raised by Mr Cameron, when he was the Leader of the Opposition, and Mr Clegg. We have centred on the words "probable cause" versus "reasonable suspicion" with a view to saying that these were actually different words and that they meant different things. You do not accept that. You think that this is a bit of a red herring.

David Bermingham: Two different questions there. Actually, I do think they mean different things, but I do rather take the point that Sir Scott Baker made in his evidence to this Committee that, in a sense, it is semantics. Maybe the difference is not that great, and maybe, as he said, "You couldn't put a sheet of tissue paper" between it. That is not the point. The point, very simply, is that if you are a UK citizen or somebody who is ordinarily resident in the UK and

you are wanted for extradition by the United States of America, you have no right to see or challenge any evidence in a hearing here in the UK as part of the extradition proceedings.

By contrast, if you are a United States citizen who is wanted for extradition by the United Kingdom, there is a probable cause hearing in America, where evidence is discussed and you can put forward your own arguments as to why that evidence does not exist, for instance. That is the critical thing. It is not a question of relative standards; it is a question of—

Q214 Chair: Process.

David Bermingham: Exactly that.

Q215 Chair: What you are pointing the Committee to is the process. The process is different. The words may well mean roughly the same thing, but the process is different. There is always a hearing.

David Bermingham: In America, there is a hearing. Here, there is no hearing on evidence.

Chair: That is very clear.

Q216 Michael Ellis: Mr Bermingham, you suggest that you were effectively pressured into pleading guilty. Is that your position?

David Bermingham: Yes.

Q217 Michael Ellis: You complain about the plea bargain system in the United States, but do you acknowledge that, although we may not call it the same thing, we have a similar system here in the English jurisdiction in that defendants will find themselves encouraged to plead guilty if there is sufficient evidence against them to justify that plea and they can and very usually do receive anything up to a third off their sentences when or if they do plead guilty? Do you also accept that there are good public policy reasons why such a provision should apply, both here and in the United States? For example, not having a trial costs the public purse a lot less money, it inconveniences witnesses and juries far less, and there are good public policy reasons why encouragement should be made to plead guilty where there is sufficient evidence for a person to do so.

David Bermingham: I agree with all those things.

Q218 Michael Ellis: You agree with all of that. You had legal representation in the United States and here in the United Kingdom, did you not?

David Bermingham: Yes.

Q219 Michael Ellis: And high-quality legal representation.

David Bermingham: I would like to think so, yes.

Q220 Michael Ellis: You took an oath as to the plea bargain agreement that you entered into in the United States that you accepted that agreement.

David Bermingham: Yes.

Q221 Michael Ellis: And you swore that oath in court.

David Bermingham: Yes.

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Q222 Michael Ellis: So you are now saying that, despite your legal representation and despite acknowledging that there are public policy reasons in the way that you already have, you do not like the result of what happened.

David Bermingham: No. That is not what I am saying at all. I am perfectly content with what we did. In the circumstances, it was perfectly rational—like a business decision, if you wish.

There are two issues here. One is specific to our case, and of course I am going to be entirely self-serving in my evidence on that. But let me first of all deal with the more general point, which is the difference between the two systems. There has long been plea bargaining in the US, as there has been in the UK. I have no public policy issue with either of those. You are absolutely correct in everything you say. There is a difference, and that is the practical implementation. I have a genuine concern that we are travelling blindly down the road towards the Americanisation of our criminal justice system on the issue of plea bargaining. That, of course, was championed by Baroness Scotland two years ago and is now coming into law here. Believe me, it is the thin end of the wedge.

Michael Ellis: Well, forgive me—

David Bermingham: If I may? I'm sorry. The difference, in practical terms, between the two is exactly as you said. It is that here the judge has total discretion over the sentence that he will give and, moreover, it is never going to be more than a third off what would otherwise have been the tariff. The problem in America is that the confluence of circumstances that are facing a defendant are far more than just the sentence, but the disproportionality in sentencing—going back to the Jamie Olis example—is a huge one: 24 years versus 30 days.

Q223 Michael Ellis: There are differences, are there not, between sentences that are passed in the United Kingdom with individuals who turn Queen's evidence or co-operate with the police? There are comparable cases, and I am sure there are in other jurisdictions around the western world.

David Bermingham: I am sure there are.

Q224 Michael Ellis: There are very good policy reasons why that should take place, but you admitted to fraud counts, did you not?

David Bermingham: We admitted to failing to inform our employer of the opportunity to make an investment, yes.

Q225 Michael Ellis: Did you also agree to repay large sums to what is now the Royal Bank of Scotland?

David Bermingham: Yes.

Q226 Michael Ellis: Were those sums in total something in the region, for the three of you, of \$21 million?

David Bermingham: No.

Q227 Michael Ellis: How much were they?

David Bermingham: \$7.3 million.

Q228 Michael Ellis: Each?

David Bermingham: No, in aggregate.

Q229 Michael Ellis: Was that money repaid?

David Bermingham: I am not at liberty to say, other than to say that we have entered into an agreement with the Royal Bank of Scotland, and I am sure you could talk to their lawyers about that.

Michael Ellis: But I am just asking you: have you repaid—

Q230 Chair: Sorry, Mr Bermingham, I think this is a direct question. Since you have come to give evidence, if Mr Ellis says, "Has it been repaid?" I think we should have a yes or no answer. I do not think it is not right to refer Mr Ellis to somebody else, when you have agreed to give evidence. Unless you are bound by some kind of confidentiality—

David Bermingham: Sir, I am.

Q231 Chair: If it is a public announcement, that is fine. If you are bound by a written confidentiality agreement, then you must say so.

David Bermingham: I have entered into an agreement with the Royal Bank of Scotland, as have my co-defendants, which is the subject of confidentiality on both sides.

Q232 Michael Ellis: Well, you agreed to come to this place to give evidence to this Committee. You do accept that you agreed to repay millions of dollars?

David Bermingham: Yes, sir.

Q233 Michael Ellis: But you are not willing to say whether you have repaid that sum?

David Bermingham: I would be perfectly willing, but I am subject to a confidentiality clause that prohibits me from doing so.

Q234 Chair: I have taken advice from the Clerk, and if you wish to tell us, you can tell us. When you are giving evidence to Parliament, which is what you are doing today, you are covered by privilege. Your evidence is covered by privilege, and if you wish to tell us, you can do so.

David Bermingham: I would love to tell you, Chairman. I am just not sure what might be the consequences. Unfortunately, it is a bit like Pandora's box, given that the chances are that this will—well, this will—be a public record.

Q235 Chair: I think that we will accept that answer, and if we wish to pursue it we will write to the Royal Bank of Scotland.

David Bermingham: Please do. I would be more than happy, if the Committee wishes and could give me some undertakings as to secrecy, to give that information to the Committee, if it were not made public.

Chair: I think we want to move on in your questioning, unless Mr Ellis—

Q236 Michael Ellis: I am not going to pursue that any further. I just want to ask you this: Andrew Fastow, whom I think you have already mentioned,

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who was an Enron employee, was chief witness against you.

David Bermingham: No, he was not.

Q237 Michael Ellis: He was a witness against you?

David Bermingham: No, he was not.

Q238 Michael Ellis: He was not a witness against you at all?

David Bermingham: No, he was not.

Q239 Michael Ellis: Do you accept that some conduct and all the evidence against you was in the United States?

David Bermingham: No.

Q240 Michael Ellis: You do not suggest that there was any evidence against you that was in the United States?

Chair: Mr Ellis, I understand what you are trying to do, but if we could bring this to a close, because we are actually concerned with the treaty. If you could make it relevant to the treaty, that would be very helpful.

Q241 Michael Ellis: I am coming to that. Evidence and conduct committed in the United States can be prosecuted in the United States; do you accept that?

David Bermingham: Yes, 100%.

Q242 Michael Ellis: Your case was connected, was it not, to Enron?

David Bermingham: Minorly, yes, it was.

Q243 Michael Ellis: So that was an American jurisdiction case.

David Bermingham: No, it was very much a UK jurisdiction case. We were accused of robbing our bank in London.

Chair: Can we move on from the specific, and what you did or did not do, to the treaty itself?

Q244 Alun Michael: You said a few moments ago that the process was, in your view, at fault, and I just want to be clear. Some people have argued that the UK should revert to the requirement to produce prima facie evidence to back extradition requests, but do I understand you correctly that the standard or level of evidence is not the main issue, as far as you are concerned?

David Bermingham: It is certainly not the main issue, no. My main issue is the lack of any evidence. There are two questions: one is do we require somebody to produce evidence? If the answer to that is yes, the subsidiary question is what is the level of that evidence? I am less concerned by that.

Q245 Alun Michael: Is your argument an absolute one, or is it primarily that it ought to be the same in both directions?

David Bermingham: Reciprocity is a cornerstone of our international relations. Sometimes, absolute reciprocity is not possible. For instance, in the US, the fourth amendment to the US constitution demands probable cause. We are stuck with that. It may or may

not be the same as, higher or lower than prima facie. I think over here, we would be stuck with prima facie—I am not sure, but I think the point is that on a practical level, if one country asks for evidence, the other should as well. It is as simple as that, and no more difficult.

Q246 Mr Winnick: We are concerned with the treaty, as the Chair has explained, but Mr Bermingham, you are not putting yourself forward today as some innocent martyr, are you?

David Bermingham: No, sir. No, on the contrary. No. I pleaded guilty.

Q247 Mr Winnick: Would it not be right to say—before I come to the treaty, Chair—that if there is to be sympathy, it should be first and foremost for the victims of the Enron affair or scandal—the ugliest face, as I describe it, of capitalism?

David Bermingham: I could not agree more. I have consistently said, and I am on the record over many years as saying, that we were probably the least sympathetic characters you could ever possibly have imagined in the circumstances, and I am not moving away from that position. My mission here today is to talk in general terms about my observations on extradition, and preferably not to talk about our own case.

Q248 Mr Winnick: Fair enough. As far as the position over the treaty is concerned, can you explain why, in your particular case, there was sufficient evidence in the USA presumably to prosecute you, but the evidence you required was actually in the UK?

David Bermingham: Yes. In fact, in answering this question, I will hopefully answer the question that Mr Ellis was endeavouring to make, which is that actually, in our case, 95% of the so-called evidence against us was actually materials that we had gone forward with to the Financial Services Authority in London and provided, before there was any criminal investigation into Enron, ourselves. There are striking parallels here, in a sense, with the case of Babar Ahmad; all the evidence that was used to prosecute us, in the same way as Mr Ahmad faces to prosecute him, was actually here in the UK and was passed to the United States Government by the UK authorities.

Q249 Mr Winnick: You made an agreement with the prosecution authorities, as we know, in the United States, but if the matter had come before a judge and jury, would it not have been the defence of your lawyers, acting on your instructions, that since the evidence required was not available in the United States, you would not have been given the opportunity to have a fair trial, which, of course, is guaranteed by the constitution of the US?

David Bermingham: In a sense, we made that point through the filings. Ultimately, one of the reasons why we entered into a plea agreement was that we always said, prior to being extradited, “Look, if you send us to Texas, all of the stuff that we need to defend this—all the written materials and witnesses we will need to defend this—are here in London.” Because there were no proceedings against us in London, in

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England, we had no rights of subpoena over any of those before we were extradited. Once we were extradited, we filed numerous motions—they are all public record—saying, “These are the documents that we need and these are the witnesses that we need,” but because we were in the United States we had no ability to get any of those. Ultimately, the fact that we had no ability to produce our own defence, other than by taking the stand ourselves—no witnesses, no written materials—was certainly a contributory factor to us entering into a plea bargain.

Q250 Dr Huppert: It is a pleasure to be able to continue our conversation with you from the Joint Committee on Human Rights, of which I used to be a member. I will not go through every point. I assume that you stand by what you said, so we do not have to go over it all again.

David Bermingham: Every word.

Q251 Dr Huppert: Following on from the specific cases raised by Mr Winnick about access to papers—you highlighted for the Joint Committee on Human Rights the inability to defend yourself from within jail, or how hard it was—do you think there should be specific provision within the extradition treaty to guarantee subpoena powers and access to witnesses and evidence? Is there some way in which that could be structured or, alternatively, should the treaty say that, if one cannot guarantee that such papers and witnesses will be available, that would be a bar to extradition?

David Bermingham: That is a fascinating question. I am not sure, practically, whether that is achievable, other than perhaps through a forum amendment, because you would actually deal with that in assessing whether or not somebody could more reasonably or properly be tried in the UK. I don’t think you would be able to put into a bilateral treaty something that might require a whole change to a country’s domestic legal system. It is a fascinating question, though.

Q252 Dr Huppert: So you think the simplest way would be to actually enact the forum amendment.

David Bermingham: For sure.

Q253 Dr Huppert: They are simply not being commenced.

David Bermingham: The forum amendment deals with a lot of the issues that are problematic in extradition cases at the moment, I believe.

Q254 Dr Huppert: What is your response to those who object to the forum amendment? Why do you think it has not been commenced, having been put in by Parliament?

David Bermingham: I know jolly well why it was not commenced under the previous Government—it is because, when they put it on the statute book, they said they were not going to commence it, and it was just a constitutional fudge. Why it has not been enacted by this Government, I cannot speculate, to be honest. What I would say is that it is the wrong forum test. The amendments that were originally proposed back in 2006 by the Conservatives and the Liberal

Democrats actually had a presumption against extradition where a trial could be held in the UK.

Q255 Chair: And you helped draft those amendments.

David Bermingham: Yes, I did, personally. The principle behind that was very simply that, in my view, extradition has such catastrophic consequences, not only on the individual but on their family, friends and everything else, that, as a civilised democracy, we should be saying, yes, extradition is a very important part of international co-operation on crime but, none the less, it should be somewhere akin to a last resort rather than a first resort. If you put in a forum clause, that actually has a presumption against extradition if you can try a case here, that is not saying that everybody will be barred under forum; it is just saying that the judge will start off with the presumption of a UK case. That presumption can, of course, be overturned by the state seeking extradition saying, “No, here are the reasons why it makes sense for the trial to be held abroad.”

Q256 Nicola Blackwood: I did not quite understand. Why is it the wrong forum test? How do you think that should be amended?

David Bermingham: There are many lawyers around the table here, and to a certain extent one might regard this as semantics, but it is not. The forum amendment that was put in place by John Reid was very specifically drafted and was changed from what had been proposed by the Conservatives and the Liberal Democrats. If you read the current wording of the forum amendment—section 19B and 83A, I think—the presumption is in favour of extradition. In other words, it is for the defendant to say why he mustn’t be extradited, whereas the original clause that was drafted put the onus on the requesting state to say why he *should* be extradited. The significance of that is that it is the requesting state that wants to try this person—that’s why it brought the extradition proceedings. I do not think it is unreasonable for it to say, as part of that process, why he should be shipped off to a foreign land, with all that that entails, rather than the alternative of a trial here.

Q257 Nicola Blackwood: You have given us a number of written submissions about your views on the Baker review. What is your view in particular on the solution to the forum issue put forward by the Baker review, namely that, rather than enacting a forum amendment—the one that is written, or an amended version—there should instead be formal public guidance for prosecutors on whether or not to prosecute cross-border crimes in the UK or elsewhere? Do you think that this will solve the problem?

David Bermingham: No, I don’t. I don’t think it will come close to solving the problem.

Q258 Nicola Blackwood: Can you give us the specific reasons why not?

David Bermingham: Yes, very simply because such guidelines, in one form or another, already exist. The Eurojust guidelines are in operation substantially for

all the European Union countries, and have been there since 2003. Largely as a consequence of our case, the US guidelines, which were put in place by Lord Goldsmith when he was the Attorney-General, deal with cases for the United States. Those guidelines have been around now for many years. The problem with them is that there is no transparency, on the one hand, in the decision-making process, and there is also no judicial oversight. In other words, a defendant has no part in these proceedings. The defendant can at no stage during these proceedings make any representations of his own on the issue of forum, nor can he effectively challenge—other than through trying to get judicial review—a decision of these prosecutors. That has to be wholly wrong. The one observation that I would make is that the Framework Decision itself specifically contemplates the fact that many of the European Union countries operate a forum test as part of their extradition proceedings. The suggestion that judges are incompetent to decide forum, or that they are not the best the people, is wholly wrong.

Q259 Nicola Blackwood: Do the guidelines at the moment take into account the need for defendants to access evidence in their own country?

David Bermingham: On paper, to a certain extent, yes—but not in practice.

One of the issues that I have with the Scott Baker review is that it is a fantastic, dry piece of legal analysis, but it totally lacks the humanity associated with practice. It is not a question of what the guidelines actually say, it is a question of what in practice people do. The biggest problem with the guidelines as they stand, and I cannot see how you can put more transparency into the process, is that there is no judicial oversight. There is no ability for the defendant either to have a part in that process of decision making or to take issue with it in a legal proceeding. He cannot do it.

Q260 Nicola Blackwood: Your view is that there is no way in which these guidelines could be enforced without judicial oversight.

David Bermingham: Correct.

Q261 Steve McCabe: The object of the forum arrangements that you helped draft is to prevent extradition in the majority of cases and, indeed, to prevent some cases coming to trial at all.

David Bermingham: No, sir, that is wholly wrong.

Q262 Steve McCabe: The presumption is to be against extradition, but the arrangements are not designed to prevent extradition in the majority of cases.

David Bermingham: No. Forgive me if I am miscommunicating.

Q263 Steve McCabe: I am reading what you said on 14 December. That is why I am looking a bit lost. You said then: “In all probability only those cases when extradition really is the best option would be brought. In all other cases the prosecutors would agree that the UK authorities could deal with the matter or the case

would not be brought after all.” Therefore, as I said, the object of your intention is to prevent extradition in the majority of cases and, in some cases, to prevent them being brought at all. That is what you say, isn’t it?

David Bermingham: Let me expand on that by analogy. One of the reasons that we are all sitting in this room today is that since 2004, when the new Act came in, the volume of extradition cases has grown exponentially. One of the biggest issues faced—this is not to do with the US or in general terms, but much more on the EU side—is proportionality; it is frivolous cases being brought, cases which really should not be brought, for a hundred different reasons. One of the things about putting in place a forum amendment, as I am proposing, is that actually in a lot of cases it would stop the foreign state bringing the case because it is frivolous, it should not be brought and the state is only bringing it at the moment because it can.

Q264 Steve McCabe: But does not the forum amendment apply only at the point where extradition is already considered appropriate?

David Bermingham: Yes, in the same way that any other—

Q265 Steve McCabe: Therefore, a case for extradition has already been made satisfactorily. You are implying that this is going to deal with a whole lot of trivial, frivolous cases. All I am asking is, is there not a danger here that international criminals are going to evade the law because you are going to introduce a proposal that will make extradition extremely difficult and, in some cases, will prevent prosecution in any jurisdiction? Is that not the risk in what you are advocating?

David Bermingham: That was very much the point made by Sir Scott Baker in his evidence before the Committee and, with respect, I disagree. The simple reason is this: the country that wishes to extradite somebody should make the case as to why extradition is preferable.

I will give you a good example. Let us say that it is the US. Let us say that the only evidence against the person is wiretap evidence. They would come to the UK, requesting extradition, and they would say that the reason that they need to have the case in the US is because the only evidence that they have against this man was obtained by wiretap. Therefore, under UK law, it would be inadmissible, and therefore the judge has to sit there and say, “Well, in this situation, if I use the forum bar to prevent the extradition, this chap will not be prosecuted.” That will bear. The judge will have to take a decision as to whether or not he believes, in the circumstances that are facing him, it would be in the interests of justice to prevent the extradition and, as a consequence of that, for the case not to be tried. In that situation, most judges will say, “Well, this looks like a serious case. They have wiretap evidence. I have seen the evidence. He should be extradited. He needs to face trial.” The judge can make that decision. There has to be a presumption one way or the other. All I am asking is that it should be incumbent on the requesting state to make the case as

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to why extradition is preferable. No more than that. I am not saying, “Let’s go around stopping everybody getting extradited.”

Q266 Steve McCabe: Fine. So why did you say “or the case not be brought at all”? That sounds slightly more than what you have just said to this Committee.
David Bermingham: Because there are an awful lot of frivolous cases where there is no evidence.

Q267 Steve McCabe: Would you like to quantify that for me?

David Bermingham: For instance, Alex Stone—

Q268 Steve McCabe: That is one. You say that there is an awful lot. Give me an idea of what scale we are talking about here.

David Bermingham: I could not possibly, but you have taken evidence from a number of people—

Q269 Steve McCabe: It is just that you made the assertion that there are lots of frivolous cases. I just wanted the number.

David Bermingham: I have no idea.

Steve McCabe: You do not know. Thank you.

Q270 Chair: Much play has been made of the fact that the treaty is designed to take politics out of extradition, so that you do not leave it to the politicians to make a decision, but there still remains a great deal of politics in extradition. When you arrived in the United States, it was because the then Prime Minister and the then Attorney-General intervened to make sure that you went on bail rather than being held in custody. So there was intervention at the very highest levels. I have actually checked this out and apparently it is absolutely true that they did intervene.

Is it surprising that, even though everyone says that there is no politics in extradition and that it is all up to the judges, here we have Prime Ministers intervening? When Barack Obama came over to see Prime Minister Cameron, Prime Minister Cameron raised the Gary McKinnon case with him, and it was raised in the press conference.

David Bermingham: In a perfect world, there would be no politics in extradition. We do not live in a perfect world. I think there are extraordinary cases—Gary McKinnon is one such case—where simple legal argument is not sufficient. I think human nature is such that there will always be these cases, and, frankly, long should there be these cases. I said in my evidence to the Scott Baker committee that I would actually like to see the role of the Home Secretary in the extradition process reduced even further to keep politics out, but—

Q271 Chair: Even though that might have helped you? In your particular case, there were many Members of Parliament, including your own constituency MP and others, who were very concerned about it.

David Bermingham: It is difficult to say. I hesitate because there is obviously enormous self-interest here. I think we were dealt with unreasonably well, because

of who we were and because of all the stink that we had kicked up. One of the problems that I have is that 99.9% of people who are caught up in extradition do not have the advantages that we had. They do not have all the publicity. They do not have the money and everything that we had.

Chair: Or the contacts.

David Bermingham: Or the contacts. We were not the victims. We were the lucky few.

Q272 Lorraine Fullbrook: Mr Bermingham, you have said that the prosecutors in your case said that if you agreed to plead guilty, they would support and expedite a transfer back home. Therefore, you agreed to the plea bargain and you served 37 months, rather than the expected 10 years if you had gone to trial. Why do you think, in principle, prisoners should not serve out the whole of their sentence in the territory in which they were convicted?

David Bermingham: I think it depends on a case by case basis. The issue here is obviously prisoner repatriation. One of the issues I have—particularly with the US, given the nature of the cases that we have seen over the last six years—is that many of the people that it requests for extradition have never set foot in America. Every case is different, but if you have a situation where somebody from country A goes to country B, commits a crime and then goes back to country A, that is the classic. That is what extradition is all about: take him back to country B, try him there and, if necessary, imprison him there.

However, Sir Scott Baker, in his own report, drew attention to the fact that in a civilised society it is actually a very good thing, if a citizen or somebody ordinarily resident in a country is tried and convicted somewhere else, he should be able, as part of the process of rehabilitation, to serve his sentence close to his family. The problem that we have with—I will come back to the US if I may, but there are a couple of very interesting cases out there at the moment. The Dewani case is one in particular. For instance, there is no prisoner transfer agreement with South Africa, so if Shrien Dewani were to be extradited to South Africa, tried for murder and found guilty, we would never get him back—it is as simple as that, notwithstanding the fact that he was born and grew up here in Britain and all his very extended family are here in Britain.

In America, the situation is different, because in America—it goes back to what I was saying to Mr Ellis earlier—the American prosecutors will use, and do use, the threat of serving your whole sentence in the US to encourage people to make plea bargains that they might not otherwise have made. It is a matter of record—I think Janis Sharp, Gary McKinnon’s mother, has testified before this Committee that he was told, in the US embassy here a number of years ago, that if he agreed to enter into a plea bargain they would ensure that he got back quickly. Now, if you are a foreigner who is being extradited and you are in a situation where they say, “Look, if you plead guilty, we will get you back quickly”—again, our plea bargain is a matter of public record, they wrote it into it; it was part of the deal that they not only would agree to it, they would expedite it—“on the other

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hand, you can go to trial, lose, and if you lose, we will ensure you never get back”—because they can.

One of the problems that I have with the Scott Baker report on prisoner repatriation is that it deals in abstract terms with the Repatriation Of Prisoners Act 1984 and with the Convention on the Transfer of Sentenced Persons. The practice of those mechanisms is actually quite complicated. The highlight issue is that in order to get back home, under the Convention on the Transfer of Sentenced Persons or the Repatriation of Prisoners Act, three different agencies have to agree: first, the country in which you are incarcerated; secondly, the country to which you wish to go back; and thirdly, you, the individual.

On the first of those, in the case of the US, the decision as to whether to allow a treaty transfer rests with an office in Washington, and it is completely unreviewable. They do not have to give any reasons why they have turned down, but they routinely turn down any request of anybody who has not already served half of their sentence—they just do. There is a British man, a former chief executive of a company called Refco, whose name is Phillip Bennett. He was sentenced in 2008. He entered into a plea bargain to fraud allegations, and was sentenced to 16 years in prison. He is British, his wife is British and his family is British. He recently applied for a treaty transfer home and was turned down. Having been turned down, he must wait a further two years before he can re-submit such a request.

My problem with Scott Baker’s view that we do not need to do anything about prisoner repatriation, to put anything into the law, is that unless we have a Government-to-Government agreement on these things—whether it is with all European Union countries, as envisioned by the Framework Decision, or on a bilateral basis with non-EU countries—this is going to be used to persuade people to enter into plea bargains that they would not otherwise do. It is just wrong, and we will never have any ability, having extradited somebody, to guarantee that they can come back.

Q273 Lorraine Fullbrook: Thank you. May I just go on to ask you a further question about the repatriation of prisoners? Is there any reason why prisoners who are extradited to stand trial should be treated differently from an overseas prisoner who is arrested in the territory where the offence took place?

David Bermingham: In principle, no. I think in practice that for an overseas person who is ordinarily resident in that country, the primary difference is that, depending on the nature of the offence and assuming that it is a non-violent offence, they will almost certainly be granted bail, which someone who is extradited will not. It is a matter of absolute practice that prosecutors in a foreign state will refuse to support an application for bail. It is up to the judge, obviously, whether someone gets bail.

One of the problems about people being extradited is that there is a 99% probability that they will end up being imprisoned in that foreign land pending a trial, whereas someone who is ordinarily resident there, even if they are a foreigner, might have a much better chance of getting bail.

Q274 Chair: You mentioned the Scott Baker review several times, obviously because that is why we are here. What is your concern about the way in which the review was conducted? I know that you asked to give oral evidence, as did other people involved, and they were told they could not do so. Do you think that was a problem?

David Bermingham: To be fair to Scott Baker, I did ask to give oral evidence. I was not told that I could not do so; I just was not called.

Q275 Chair: But none of the defendants seem to have been.

David Bermingham: I think it is unfortunate, not least in the context of the parliamentary inquiries that are going on, because both your Committee, Chairman, and the Joint Committee on Human Rights have taken evidence from many people, including the families of those who have been extradited. This goes back to my observation earlier, the Scott Baker review is a fantastic piece of dry legal analysis, but it is utterly lacking in humanity. I think the human aspect comes from talking to people who have lived through the various aspects of extradition, whether as a defendant or as the family of someone. It breaks up families; it destroys them. It is a terrible, terrible thing.

Q276 Chair: That could happen to other people involved in the criminal process. It is not unique to extradition cases. You talk about the fact that you were preparing your very complicated case in a very small cell in an American prison. It is access to lawyers, and access to papers, which were all in the United Kingdom—is that right?

David Bermingham: By virtue of the intervention of Tony Blair and Lord Goldsmith, we were not incarcerated. We had a better chance than most people.

Chair: Thank you for correcting me. It was not Gordon Brown, it was Tony Blair of course. Go on.

David Bermingham: Yes. Most people in that situation will be locked up in a 10 feet by 7 feet cell with someone who statistically will be a drug dealer or whatever. Trying to prepare any form of defence in a case that involves a lot of paper is close to impossible. Prison in America, whether on remand or after conviction, is not nice. On remand, it can be very unpleasant. Sir Allen Stanford, who ran the Stanford Financial Group, as you may recall, has been on remand in prison in Houston for three years pending trial. He has now been pretty much medically certified as unfit to stand trial because the beatings he took while in prison—this is all on the public record and documented—were so severe that he was hospitalised for a long time and had to have major surgery. His ability to prepare for a trial not only with all the physical issues, but the fact that his case probably involved twice the volume of this room in paperwork, is zero.

My attorney in Houston is representing another person involved in the Stanford Financial case, and has told me that there is no possibility of that man ever being able to defend his case.

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Q277 Chair: But as you say, you are one of the 1%; there are 99% who do not have the kind of contacts, or the mood there was in Parliament at the time.

David Bermingham: Yes, we were lucky.

Q278 Chair: But going down to basics again, the real difference you see is the process not the wording, and the fact that there is a hearing for probable cause, and there is not one for reasonable suspicion in this country. Testing of the evidence. Very briefly.

David Bermingham: There are very stark examples either side of the line. In Lotfi Raissi on one hand, which was a pre-2003 Act case, there was no evidence, so when it came to the extradition hearing and the US was required to produce the evidence that supported extradition, there wasn't any, so he was discharged. On the other side of the line, Alex Stone, a blind man, was shipped off to Missouri when there was clearly no evidence. There was suspicion, but no evidence. His life was ruined, and he was not even allowed to come back when it was discovered there was no evidence, having been locked up for six

months, 23 hours a day, until such time as he agreed to plead guilty to leaving the country during the course of an investigation. He came back saddled with a criminal record. Sir Scott Baker said he could not find a case of injustice, but that was injustice. A man's life was ruined by unjust extradition.

Q279 Chair: Finally, going back to the time when you helped both the Conservatives and the Liberal Democrats put forward their amendments, in your view, has anything changed since then as far as the treaty is concerned, or the views you held then with the then leader of the Conservative party, and the then leader of the Liberal Democrat party? Do you think it is still the same? The Act is still there.

David Bermingham: I think it is exactly the same. We made the point a long time ago that if we went, the floodgates would open. I am very sorry to say that I think we have been proved right.

Chair: Mr Bermingham, thank you very much for giving evidence today. If we have further questions for you, we will write to you.

Tuesday 21 February 2012

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Mr James Clappison
Michael Ellis
Dr Julian Huppert

Steve McCabe
Alun Michael
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: **Michael Turner**, gave evidence.

Q280 Chair: This is an ongoing inquiry into extradition, which the Committee will conclude next week when we will hear evidence from the Attorney-General.

Mr Turner, thank you very much for coming in to give evidence to this Committee. Some members of the Committee were present in the debate on 5 December when your local Member of Parliament, Richard Drax, spoke very powerfully about your case. We are concerned with the issue of extradition, not just to the United States but also to other European countries. We will return in the future to looking specifically at the European Arrest Warrant, which of course was the subject of the reason why you were sent back to Hungary. Can you tell the Committee about the current circumstances? When are you due back in Hungary?

Michael Turner: I am due back in Hungary on 29 February, so next Friday. Sorry, not this Friday, the next Friday. I fly out on the Monday for a few days with my lawyer before I go to court and this is the first hearing in the case.

Q281 Chair: Is it the case that when you were extradited on the last occasion—obviously you are returning voluntarily to Budapest for this hearing—there was an extradition and you went to Hungary and you spent four months in Hungary without having been charged with any criminal offence whatsoever? Is that right?

Michael Turner: Yes. I am not exactly sure the way the system works, but there was a European Arrest Warrant out in my name. I surrendered to the warrant. I was on bail in England for a year because I opposed the warrant. I didn't want to be extradited; I didn't feel that I should be extradited. I was then extradited to Hungary and while they continued the investigation I was obviously kept on remand in a remand centre in Hungary.

Q282 Chair: Can you tell us the conditions in that remand centre?

Michael Turner: It was 23 hours in a cell. You are allowed to go out for an hour walking. My personal walking was in a roof cage above the prison, so it is quite confined conditions anyway. Sometimes the temperature could get to minus 20. Obviously I didn't pack my winter clothes or any thermals or anything like that. So a lot of the time I just stayed in the cell rather than go out in the cold conditions, because you couldn't go out for five minutes and then come back

in; you had to stay out there for an hour. It got quite cold.

Q283 Chair: You had not been charged with any offence. Were you served with any papers, or did you have access to any lawyers?

Michael Turner: I had a brief interview when I arrived in Hungary. They took me to the police station and tried to get me to sign some paperwork.

Q284 Chair: Was that in English or Hungarian?

Michael Turner: It was in Hungarian. I had a translator who sort of roughly translated things, but I didn't want to sign anything obviously without my lawyer being present. It was so late at night—I think it was about midnight or something like that—the lawyer was not present and they were trying to force me to sign it, basically. They had to get my signature on a piece of paper. In the end I wrote, "I will not sign this without my lawyer present", and signed it that way instead, just to try to cover my own back on that one.

Q285 Chair: What kind of support did you have, incidentally, from the British Embassy in Hungary?

Michael Turner: I didn't get any support until my father contacted them. They asked me in the police station if I wanted the embassy contacted. When I said yes they said, "There is no point in contacting them. They won't want to know". Also when I tried to say I would like to phone home they said, "No, we can't afford for you to phone home", and sort of laughed at me. It was my father who contacted the embassy, who I think came to see me on the second or third day that I was in prison, who gave me some brief information on the prison systems in Hungary that I later found to be incorrect. Obviously their support was there and they tried to help but they couldn't do too much towards the judicial side of things. They brought in a magazine for me to read and something like that, which was quite helpful.

Q286 Chair: This went on for four months. Before you went off to Budapest, was there a hearing here when any of the evidence was tested?

Michael Turner: In England? No.

Q287 Chair: Were any papers served on you before you were extradited, indicating the case against you?

Michael Turner: Just the European Arrest Warrant.

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Q288 Chair: That is it? No information as to why you were being asked to return to Hungary?

Michael Turner: No. We employed a lawyer in Hungary to go and look at the evidence to try to sort this out even before we were extradited to cause less hassle, but the police refused to release the evidence because the investigation had not finished. So we tried to work on it before we went, but we were not allowed.

Q289 Chair: After four months you were then released and you returned to the United Kingdom. Is that right?

Michael Turner: Yes, that is correct.

Q290 Chair: When was it you were then asked to go back to Budapest?

Michael Turner: The night before I was released they asked me to sign a piece of paper, put my home address on the piece of paper and said, "You agree to go to the police station on 4 April", I think it was. I said, "Fine, no problem". But they didn't say, "This is because we are releasing you". The next day I was just sort of ushered out the door and found myself in Budapest.

Q291 Chair: On your own?

Michael Turner: Yes, on my own. No one else knew about it.

Q292 Chair: How did you get back to the UK?

Michael Turner: Luckily I had a mobile phone, which I managed to charge and contact my lawyer in Hungary who translated the paperwork that said I must pick up my passport from a certain office, and then he contacted the police to ask questions—"Can he return to England?" and this, that and the other.

Q293 Chair: What did the British Embassy do for you when you were released?

Michael Turner: They kindly met me and helped me arrange a temporary passport, because my passport was out of date at the time.

Q294 Chair: You got back here?

Michael Turner: I managed to come back to England.

Q295 Chair: On this occasion, this latest occasion when you are going back next week, has there been a hearing of any kind?

Michael Turner: Not a hearing. No, this will be the first hearing.

Q296 Chair: No, a hearing in the United Kingdom?

Michael Turner: Not in the United Kingdom, no.

Q297 Chair: So, in effect, throughout this entire process you have never had a hearing as such?

Michael Turner: In the United Kingdom I had many hearings for the extradition.

Q298 Chair: For the extradition, but not on the substance of the case?

Michael Turner: Not for the case, no. We were never allowed to hear the evidence of the case.

Chair: Thank you. My colleagues will have other questions for you.

Q299 Mr Winnick: One or two questions, Mr Turner. Obviously we are concerned about the general position of extradition. As regards conditions, and you were describing the situation earlier, is it the case that you were not even allowed to have a shower?

Michael Turner: One shower a week. I think it was Thursdays.

Q300 Mr Winnick: Family parcels?

Michael Turner: Family parcels were received. Once a month you were allowed a parcel but they seemed to have great difficulty in getting it to me from the UK. They had to be labelled correctly. Obviously certain things were not allowed, which we sort of learned as we went along. So it was difficult to get—

Q301 Mr Winnick: As regards communications in prison, presumably you do not speak Hungarian.

Michael Turner: Very little.

Mr Winnick: Neither do I. Were any of the officials in prison able to speak to you in English?

Michael Turner: I remember one or two of the guards spoke a little bit of English now and again. The social worker on the prison floor couldn't speak any English. She would get a translator from one of the other cells, so one of the other inmates would translate. Obviously I felt a little bit uncomfortable with this because you wouldn't want to say anything bad about anyone else because it would go straight back into the system.

Q302 Mr Winnick: Should we take the view that in the main you were held in a way that did not show any respect to you—indeed, contempt?

Michael Turner: I think so, yes. After four months I left the prison, I had muscle fatigue. My legs hurt for days afterwards because of the lack of exercise.

Q303 Mr Winnick: There was no brutality shown towards you? Contempt but not brutality; is that how you would put it?

Michael Turner: Verbal abuse. I did receive verbal abuse, although I couldn't understand most of it, so I am not sure if that is classed as verbal abuse, to be quite honest.

Q304 Mr Winnick: No physical abuse?

Michael Turner: No, no physical abuse.

Q305 Chair: But it was done in an aggressive manner, so you thought it was abuse.

Michael Turner: Well, someone translated in the cell afterwards and said, "He said this, this and this".

Mr Winnick: Thank you very much.

Q306 Michael Ellis: Mr Turner, the European Arrest Warrant is what we are looking at. It is apparently available only for the purposes of conducting a criminal prosecution or executing a custodial sentence or a detention order. In other words, it applies where a prosecution is being levied or where a sentence is to be passed. It appears as though you were subject to a

European Arrest Warrant when no decision had been made even to prosecute you. Is that correct?

Michael Turner: Yes, it looked a bit premature. They have now sent papers through to say they are ready to go to court and they would like to prosecute. This is two to three years later.

Q307 Michael Ellis: Have you received legal advice here in the United Kingdom about this?

Michael Turner: Well, Fair Trials International and—

Q308 Michael Ellis: Is it your understanding, therefore, that you were unlawfully detained in Hungary for those four months? You were reacting to a European Arrest Warrant that was invalid inasmuch as it did not apply in order to aid a prosecution, but no prosecution had been levied at the time that you went over there.

Michael Turner: Yes. My sending may have been unlawful. When you get into Hungary, I presume Hungarian law takes place and they can hold you for three years on remand.

Q309 Michael Ellis: But it was a misuse of the European Arrest Warrant; is that your understanding and advice?

Michael Turner: Yes, I believe so.

Q310 Michael Ellis: So you can be said to have suffered an appalling miscarriage of justice, can you not? You were not effectively detained lawfully for that four-month period, were you?

Michael Turner: I don't think I was. I think there were lots of big mistakes made. I don't even think I was arrested when I arrived in Hungary. I was just told to, "Be quiet and do as we say".

Q311 Michael Ellis: I am very concerned about this because there appears also, to me, to be a violation of the principle of natural justice. The translation difficulties that you had, the failure to communicate with the British diplomatic authorities in Budapest and other aspects seem to indicate a complete failure on the part of the Hungarians to meet their international obligations. Is that your understanding?

Michael Turner: Definitely.

Q312 Michael Ellis: Has anyone been in touch with the Hungarian authorities here in London to ask them to explain their conduct of this matter?

Michael Turner: I believe a few people have tried to communicate with them.

Q313 Michael Ellis: Have they responded, do you know?

Michael Turner: I think they responded initially but after that they have kept very quiet.

Q314 Michael Ellis: Is it right that you are facing criminal charges in Hungary for the recovery of a debt?

Michael Turner: I am accused of fraud but in the thing I got through recently—it's called my writ in penal case—it says, "Fraud causing minor damage committed in a business operation and other crimes".

Q315 Michael Ellis: That is what it might say but I do not have confidence in Hungarian legal documents at the moment. Shall we ask you what your understanding is of what the criminal charge is against you, or would be against you if they bothered to levy one?

Michael Turner: Fraud, I believe.

Q316 Chair: Thank you. That is sufficient. Mr Ellis, we will come back to you if you have more questions. James Clappison has a question. Sorry, I should say but you deny this?

Michael Turner: Yes, of course.

Q317 Mr Clappison: Can you tell us a little bit more about exactly what happened when you arrived in Hungary after the execution of the warrant. You arrived at, presumably, Budapest Airport?

Michael Turner: Yes. I drove myself to Gatwick Airport. I met a female officer, an English officer, who handed us over to four Hungarian officers.

Q318 Mr Clappison: At Gatwick?

Michael Turner: At Gatwick Airport. They wanted to search us. I think they pulled out some handcuffs at some point as well and the police lady there said, "No, there is no need for that. They are not dangerous". We were then taken on the plane. When we arrived in Hungary we were taken off to a side room at the airport and we were sat down. This is where we were handed over to District 5 Police, I think, and a man said to us we must not talk and we must do as he says. Then we were handcuffed and led back through arrivals where the people from our plane were collecting their luggage, handcuffed on a lead and they were sort of pulling us along, and then bundled into the back of a van—no seat belts or anything like that, so I had to carry my bag and—

Q319 Mr Clappison: Did they tell you that you had any—could you communicate with these people? Did they speak English?

Michael Turner: He obviously said, "Be quiet and do as we say" in English, so maybe he could speak a little bit of English. When he said, "Be quiet and do as we say", I wasn't starting a conversation with him. He seemed quite a scary guy.

Q320 Mr Clappison: You were not told anything about the system. What was happening?

Michael Turner: In this country when I surrendered to the warrant I met with the English police officer at the Magistrates' Court in London. As we were walking in and up the stairs he said, "At this moment I must arrest you to surrender for the warrant". In Hungary nothing like that happened.

Q321 Mr Clappison: When you arrived in Hungary, and you have told us about that and you were put into the prison, you were interviewed once, I think that is right to say, by the police about the substantive charges?

Michael Turner: Yes. I think it was a few months in. It may have been the first or second month I was there I finally got interviewed by the police.

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Q322 Mr Clappison: You were there from 2 November until 26 February.

Michael Turner: Yes. It must have been December, I think, some time when I was first interviewed.

Q323 Mr Clappison: So you had one interview with the police. Did you have any sort of hearing to decide what should happen to you or not?

Michael Turner: Yes. After the first three days we were put in front of a judge. We went to a court where he decided what was going to happen to us. We were taken into the room. The first time I met my lawyer as well was outside this room. I was taken in and it was basically, "Right, stand up. Now, explain", through a translator. There were lots of things going on and the translator was saying, "Well, now they're talking about this, and now they're talking about that". None of the translation seemed to make any sense. It was just very generalised. I didn't know whether he had any paperwork about the case or anything like that.

Q324 Mr Clappison: Were you given any understanding of why you had been arrested and why you were being held in custody?

Michael Turner: I think maybe they tried to explain this the first day we arrived at the police station—this paperwork that I was supposed to sign, but the translation was poor and I wasn't going to sign anything.

Q325 Mr Clappison: Okay. So you had the hearing and you had the interview and then you have told us you were released at the end of February 2010. From what you have told us it seems to be quite random—you were just released.

Michael Turner: Yes, there was no explanation for it.

Q326 Mr Clappison: There was no trigger for it. There was no hearing or anything like that?

Michael Turner: No. Inside the prison I had a guy in the cell who could speak a bit of English. He had been there two years in that cell and he explained to me that nobody is released or goes to court before six months, so I could look at least being there for six months before anything happened—so four months, I was quite relieved.

Q327 Dr Huppert: Mr Turner, it seems quite clear, to me at least, that you were maltreated in Hungary, but can I just come back to what happened in the UK, because hopefully we have more control over what happens here. Do you think that the British judicial system knew all of the relevant facts before they ordered your extradition, or were there things that they just did not know about and hence made the wrong decision?

Michael Turner: Obviously I can't say what they knew and what they didn't know. We tried to put a case forward saying that they were still in the investigation stages, and that they were not ready to prosecute. I don't want to say it was ignored, because it was discussed in the manuscript, but it was sort of passed over. I am not sure if they went back and said, "That is a valid point. We will research into that

ourselves", but they just didn't seem to believe us when we said that.

Q328 Dr Huppert: So you told the court that it was still being investigated but they still proceeded—

Michael Turner: We showed them evidence. We said, "It's still being investigated because we are not allowed to look at the evidence. Our lawyer in Hungary is not allowed to look at the evidence because they are still in the investigation stage, so why are we being sent across for a prosecution?"

Q329 Dr Huppert: There are lots of people who have been caught up with extradition problems and a whole range of things. Just two weeks ago I met Janis Sharp to commemorate the tenth anniversary of Gary McKinnon's arrest. I saw Richard O'Dwyer and there is a whole long list of others. Are you aware of any others who have fallen into a similar category to you, or are you unique in this case?

Michael Turner: I think my dad got a few phone calls while I was in prison, because we put ours out on the internet and it was quite publicised. He got phone calls from people saying, "I have been in a similar situation. I have been caught on a border crossing and then suddenly thrown off to another country. Nothing has happened and I have been released. What is going on? Very confused with the situation". So I believe there are people out there who are being investigated and are being moved across to different countries, not being fully told what is going on, and they are suddenly released when they find out the investigation has not led anywhere. I don't think it is a unique case as such but just one that is quite well documented.

Dr Huppert: If you do come across any other details, or if anybody following this is aware of any, I think it would be useful to know how often this occurs.

Q330 Alun Michael: You have obviously had an experience that we have not shared. In the light of this, as a person who has been on the receiving end, what would you like to see done in terms of changing the European Arrest Warrant system?

Michael Turner: Personally, I would say definitely look into the evidence. I have now got to see my evidence in my case and I think there is evidence in there to squash the European Arrest Warrant, that they are obviously—I don't know who looked at the evidence to make up the warrant but it is obviously not true. So I would like for you guys to have, or the court system to have, more power into looking into them. I feel it was overlooked that they weren't ready for prosecution, even though we tried to prove that case. I would have thought the courts would say, "Okay, we will find out exactly if they are ready".

Q331 Alun Michael: In effect, the UK courts, the UK authorities, ought to be provided with information that shows that they are ready to proceed with the case at that stage?

Michael Turner: Yes, I think so. It was a simple question for us. We asked a lawyer to go to the police: "Are you ready to prosecute?" "Oh no, we are still investigating". We found it rather simple.

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Q332 Alun Michael: It certainly was not clear at the first stage what you were being charged with. Is it clear now or is it still unclear?

Michael Turner: It does change from translation to translation. It is fraud, misdemeanour. I understand what they are trying to do—

Alun Michael: But it is not precise.

Michael Turner:—but I can't relate it to the evidence that they have collected and things like this.

Q333 Alun Michael: Have you been provided with full details of what the case against you is?

Michael Turner: I have now started to receive it, yes—translated.

Alun Michael: But only started?

Michael Turner: Yes, because they have only just finished the investigation. They wouldn't release all the evidence until they had finished and now I am getting it through. I think it was dated December but I only received it at the end of January translated.

Alun Michael: So you haven't yet had the full disclosure of the case against you?

Michael Turner: No. Apparently there are 16,000 pages of evidence to look through.

Chair: Mr Turner, thank you very much for giving evidence to us today. I have spoken to members of the Committee and I will write to the Hungarian Government to express our deep dissatisfaction about the way in which you have been treated, because we find this to be thoroughly unsatisfactory. We don't believe that this is the way in which the warrant should operate, where people should be extradited and there should be a fishing expedition to find out what has gone wrong. But of course that does not help you in your case because this is something that has gone before you.

Members of the Committee have also asked me to write to the Hungarian Ambassador to ask him to come before the Committee to explain what has happened in this case, but also to look at these matters as matters of principle that we will look into as well. Thank you very much for coming into the Committee today and the best of luck for next week.

Michael Turner: Thank you very much. Thank you for inviting me.

Tuesday 28 February 2012

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Michael Ellis
Lorraine Fullbrook

Alun Michael
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: **Judge Riddle**, Senior District Judge, Westminster Magistrates' Court, gave evidence.

Q334 Chair: This is the final session of the Committee's inquiry into extradition, and we are very grateful that we have Judge Riddle giving evidence to us this morning—the Senior District Judge, the Chief Magistrate, dealing with extradition cases. Judge Riddle, I am most grateful to you and the Committee is most grateful to you for coming in today.

Before we begin our questioning I would like to remind colleagues of the House's rule relating to matters that are sub judice, which means cases that are currently before the courts. We will not be asking you about any of those cases. I would also like to remind the Committee of the agreement that has been made with the Lord Chief Justice of the constitutional arrangements between the House and the judiciary, which means that we will not be questioning you on any of your decisions or the reasons for your decisions. The purpose of this session is to look at the process of extradition.

Perhaps I can begin. How many extradition cases have you dealt with since you took over from Judge Workman as the Chief Magistrate dealing with these matters?

Judge Riddle: Probably between 500 and 1,000, of which I would say maybe 100 to 150 have been, if you like, hotly contested.

Q335 Chair: Presumably the vast majority of these cases relate to the European Arrest Warrant?

Judge Riddle: Yes.

Q336 Chair: If I could explain, when the Committee began its inquiry we were looking both at the UK-US Extradition Treaty and the European Arrest Warrant, but we have received quite a bit of evidence about the European Arrest Warrant and therefore we have decided to produce a report specifically on the UK-US Extradition Treaty. We will return at a later date to look at the European Arrest Warrant. I have agreed with the Lord Chief Justice that the Committee should come and observe you in action to see how these cases take place.

Judge Riddle: You are very welcome, both individually and separately and, of course, with your staff.

Q337 Chair: For the purposes of my questions—other colleagues will ask about the European Arrest Warrant—could we concentrate on the UK-US Extradition Treaty?

Judge Riddle: Yes.

Q338 Chair: You are dealing with the process of extradition. How is the judiciary involved in this? What exactly do you do when you get a request?

Judge Riddle: We get a request from the Secretary of State, in the first instance. It has come from the United States Government via the diplomatic channels, comes to the Secretary of State and eventually comes to us with an application for an arrest warrant. We have to check some of the basics, as set out by Parliament, and we do that. If the arrest warrant is issued, sooner or later, one hopes, the defendant will appear in front of us. There are time limits as to when the papers must be served on the defendant—depending on the circumstances, 45 days or two months. At the first hearing we tend to deal with what issues might arise and we then have another hearing to deal with those issues, and each case, of course, is different.

Q339 Chair: Are these technical issues? Is there any question of looking at the evidence that has been given by the United States or do you just decide on whether or not the warrant is in order? Do you deal with any of the substance?

Judge Riddle: Not in terms of the strength of the evidence, which I suspect is the thrust of the question. Obviously we have to satisfy ourselves that it is an extradition offence and, as you say, of some of the technical matters.

Q340 Chair: But there is no review of the evidence that has been sent, if any?

Judge Riddle: The United States tends to send rather more detailed information than most other countries do, so in fact they do provide us with a lot of information that we do not necessarily need. But in fact very often that turns out to be material in the hearings, for example if there has been a delay in the proceedings, the information is useful. We do in fact get quite a lot of information from the United States, although technically it is not necessary.

Q341 Chair: But you do not act on that information because you do not look at any of the substance?

Judge Riddle: Not in terms of finding whether there is a case to answer, no.

Q342 Chair: Do you know much about the other side—the process that the Americans use? Have you ever been over to America to look at the way in which they deal with extradition?

Judge Riddle: No. The only other country I have been to observe is France.

Q343 Chair: How does the system work there? Is there a testing of evidence?

Judge Riddle: No. They deal with things very differently to us. I have been to the Cour d'Appel in Paris and they will hear, perhaps, 20 cases, nearly always European Arrest Warrant cases, in a single afternoon, once every week or once every fortnight. They deal with, I think, a slightly smaller volume than we do and they deal with it far more expeditiously than we do.

Q344 Chair: Do they deal with the substance of cases or do they just deal with the technicalities of the law?

Judge Riddle: I can't tell you how they deal with American cases, I haven't seen one, but certainly as far as the European Arrest Warrant is concerned, no, they don't.

Q345 Lorraine Fullbrook: Judge Riddle, you said that you review the information when you receive a request, particularly from the US. When you review the information, do you review it on a test basis of probable cause, as in the US, which is a lesser requirement than the UK test, which is reasonable suspicion? Which do you look at, the US probable cause or the UK reasonable suspicion?

Judge Riddle: I follow United Kingdom law. I couldn't tell you whether there is a difference, but I follow the usual practice in the United Kingdom, which is reasonable suspicion.

Q346 Chair: In your experience, what are the common features of extradition cases?

Judge Riddle: Are we talking generally?

Chair: Yes.

Judge Riddle: They almost always—by which I mean 99% of the cases—involve foreign nationals who are requested back in their own country. That is the most striking and overwhelming feature of the cases. Only a very small number of cases involve British citizens at all. Generally, those are British citizens who have either been living abroad or perhaps, very rarely, been on holiday abroad when the alleged incident occurred. In my personal experience I have never had a case—I know there are cases—in which the defendant was in this country when the conduct occurred.

Q347 Chair: Do they generally involve cases in which the accused was in America when the offence took place, or in the United Kingdom, concentrating on the Americans?

Judge Riddle: The American cases I have had, and we are not talking about significant numbers here—

Q348 Chair: No. How many are we talking about?

Judge Riddle: We ordered extradition in 16 cases out of 18 last year, in 2011. I have dealt with three in the recent past and they all involved conduct in the United States.

Q349 Chair: How many have related to the internet or e-commerce and issues of—

Judge Riddle: None.

Chair: None?

Judge Riddle: No. There was one that possibly involved accessing the internet for child pornography, but I think that occurred in American territory.

Q350 Chair: How many would be regarded as serious offences in the United Kingdom?

Judge Riddle: Of the ones I have dealt with?

Chair: Yes.

Judge Riddle: Of the ones I dealt with, one was a murder; one was serious sexual offences against children; one was, frankly, from my point of view, rather less serious, but nearly all part 2 cases are cases that we would expect to be tried here by a judge and jury. They are sufficiently serious for that.

Q351 Mr Winnick: Judge, the European Arrest Warrant—which I will concentrate on; other colleagues will obviously ask you questions relating to the US arrangements—has replaced all previous instruments, I take it, concerning extradition between EU countries. Is that the position?

Judge Riddle: Yes, with a very small residue, I suspect now entirely gone, of applications that were made before the 2003 Act came into force.

Q352 Mr Winnick: On the issue of substance, is it the case, at least where extradition is applied for by one of the EU countries, that the offence would have to carry a minimum sentence of 12 months in that particular country before the process started?

Judge Riddle: Yes, either that or on a conviction warrant more than four months has been imposed. So we are talking about the maximum sentence being 12 months or more, not necessarily the actual sentence or even the likely sentence.

Q353 Mr Winnick: I wonder if I can put this point, because obviously, as the Chair has said, we can't deal with individual cases, and rightly so when we have a judge before us, but the criticism has been—leaving aside the US position, which is far more controversial at the moment—that some of the cases that have come to you or to your colleagues under the European Arrest Warrant procedure have been rather minor. Poland, for example, has been mentioned as applying for extradition in cases where one would not consider under British law that there would be a great deal of substance in the allegations against a defendant. Would you wish to comment on that?

Judge Riddle: Obviously not on the judgment of whether they are serious or not—that is really not a matter for me—but in terms of the types of cases we do see drink-drive cases, we see criminal damage cases, we see possession-of-drug cases, taking a car, the sort of cases quite frequently that would be dealt with here by a Magistrates' Court with a maximum penalty of six months or less. So we do see a lot of that sort of case.

We also see quite commonly—and again I make no judgment on this—cases in which in the originating country a suspended sentence had originally been

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imposed. It is not uncommon for the citizen of the country to come here, often for economic purposes, and that almost automatically then breaches the suspended sentence in the originating country because he or she no longer keeps contact with the probation officer. So we do have a fair number of requests, which were not initially considered in the requesting stage sufficiently serious for an immediate custodial sentence, that are activated by breach of a suspended sentence.

Q354 Lorraine Fullbrook: Judge Riddle, given that there is no complete reciprocity in the Extradition Act 2003, in your professional opinion do you think the Extradition Act 2003 should be repealed?

Judge Riddle: I couldn't possibly answer that. It must be a matter for Parliament.

Q355 Michael Ellis: Judge Riddle, there are some bars to extradition, are there not? When the court is considering European Arrest Warrants and UK-US extradition cases, could you explain what, if any, bars there are to extradition? When would you, as the presiding judge, say, "Well, this is not permissible. This does not fall within the treaty or parliamentary arrangements"?

Judge Riddle: Yes. There is quite a long answer to that; stop me if it is too long. About 90% of all requests are met. That means that about 10% fail. That is very rough and ready, but those are the figures we think we have. As I have just told you, with the United States it was two out of 18 last year, and that is about average. There are four broad grounds on which applications normally fail.

The first is what I would call time limits. If a prisoner is not brought before my court as soon as practical, he must be discharged; we have no discretion about that. To give you an example, if someone was arrested this morning in Surrey and does not make it to court this afternoon, perhaps because I am here, the case must fail, whether he is allegedly a mass murderer or not. There are other examples of time limits. In the case of the United States, if the papers are not served on the judge within the time limit—either 45 days or two months—the court must discharge; no discretion. Similarly, if we order extradition and extradition does not take place within the time-limited period—generally 17 days—and if the defendant applies to be discharged before there is an application to extend, we must grant that. That, I think, is probably the biggest number numerically.

Another area is where it is not clear from the information—this is more generally going to be the case with non-English speaking countries, I have to say—that the reasons for extradition are made out on the face of the application, and there are a number of those. There are passage-of-time applications that can be successful; that is, effectively, historic cases where somebody's life has moved on. Then there are oppression cases that generally revolve around health, physical or psychiatric health. Those are the most common, but there are a lot of others that are commonly argued, for example human rights arguments, asylum seekers, and cases where there are what are called extraneous considerations.

Q356 Michael Ellis: Thank you. Where there is no oppression or a time-limit issue in respect of European Arrest Warrant cases, is it necessary for you to be satisfied that the prosecuting authorities in the country requesting extradition have themselves embarked upon a prosecution of the individual? In other words, is a fishing expedition requiring the individual in question to come into their jurisdiction while they consider whether to prosecute something that would fall foul of the European Arrest Warrant terms?

Judge Riddle: Yes, it would. The authorities must intend to prosecute or, of course, there may have been a conviction already in some cases. Often that is the case.

Q357 Michael Ellis: Are there safeguards against an extradition request that contains material inaccuracies? For example, where the evidence about the accused has not accurately been obtained or followed in the requesting country or where there is some other type of material inaccuracy that would, in the courts of England and Wales, be a source for concern, is that a reason for refusing extradition?

Judge Riddle: Our starting point is that if Parliament has determined that we have an extradition treaty with a friendly country, if I can put it that way, we start from a view of mutual co-operation, mutual respect, so we start with an assumption that what we are being told is accurate. But it can be challenged, and it is challenged. It can be challenged either by the defendant obtaining information locally through lawyers in the originating country or it can be challenged because we, the judges, or the Crown Prosecution Service of its own motion or the defence ask the Crown Prosecution Service to make further enquiries of the requesting authority. There are mechanisms for challenging it within the law as well, but they are rarely used and rarely successful.

Q358 Michael Ellis: Just one brief question, if I may. You have referred to most of the cases, or many of them, being ones that would result in a trial by judge or jury here in this country; in other words, cases that would be more likely than not sent to the Crown Court for trial or sentence and would attract sentences in excess of six or 12 months. For what sort of percentage of cases, would you say, are there extradition requests—I am thinking now particularly of the European Arrest Warrant—where you would expect that if they were to take place in this country they would receive a sentence of less than six months' imprisonment or even a non-custodial sentence?

Judge Riddle: I can't give you figures but my impression—and it is purely a personal impression—is that they are significant. They may be a quarter to a third of the requests we get from within the European Union, but I could be quite wrong on that.

Chair: Thank you. We will be returning to the European Arrest Warrant in the future.

Q359 Nicola Blackwood: As I understand the procedure under the 2003 Act, initially the request for extradition comes to the Secretary of State, who issues a certificate and sends the papers to court. It then comes to a judge such as yourself, who has to decide

whether any of the bars that you have enumerated apply, whether the request is compatible with the Human Rights Act or whether it is applicable within the 2003 Act.

If all of those three are appropriate, then the request goes back to the Secretary of State to decide whether the surrender would be prohibited because the person could face the death penalty, because there would be specialty arrangements with the requesting country, or because the person was earlier extradited to the UK. If the Secretary of State finds that the surrender would therefore be prohibited, they must order the discharge of the person. But if none of those three prohibitions apply, then the Secretary of State must order that person to be extradited. That requested person can then appeal within 14 days to the High Court. If the extradition is then ordered, they could appeal to the Supreme Court and then on to the ECHR. Is that correct?

Judge Riddle: It is a very good summary of something that is slightly more technical than that. I can't tell you what the Secretary of State does, I am afraid.

Q360 Nicola Blackwood: Okay. My question is, at what point during that process is the defendant informed that they are the subject of an extradition request?

Judge Riddle: They are informed as soon as they are arrested.

Q361 Nicola Blackwood: At which point during that process would they be informed? At the very beginning?

Judge Riddle: At the very beginning. They are arrested and then brought to court.

Q362 Nicola Blackwood: Is that when the request comes to the Secretary of State and they issue the certificate to the courts, or is it when they come to court and they can appeal within 14 days? At which point in that process does it occur?

Judge Riddle: The Secretary of State sends the papers to us. We sign the warrant and then the police either do or don't execute the warrant. As soon as the warrant is executed, the person must be brought to court, so that is when they find out.

Q363 Nicola Blackwood: What percentage of defendants, in your experience, have legal representation?

Judge Riddle: A very good question. They all ought to have; the interests of justice test is invariably met. There is sometimes a delay, a problem obtaining legal aid, particularly for foreign nationals who can't prove their income.

Q364 Nicola Blackwood: What sort of percentage would you estimate?

Judge Riddle: Ultimately all of them, but at first there can be delays with unrepresented defendants finding it difficult to obtain legal aid.

Q365 Nicola Blackwood: Do you find that there are problems with quality of representation in those instances?

Judge Riddle: When they are unrepresented, clearly it is very difficult for all of us and, frankly, it does not always look very fair to have someone who perhaps does not speak English unrepresented. We have quite a complicated system that we all recognise. When they are represented, I have to say the quality of representation is generally excellent. The extradition bar is first class.

Q366 Nicola Blackwood: There has also been quite a lot of debate surrounding whether there should be a forum bar, such as was put in schedule 13 of the Police and Justice Act. In your experience are there any circumstances that might have prevented extradition if that forum bar were commenced, and had that been argued as a case before you?

Judge Riddle: As I have said, in my experience it would never have applied because I have only ever dealt with cases in which the offender was in the country where the alleged offence occurred. If you would like me to be broader—because I have given a little bit of thought as to the circumstances in which it could be argued—I can deal with that. It would be wrong, I think you understand, for me to say whether I think those arguments would be successful or not, but certainly I can see it being argued, first of all, in all the cases that concern the Committee most, which is the cases that I have not personally dealt with, where the offender was here at the time of the offence. Clearly it could be argued in all those circumstances. Can I say that any defendant who has the opportunity of arguing the proposed bar undoubtedly would because there are very great advantages to arguing it. If you think of terrorism cases, which I know you have looked at, it could be a very significant advantage to an offender who perhaps was here co-ordinating an attack abroad to have access to all the investigative material, all the witness statements, potentially, I suppose, to ask witnesses to come to this court to be cross-examined. I think they would invariably want to do it if they could. Clearly, there would be an argument about what is meant by “significant part of the conduct” and that would have to be dealt with by the higher courts in due course.

The other part of the bar is that the court would then look at all the circumstances. I think we would take time probably to refine it down, but at least at first it will be argued that that is very broad indeed. The sorts of cases it would apply to are obviously the terrorism cases that you see, the internet frauds that you see, the internet grooming of children in foreign countries by people here. An obvious example is Lockerbie in reverse; in other words, a person in this country plants a bomb on an aeroplane that then explodes over another country. You can imagine it being argued there. Phone threats—I have had a phone threat case—international banking, international commerce—all those areas.

I think it can be argued to be broader than that. Cases I have dealt with are where people have been found in foreign countries with large quantities of drugs—heroin, cocaine—inward bound. I think they would at

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least argue that the trial should take place here because clearly some of that activity must have taken place here—also, duress cases where the duress occurred here. So I think it could be quite broad.

Q367 Nicola Blackwood: Do you think that it is possible to establish that it is appropriate to have a jurisdiction within the UK? Do you think that judicial oversight is more appropriate than prosecutors deciding which jurisdiction is the best?

Judge Riddle: What I will say is that if Parliament decides that this is the legislation it wants, we will do our very best to implement it. There are clearly significant difficulties within our system. We are not used, as judges, to overriding a decision of a prosecutor. Prosecutors and judges are quite separate and there are advantages in that but, having said that, it is a matter for you.

Q368 Mr Winnick: We had figures given that go to July 2009. I should explain that that is for the UK-US arrangement that was agreed to. The figures we have between 1 January 2004 and 31 July 2009—when I do not believe you were involved—show that the requests from the United States for extradition from the UK amounted to 95 and requests the other way, the UK to the US, 42. There seems to be an imbalance. I wonder—without, of course, touching on legislation or individual cases—whether you are surprised at the fact that it is in no way equal. I am not suggesting that necessarily it should be equal, but there does seem to be, as I have said, an imbalance between the applications made by the United States to Britain and the other way round.

Judge Riddle: I am afraid I simply have no experience of the other way round—of us requesting people back from the United States.

Mr Winnick: I understand.

Judge Riddle: It won't necessarily originate in our court. Any magistrate in England and Wales, indeed any circuit judge, can originate those proceedings, so we don't necessarily see them.

Mr Winnick: No, but are you at all surprised that there is this sort of imbalance?

Judge Riddle: Nothing really surprises me.

Q369 Lorraine Fullbrook: Judge Riddle, I want to ask you a supplementary to an answer you gave earlier about the discretion that you don't have when you are dealing with these cases. I have many problems with both the US Extradition Treaty and the European Arrest Warrant and one of them is the issue of discretion. When you are dealing with these cases, in your personal opinion would it be better for you if you had discretion?

Judge Riddle: I really do not think that is a matter for me. I think it must be a matter for you, whether you give us discretion or not.

Lorraine Fullbrook: But I am asking in your work, when you are doing your work, if you had discretion, do you think it would be more just when you are dealing with these cases?

Judge Riddle: Would you like to spell out the sort of discretion you are considering?

Lorraine Fullbrook: Where somebody, for example, does not have their legal aid in place or we have a violent terrorist who has to be released because you are here, for example.

Judge Riddle: I beg your pardon, I misunderstood. Again, I raise it for you—and I raise it deliberately for you to think about. It must be a matter for you whether you think it is just that a potentially dangerous person should be released because we do not have that discretion.

Q370 Lorraine Fullbrook: Absolutely, thank you very much. Can I ask my real question now, please? Judge Riddle, the UK receives a very high volume of extradition requests from various countries. Is the volume of the requests made to the UK a problem for the court system?

Judge Riddle: Not now. I would be misleading you to say that it didn't cause problems at first before my time, because in 2003 we had 50 of these cases to deal with a year. It went up literally exponentially at first and very quickly reached 1,000. It has now plateaued at between 1,600 and 1,700, so we are talking about an enormous increase in volume in a short period of time. We have adapted. Certainly at the summary level we have increased our court capacity—we now have three courts dealing with this every day—and we have increased the number of judges dealing with it. I think other players in the system have responded magnificently as well. I compliment the Crown Prosecution Service, for example, which has worked very hard to increase its capacity on this. The independent bar has responded. I think we are now dealing with cases in a timely way.

The other point about it is that we always find—and I am sure you are aware of this—with new legislation there are points that come up that have to be resolved, and while they are resolved at the higher courts, they can cause problems for us.

Q371 Lorraine Fullbrook: If you had discretion, of course, that would be helpful to you.

Judge Riddle: Not necessarily.

Lorraine Fullbrook: Thank you.

Q372 Chair: Mrs Fullbrook is very keen to give you this discretion that you are not happy to take on.

Judge Riddle: I am just simply not commenting, Mr Chairman.

Chair: Of course, I understand.

Q373 Michael Ellis: Judge, I am struck by what you said earlier in your evidence. You said that—approximately, of course, I'm not holding you to exact figures—a quarter to a third of cases, in your view, which you deal with would not receive a sentence of more than six months imprisonment, or even a custodial sentence at all, if they were being dealt with in this country. Is it your considered view that there are significant difficulties, as far as the European Arrest Warrant is concerned, in terms of proportionality?

Judge Riddle: That is a very good question. To some extent we can take into account proportionality and balance it against article 8, rights to family life, and

that is an argument that is sometimes put before us. I think we also have to respect our European counterparts. We may or may not have a more lenient system of dealing with offenders than some countries do. As Mr Winnick referred to, we do have these tests. It has to be an offence that would carry at least a minimum sentence of 12 months or, if it has been sentenced, four months imposed. I would be uneasy, I think, about saying that other countries get it wrong and we necessarily get it right.

Q374 Michael Ellis: As far as the UK-US arrangements are concerned, it has been suggested to you that there is an imbalance but, of course, the population of the United States is very much larger than that of the United Kingdom, so that would necessarily reflect some figures, would it not? But do you feel that what you have said about proportionality would apply to the UK-US arrangements, or is it something you see far more often in the European Arrest Warrant scenario?

Judge Riddle: In my experience, part 2 cases—not just the United States but other than Europe—are almost always, as I say, cases that would be tried on indictment and therefore are almost always more serious. There are exceptions.

Q375 Nicola Blackwood: I wanted to follow up from your answers to Mrs Fullbrook in relation to your lack of discretion. Due to that, can you think of an example, in your experience, without going into specifics, when you have either had to order the extradition or order the discharge of an individual in a way that you felt was not in the interests of justice?

Judge Riddle: That is getting very close to an answer I should not give, I think.

Q376 Chair: Thank you. What you are telling this Committee today, Judge Riddle, is that you apply the law, you have no discretion, the law is very clear, as far as the extradition treaty with the United States is concerned. You check that it is technically correct, you don't test the evidence and unless there are the circumstances referred to by Nicola Blackwood, where the Home Secretary can intervene, the extradition request is granted. Is that right? There is very little wiggle room for you. You cannot use your discretion and you cannot test the evidence.

Judge Riddle: You certainly can't test the evidence. I can't use the discretion in certain technical areas. There are, of course, bars that are argued and, I suppose, some judges would decide one way and some judges would decide another way. Whether you call that discretion or not, I don't know.

Q377 Chair: Were you consulted or asked for your opinion by Sir Scott Baker when he conducted his review?

Judge Riddle: Yes.

Q378 Chair: You were? Did you give written or oral evidence to him?

Judge Riddle: I gave oral evidence in front of him. The judges at my court, not me personally, provided written information.

Q379 Chair: Presumably the evidence you gave was based on your experience rather than any personal opinions that you may have about the way in which the law operates. You have made it very clear to the Committee today that you don't have any personal opinions as far as your cases are concerned—that this is a matter for Parliament—or did you give him personal opinions?

Judge Riddle: I imagine the evidence will be published in due course and you will be able to form that judgment yourselves.

Q380 Chair: I think the Committee will want to know. If you have given evidence of your personal views to Sir Scott Baker on the way in which the legislation operates and the treaty operates, we will be surprised that you have not done so today. We understand the reasons why, but we will just be a little surprised that you should give it to him and not to us.

Judge Riddle: I see.

Q381 Lorraine Fullbrook: I would like to clarify an answer you gave to the Chairman's very first question. Just now the Chairman said to you that you can't test the evidence, but in your very first answer you said to me that you test the evidence on reasonable suspicion, the UK standard, and not, in the case of the US Extradition Treaty, on the US probable cause.

Judge Riddle: Yes. It is not technically evidence. Whether there is reasonable suspicion is an objective test, so we look at the information provided—

Lorraine Fullbrook: So you do test the evidence?

Judge Riddle: We look at the information provided and form a judgment, effectively, on two things. Is this evidence of an extradition offence? That is the first point, so you look at it from that point of view and look at that, I hope, fairly carefully. Secondly, is there reasonable suspicion sufficient for this man to be arrested? That is the test we would apply domestically in any case where we are asked for a warrant. To that extent you are looking objectively at it, but it is not objectively at the evidence. It is objectively at the grounds for the reasonable suspicion.

Chair: What Mrs Fullbrook is getting at is that you don't go to the substance of what is being alleged about somebody and test the evidence to that extent.

Judge Riddle: It is not part of the exercise to see whether they may or may not be guilty of the offence, if that is the thrust of the question.

Q382 Mr Winnick: That is not your function whatsoever, is it?

Judge Riddle: No.

Q383 Chair: You have dealt with a number of high profile cases, which we will not talk to you about today, but they are all in the public domain. We will be hearing evidence later from Mrs Tappin. Did you deal with the Christopher Tappin case?

Judge Riddle: No, I did not.

Q384 Chair: Judge Riddle, thank you very much for coming. We are most grateful, both to you and to the Lord Chief Justice for arranging for you to be here.

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Judge Riddle: Thank you very much, and we will look forward to the return visit. You are all very welcome.

Chair: Thank you very much.

Examination of Witness

Witness: **Sir Menzies Campbell, CBE QC MP,** gave evidence.

Q385 Chair: Sir Menzies, thank you very much for coming to give evidence to the Committee today. We are most grateful. On 27 November, in the Westminster Hall debate, I asked you a question. I said, “I understand that the Deputy Prime Minister, in his capacity as leader of the Liberal Democrats, has set up a party review under the chairmanship of yourself. Can you tell the House when the review is likely to report?” You replied, “As soon as possible”. Three months later, we are very keen to know where your review is.

Sir Menzies Campbell: Mr Chairman, thank you for the opportunity to address the Committee. As a former Minister yourself, you will know that the words “as soon as possible” are susceptible to a variety of meanings. I was going to make a very short statement setting out my involvement with these matters, and I will deal with the particular question you asked.

My particular involvement and interest and my present engagement with the issue arises out of the fact that Gary Mulgrew, of whom you will have heard, one of the NatWest Three, had a house in my constituency. He was not technically my constituent, but had a house in my constituency, and when proceedings began against him he sought my advice, firstly through members of his family, but later himself. On two occasions, in successive weeks, I raised the issue of extradition with Tony Blair at Prime Minister’s Questions. In particular, I was doing so at that time because the United Kingdom had signed the treaty, the domestic legislation necessary for its implementation had passed through the House of Commons, but at that point the Senate had still failed to ratify it. It seemed to me something of a paradox that we were binding ourselves with a treaty that was not being ratified—put through the necessary procedure—in the United States.

Q386 Chair: So you raised your concerns then?

Sir Menzies Campbell: Yes, indeed I did.

Q387 Chair: You are not late to the party. It was at that time you raised it?

Sir Menzies Campbell: Indeed. I remember a passage on Newsnight with the relevant Minister and the interviewer, who happily took my side, so it was two against one, rather unfairly perhaps.

The Senate’s reluctance was now generally accepted as being due to pressure from the Irish lobby that persons who might otherwise not be extradited back to Britain in response to allegations of terrorism might more easily be extradited. As you are well aware, in the United States system, the Irish lobby—indeed, lobbies of all kinds—sometimes exercises very considerable influence and power. What I sought to do in addressing the Prime Minister was to hold him

to the view that there was a different standard in application. I know you will want to deal with that in more detail in due course. As you know, the Fourth Amendment to the United States constitution provides that probable cause is required, while the United Kingdom relies on reasonable suspicion.

Rather interestingly, as I imagine you have all read Sir Scott Baker’s report, he quotes from a letter written by Baroness Scotland in her then capacity as Attorney, but of course she was previously a Home Office Minister, and she had the task of introducing the implementing legislation into the House of Lords. On that occasion she said, in terms, that the standards were different.

Q388 Chair: Yes. We are going to come and ask you questions about that. If I can start with the first question, you again said in this debate on 27 November, “I have the misfortune to disagree with the conclusions of the Baker report. I believe that probable cause is a requirement that has to be met before any United Kingdom citizen should be extradited to the United States”. Is that still your view? Do you believe the Baker report has got it wrong?

Sir Menzies Campbell: Indeed. I hesitate to take issue with such a distinguished judge—supported as he is or was, by such a wide variety of informed legal opinion—but I adhere to the view that I expressed to the Prime Minister and the view that I expressed in the debate to which you refer. To finish very quickly on the issue of areas in which I have a disagreement, I also disagree with the conclusion in relation to forum. In that respect, I agree with the conclusions of the Joint Committee on Human Rights, whose report I have no doubt you also have before you.

If I can make two last points. In some of the description, it is said that the distinction between probable cause and reasonable suspicion is a semantic one, as if the difference in language was so minor as not to constitute any significance. May I just make this point, and I suspect it is one, from your legal background, you will not find difficult to understand. It is a cardinal rule of interpretation that words should bear their ordinary meaning unless the context requires otherwise. In particular, I would say that that is a rule that is required to be enforced rigorously in relation to issues where the liberty of a subject is at stake.

Q389 Chair: Yes. We will be coming on to that. Mrs Fullbrook is going to ask you specifically about those words, but I am interested in your position as chairman of this review. Your leader, the Deputy Prime Minister, said about the treaty, in relation to Gary McKinnon’s case, “This treaty is wrong, and

Gary's extradition must be stopped". Those are very strong words. "The Government can change this; we can change this." Given that this is the view of the Deputy Prime Minister and the reason why you are before us today is that you are leading this extradition review for the Liberal Democrats, why is this not the case now? Why has nothing been done about this? Why is it still dragging on?

Sir Menzies Campbell: Let me first tell you what my mandate was, which was to prepare the Liberal Democrat position for the manifesto at the next general election.

Q390 Chair: So "shortly" meant three years?

Sir Menzies Campbell: As soon as possible, Mr Chairman. In your ministerial experience, as I have already said, you will know that. You would hardly have expected me to say I was going to take a long time. The reason is, of course, that the Home Secretary has yet to pronounce in response to Baker. Until she does so, then it is not clear what differences, in terms of legislation or policy, might be required in a manifesto for the next general election. As a consequence, I have continued to follow the matter on my own behalf, as evidenced by my presence here today, but I have not yet formally formed a commission. I have discussed it from time to time with Nick Clegg, and he has agreed that the approach I am presently adopting is the right one. I have tried informally to make it clear that I think it is time the Home Secretary did come to the House and explain what her response to Baker is going to be.

Q391 Chair: That is your view? I think the Government's review began 17 months ago. The Baker review has been with her for some time. There are cases that are currently in the public domain. The Tappin case, of course, is concluded to the extent that Mr Tappin has left the country, but Gary McKinnon is still in the United Kingdom. Do you not think it is absolutely vital, given what you have said and what the Deputy Prime Minister has said, that this review comes out as a matter of urgency because it affects so many other cases?

Sir Menzies Campbell: My review?

Chair: No, the Home Secretary's.

Sir Menzies Campbell: The Home Secretary's. Absolutely. A great deal, as I think, if I may say so, you rightly acknowledge in the way in which you frame your question, rests upon it. If you remember, in opposition both the now coalition partners agreed—in fact, I think it is in their manifestoes and, indeed, the coalition agreement—that there should be a review. I do not think anyone anticipated that it would take quite such a long time. I should also say, although I disagree with two of the issues determined by Sir Scott Baker, nonetheless his report is a very substantial piece of work. If you and the members of the Committee have had the opportunity, or indeed the obligation, to read it, then you will understand that there is a great deal in it. It is comprehensive. There are large parts of it, I think, which have to be accepted, not least the analysis of the law and the history.

Q392 Chair: But you disagree with the conclusions?

Sir Menzies Campbell: I disagree with two particular conclusions. First of all, that in relation to standard and, second, that in relation to forum.

Q393 Lorraine Fullbrook: Thank you. I am not quite sure what my question is going to be, because I agree with every word you say.

Sir Menzies Campbell: I am not quite sure what my answer is going to be.

Lorraine Fullbrook: My question was about the evidence required by the United States being probable cause, which I believe is a lower standard than reasonable suspicion, which is required by the United Kingdom.

Sir Menzies Campbell: I think you mean the opposite, do you not?

Lorraine Fullbrook: I am sorry. Yes, I do. You are absolutely right. I do not think there is reciprocity in the US Extradition Act. I also have an issue with discretion, where a judge is dealing with extradition cases, and I agree with you that the conclusions in the Baker report are incorrect. Like me, I would suspect that you would like to see the Extradition Act 2003 repealed?

Sir Menzies Campbell: I would like to hear what the Home Secretary has to say and what the Government's proposals, qua government, are in relation to this. Repeal of the Act, of course, would, prima facie, put us in breach of a treaty obligation, and that would be a very considerable step to take. As Sir Scott Baker indicates in a passage dealing with the report of the Joint Committee, that could have consequences for reputation and general relationships with the United States, but also, of course, with the willingness of the United States to respond to requests for extradition from the United Kingdom. That is a very considerable step, but it is one that, at the very least, will have to be in contemplation.

Q394 Lorraine Fullbrook: Do you think that we can rebuild the Act where it becomes a just Act, while maintaining our relationship with the United States?

Sir Menzies Campbell: I certainly hope so. One point perhaps I should have made a little earlier too is this: a lot of the comment that appears in newspapers and radio and television carries with it a kind of implication of anti-Americanism. I want to make it as clear as I can to the Committee, that part of my legal education was in an American law school and I have an abiding affection and respect for the United States and, while I may disagree with its views on law and perhaps even penal policy, nonetheless my interest in this is to put the position of the British citizen in a condition in which he or she is, to use your own words, in a position of reciprocity.

Q395 Nicola Blackwood: You have already stated that you disagree with Sir Scott Baker's conclusions about the forum bar. Can you explain why you disagree with his conclusion that an introduction of a forum bar would lengthen extradition proceedings in the way that he has concluded?

Sir Menzies Campbell: I do not believe that to be so. One of the issues that runs through this report, an

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underlying theme, is the need to have efficient extradition, not to waste time and not to waste money. All of us sitting round the table would heartily agree with these principles, but that has to be balanced against the rights of individual citizens. If the process takes a little longer for the protection of a British citizen so that a principle can be applied, then that is sometimes a cost that we have to bear.

Q396 Nicola Blackwood: In your research so far, do you believe that there is evidence that it would take longer to make this case, or do you think that the case for the forum bar could be made alongside other extradition applications—therefore it would just be made alongside?

Sir Menzies Campbell: I think there is an expressed anxiety that it might lead to supplementary litigation, not subordinate but supplementary. I think that can all be dealt with, frankly, since we have been talking about a reformed statute or an amended statute. If that is couched in appropriate terms, I do not see any reason why that issue could not be considered in the same way as all the other issues that arise routinely in relation to an extradition application.

Q397 Nicola Blackwood: Do you believe it is possible, as Scott Baker does, that leaving prosecutors to properly negotiate forum under current guidelines will have the confidence of the public in deciding these issues?

Sir Menzies Campbell: If I may say so, that is very profound question. What is ignored often, although there is a passing reference to it in Scott Baker, is the willingness of the United States to take extraterritorial jurisdiction. Scott Baker indicates, very properly, that in the age of globalisation, of electronic communication, it is not impossible to commit an act in one country that has consequences in another. But it has to be remembered, first of all, that there is no single American legal system. There is a federal system, and then there are systems for all of the other states, and they vary. Indeed, you can't practice in one state if you only have the bar qualifications of another state.

Q398 Nicola Blackwood: This issue is not just about the United States, of course. This is about extradition to any state.

Sir Menzies Campbell: Yes, but the extraterritorial jurisdiction point, in my view, has to be taken into account. If you have a jurisdiction that is willing—the joke used to be, in my American law school, if you had ever flown over New York State in an aircraft, they would take jurisdiction over you in a civil claim—a joke, but nonetheless there are some states that are very much more active in jurisdiction. For example, the offshore betting which is located in Gibraltar, as I understand it, has been the object of efforts by, I think, New York State, to take jurisdiction over it in circumstances where you might think that there was a very strong argument against that.

Q399 Nicola Blackwood: Do you believe that the forum bar in schedule 13 of the Police and Justice Act should be commenced, or do you believe that it is

necessary to rewrite that in order to bring in an effective forum requirement?

Sir Menzies Campbell: First of all, the House of Lords passed the legislation. Second, when it came back to this House, what was inserted was a sunset clause. No effort was made by the then Government to disagree with the Lords in their conclusions and it, of course, now carries the endorsement of the Joint Committee.

Chair: If you could answer, specifically, Nicola Blackwood's question. Should it be implemented now?

Sir Menzies Campbell: Yes.

Q400 Nicola Blackwood: Should it be that specific form of words, or do we need some amended version?

Sir Menzies Campbell: I would follow the recommendation of the Joint Committee.

Q401 Mr Winnick: First of all, can I put to you in the most friendly way, as political opponents nevertheless, that you are carrying out a review, or will be carrying out a review, at the request of your party leader, but time and time again during the Opposition days when Labour was in office, your party, even more than the Conservatives, was highly critical of this treaty. This Government has been in office now for nearly two years; no change whatsoever. Why?

Sir Menzies Campbell: Because of Sir Scott Baker. Not surprisingly, it took him and his colleagues quite a long time to write the report. I have already indicated that this is a report—I am sure you have read it—that goes into great detail. It gives history, context and alternatives, and it is a complicated issue. But I would not have thought it was so complicated, and here this is a criticism, I suppose, implied or even expressed. I am critical of the fact that the Home Office has not yet been able to issue a view. The Home Office is very busy, of course, as we know, for a whole variety of reasons, but this is an issue that, as I think the Chairman pointed out, comes up, not quite on a daily basis but on a regular, even frequent, basis, and therefore the sooner we get some kind of response to this report the better.

Q402 Mr Winnick: Yes, but one would have thought that when such strenuous opposition was being expressed by the Liberal Democrats in opposition, there would be recognition, regardless of the Scott Baker Review, that extradition had all kinds of complications and the rest. But if I may say so, it came down to the view that the treaty signed between the United States and ourselves was unfair to British nationals, and no indication was then given that this would be so complex an issue that it would have to be put in abeyance for quite a few years if there was a different Government for your party's participation.

Sir Menzies Campbell: At Prime Minister's Questions you do not get a lot of time to say how difficult and complicated an issue is. I am sure the Chairman was present throughout the debate in Westminster Hall. I was able to be present then but not in the Commons because I was abroad on parliamentary business. If you would read the Hansard of these two debates,

there is a great deal of detail there. There was a great deal of understanding and grasping of the detail by those who spoke. If yours, Mr Winnick, is a plea for speed, then let me put my shoulder behind the wheel on your behalf.

Q403 Mr Winnick: I suppose it would be very much a plea by those who consider themselves to be victims of the Act.

Sir Menzies Campbell: I understand that too.

Q404 Mr Winnick: Yes. I understand, perhaps I am wrong, that you are rather critical of what could be described as the aggressive tactics by some US prosecutors.

Sir Menzies Campbell: That point I raised about extraterritorial jurisdiction. But it has a second dimension, and here, if I may, I might recommend—

Chair: If you could do so briefly, Sir Menzies, because we have three other witnesses.

Sir Menzies Campbell: Very good. I shall be as quick as I can. I recommend a little light reading in the shape of Gary Mulgrew's book entitled *Gang of One*, which is an account of his experience, particularly in the prison to which he was sent, but also the circumstances that led up to him pleading guilty. I am not being critical. This is an observation; it is a fact. The system in the United States, in many states, encourages plea bargaining to a greater extent than we do in this country. It is often genuinely bargaining, three-cornered, judge, prosecution and defence. In this particular case, the NatWest Three, the potential period of imprisonment was something like 35 or 40 years. Mr Mulgrew, as he tells you in his book, was under some internal family pressures, and the idea that he might be absent for as long as that was one that he found very difficult to contemplate. In addition, he was not entitled to legal aid. We complain about legal aid in this country. There is not much legal aid around in many states in the United States. He was in the position then of having to meet very substantial financial obligations to those who were responsible for his defence. Taken together, he took the view that 37 months, which was offered to him, was the best deal available. As happened, he served part of it in the United States but the remainder in the United Kingdom.

Looked at in the round, you can understand why he did that. Why was it necessary for him to do that? He would argue that it was because of—I do not want to be too emotive about this—the overcharging, as he perceived it.

Q405 Mr Winnick: The procedure then, particularly in white collar crime cases in the United States, is that the prosecutors in the main are not willing to enter into any sort of deal until the person is willing to plead guilty, otherwise they will be put before the jury, who would probably pass a very heavy sentence.

Sir Menzies Campbell: I think there are a lot of usual channels, if I can borrow a phrase from this building. Just one other point about this. This was in the

aftermath of Enron and, if you remember, those who were convicted in the United States of criminal offences arising out of Enron, or even of the Ponzi scheme, got very substantial sentences indeed. That was a reflection of the view of the judiciary and the prosecution in the appropriate states of the United States legal system. Mr Mulgrew and others, Mr Bermingham and his other colleague, were caught in the backwash of that.

Q406 Michael Ellis: Sir Menzies, other countries have extradition arrangements with the United Kingdom and many of those other countries, it at least could be argued, do not have anything like the safeguards built into the United States system by way of their constitution and lesser laws. Do you feel that you are falling into a politician's trap of focusing on America because of the high profile of certain cases, and that many other far more egregious cases fall by the wayside because they are not quite so in the public eye?

Sir Menzies Campbell: I apprehend that you are referring by implication to the consequences of the European Arrest Warrant, and that is something on which I have not been instructed or mandated or requested. But it does occur to me that in the fulfilment of my responsibility, as set out by my party leader, some consideration will have to be given to that. You will be familiar, I have no doubt, with part 1 of the Act. These are the members of the European Union who we automatically accept as being, if you like, reasonable. But of course both part 1 and part 2 of the Act contain provisions allowing the issue of human rights to be raised as a bar to extradition.

Q407 Michael Ellis: I take that on board, Sir Menzies, but with respect to other countries as well that are not part of the European arrest system, or the United States, you have referred to over-aggressive American prosecutors and their plea bargaining.

Sir Menzies Campbell: I do not think I quite put it in those terms. If I may respectfully say so, I draw upon the fact that part of my legal education was in an American law school. I stated as a fact that extraterritorial jurisdiction and plea bargaining are essential components, in some states, of the American system.

Q408 Michael Ellis: The British, or more accurately I should say the English, legal system also allows extraterritorial jurisdiction in certain cases. Would you not agree that in the world in which we live, with computer technology, telephone threats and cybercrime, there is some rationale behind extraterritoriality in these areas?

Sir Menzies Campbell: I said that. I said that a moment or two ago.

Q409 Michael Ellis: Yes. Would you also accept that our system also encourages plea bargaining, and that there can be a reduction of anything up to one-third off sentences in this country for a guilty plea? Is that not correct?

Sir Menzies Campbell: Yes, but it is a question of degree, and I just ask you to put yourself in the

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position of a 65-year-old man who finds himself before an American court in relation to a charge of some kind. How should he react if there is the prospect of getting a sentence that might allow him to return home, or how should he react if the prospect of pleading not guilty, however strongly he feels that, might result in him getting a sentence that would never allow him to return home?

Q410 Michael Ellis: You referred to Lord Justice Scott Baker's report. He took a year to compile it, together with others on his panel who had experience of both prosecuting and defending, for want of a better way of putting it. It is nearly 1,000 pages long, it is a seminal work, but you choose to ignore the findings of that report, and you consider there to be an imbalance between the UK and the US. Can you cite any case law examples of this imbalance? Sir Scott Baker could not find any.

Chair: Rather than go through the whole report again, if you could be very brief.

Sir Menzies Campbell: No, I am not going to. I will answer the question. My duty as a Member of Parliament is to scrutinise the Government and to protect the interests of British citizens. That is my motive. It is not an anti-American motive, as I have been at some lengths to try to explain. If I may answer your question in a possibly flippant way, but I hope—

Chair: Unfortunately, witnesses can't ask members of the Committee questions, but you can make a statement.

Sir Menzies Campbell: If I may answer the question. Lawyers get well paid for being wrong half the time. If you take the recent case of Abu Qatada, the Court of Appeal reached a particular view. What happened when it went to the Supreme Court? The Supreme Court reached the opposite view. We have a system in which people are obliged, as I feel obliged as a Member of Parliament, to make a judgment. I made that judgment in relation to this particular case. I continue to adhere to it. I do not say it is a better judgment. I am not setting myself up as an alternative to Sir Scott Baker.

Q411 Michael Ellis: Is it not the case, though, that it is perfectly reasonable to ask for evidence. This is not a court case, this is a report that the Government have commissioned and paid for and waited a year for, and it is a detailed work. Is it not right, if one is going to castigate that report or disagree with it, to at least ask for evidence as to why one might have come to a different conclusion, in the face of that report?

Chair: Sir Menzies, we have to move on. If you could answer Mr Ellis, just in a sentence, I would be grateful.

Sir Menzies Campbell: It will not be a complete answer, but my answer lies in the way in which the Home Office Minister, Baroness Scotland, introduced this legislation into the House of Lords, when she acknowledged that differing standards were being applied.

Q412 Alun Michael: Sir Menzies, you are a distinguished lawyer as well as a distinguished parliamentarian.

Sir Menzies Campbell: Well, that is—

Alun Michael: No, that does not brook any argument. You have looked at this in detail; you have a sense of urgency about it; you want the Home Secretary to get on with producing her conclusions; you have a mandate from your own party leader to undertake a review. I am a bit puzzled as to why you do not produce your conclusions and recommendations, perhaps in the hope that those would help the Home Secretary to what you would see as the right conclusion?

Sir Menzies Campbell: I made my position clear to the Home Secretary, both in writing and in oral questions in the House of Commons. I don't think the Home Secretary is in any doubt about the view that I take.

Q413 Alun Michael: You are still not producing your recommendations as the result of the review you are undertaking?

Sir Menzies Campbell: I live in hope that the Home Secretary will accept my views, and if she does—

Q414 Alun Michael: You are an optimist and she is not a distinguished lawyer in the way that you are.

Sir Menzies Campbell: I am not going to be party to any criticism of the distinction of the Home Secretary, Mr Michael. That would be very ungallant.

Chair: Mr Michael, Sir Menzies has said in his evidence that he hopes to have his review ready for the next election.

Q415 Nicola Blackwood: I want to clarify one point in the answer that you gave to Mr Ellis. Is it accurate that the leader of your party—the parameters of the review that you are doing were solely to consider the UK-US Extradition Treaty and not the wider issues of extradition?

Sir Menzies Campbell: Yes, exactly, and not the EAW. But as I think I said in response to a question, it seems to me likely that once I begin that review then questions in relation to the European Arrest Warrant will arise, so I shall go back and seek a fresh mandate.

Q416 Nicola Blackwood: So you are now planning to widen the review?

Sir Menzies Campbell: I am not planning, but I think it is likely.

Chair: Sir Menzies, thank you very much for coming before the Committee today and for giving us your evidence. If there is anything further that you need to add to what you have said—as I have said, we are about to conclude this inquiry today—please do write to us and we will include it. I am most grateful. Thank you very much.

 28 February 2012 Elaine Tappin and Neil Tappin

Examination of Witnesses

Witnesses: **Elaine Tappin**, wife of Christopher Tappin (British citizen currently subject of extradition proceedings), and **Neil Tappin**, son of Christopher Tappin, gave evidence.

Q417 Chair: Mrs Tappin and Mr Tappin, thank you very much for coming to give evidence today. I wrote to your husband last week inviting him to come before the Committee today on our last session to give evidence to the Committee about his case. As you know, this is an inquiry into extradition, and we have taken evidence from a number of other people who have been the subject of extradition to the United States. For the reasons that are in the public domain, he has not been able to come to give evidence. I invited you to come today to speak after you contacted my office. Would you like to make a statement?

Elaine Tappin: Thank you. Twenty months ago my husband, Christopher Tappin, was a retired businessman living happily in Orpington, Kent. Chris had retired from running a successful shipping and forwarding company, and was thoroughly enjoying his new role of president of the Kent County Golf Union and doting grandfather. Then at 6 am one morning in May 2010 we were awoken by ringing on the doorbell. Peeking through the curtains, I saw two men standing in the driveway. They looked up and showed me their warrant cards. Heart pounding, I ran downstairs, opened the door, and one asked to speak to Christopher Tappin. Chris had to accompany them to the police station. We were dumbfounded. My daughter and I spent all day worrying, until we were later told by a solicitor that Chris had been arrested and he would be spending the night in Wandsworth Prison. We were both beyond shocked.

Soon after, Chris learned the US had indicted him back in 2007. In the intervening three years, he was being spoken and written about in court papers as a fugitive, yet we had never known of the existence of any indictment against him. For the next few months, we lived in limbo. To the outside world nothing had changed. Behind closed doors, however, we kept going over and over what could possibly have happened. If Chris had been indicted in 2007, why had we not heard about it before? What did the US think he had done?

Chris spent months with his legal team. The Magistrates' Court first heard his case in September 2010 and adjourned it to December. We never once thought that this preposterous allegation could be upheld by the British courts. We were convinced that once the courts had heard Chris' explanation, they would clear up the mess and reject the extradition request, but in January 2011 the magistrate agreed to Chris' extradition. Chris' conduct was not a concern for the UK court; the magistrate simply rubberstamped the extradition. We were dumbfounded. We then thought that once the Home Office reviewed the request, Theresa May would stop the nonsense and we would resume our lives much as before. But, no, she simply upheld the magistrate's decision. It was another dreadful setback.

In December 2011, Chris' appeal was finally heard in the Royal Courts of Justice. I listened to the proceedings and Lord Justice Hooper repeatedly said,

"We're not talking innocence or guilt here". I couldn't then, and still can't now, understand why not. Shouldn't it be a basic requirement that a proper case be made out against Chris in a UK court before subjecting him to a total disruption of his life and freedom? Isn't that the cornerstone of British justice? Chris was stunned and totally devastated when his appeal was rejected. It was the cruellest blow. The ECHR also refused to stop his extradition. I cannot begin to describe the utter desolation that we both felt. Up to then we had always steadfastly believed that the UK justice system would prevent this dreadful extradition, but it was not to be. In the end, we had nine days' notice. We stared into a wholly uncertain future for us both. How did we feel? Incredulity, frustration, heartrending sadness, despair and utter disbelief. Chris soldiered on trying to sort out the necessary practical chores, powers of attorney, selling his car, our house etc., while saying farewell to his many friends and colleagues, not knowing when or if he would see them again. Early morning on—

Q418 Chair: Mrs Tappin, the Committee have the rest of your statement in writing, which deals with what happened after Friday of this week. We are most grateful to you for telling us what has happened prior to Friday, and we know these must be very difficult times for you.

As you know—you followed some of the proceedings this morning—we are dealing with process; not the substance of the case but the process. You heard us take evidence from a judge, and indeed from others, and we are going to hear now from the DPP and the Attorney-General. This is our last hearing of this inquiry. As someone who is a member of the family of one of the people who has been extradited, can you sum up the process for you? Do you think that you know enough about the extradition process as to why your husband was extradited? Is he now clear what offence he has committed or is he waiting to be told that in the United States?

Elaine Tappin: He is clear, I think, on the offence that he is charged with, not that he has committed, and as far as the extradition process is concerned, it is not until you are placed in this terrible position of not being allowed to put forward your defence that you begin to understand that the British courts will not listen to you.

Q419 Chair: In your statement you quoted Lord Justice Hooper saying this was not about innocence or guilt, and clearly your husband believes that he is innocent of any of the offences that are against him.

Elaine Tappin: Absolutely.

Q420 Chair: Do you take that to mean that, when this kind of matter goes before the courts, the courts in this country are not considering the issue of innocence and guilt?

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Elaine Tappin: Yes, absolutely. They are only looking at whether he should be extradited in terms of the treaty and not at the evidence of the case.

Q421 Chair: Do you think they ought to? Do you think this is something that ought to be considered by our courts rather than him returning to the United States and being considered there?

Elaine Tappin: I am sorry—firstly, can I just correct you. It is not that he is returning to the United States. The last time he was in the United States was about 12 years ago when we were on a golfing holiday.

Q422 Chair: So he has never done business in the United States?

Elaine Tappin: No.

Chair: I see.

Elaine Tappin: I am sorry, I have forgotten what the—

Q423 Chair: I wanted to know, in view of what you said about guilt and innocence not being an issue for the Court of Appeal, whether you think that this is something that ought to be considered by our courts before somebody goes to the United States?

Elaine Tappin: Yes, it must be. I just thought it was our right as British citizens. Before you are just picked up out of your life and flown off to a foreign country on their say so, you must surely be given the right to put your side of the case, you must surely be given the right to be listened to by the English judiciary.

Q424 Chair: Did your lawyers contact either the DPP or anyone else in this country about this case? Of course, this is a matter for the CPS and the American authorities under the treaty. Were any representations made to them?

Elaine Tappin: I don't think so, but I can't speak—I don't really know, but I don't think so. I never heard that being discussed.

Q425 Chair: Finally, from me, you mentioned the fact that it was three years from the indictment, I think in your statement. The indictment was in 2007.

Elaine Tappin: Yes.

Q426 Chair: Why do you think it took so long for him to be informed of what was going on?

Elaine Tappin: We are completely baffled. Why should it take three years? I just don't know. The other two people who were charged in this case were charged in 2007. Why should it take another three years?

Neil Tappin: Can I just make a quick point? Sir Menzies Campbell sort of alluded to this a little bit in what he said, but since Dad left on Friday we have not spoken to him. We heard last night from the British Consulate that he has been allowed one hour a day outside of his cell, and he has had his reading material

taken away from him. As far as we know, I think the Department of Justice is going to oppose bail, based on the fact that he is a flight risk. Considering the fact that he got himself to Heathrow Airport on Friday morning, it seems quite bizarre that they should do that and we just wonder why. It feels as if there is a bit of pressure there.

Q427 Chair: What kind of pressure?

Neil Tappin: It is hard to describe. They are saying in some of the press over in the US that he asked for solitary confinement. He is certainly in a cell on his own, we know that much—taking all of his reading material away from him, so that all he is there with is himself and his thoughts, not able to get outside of his cell. Would that happen in this country? A rhetorical question.

Chair: Thank you. We just have a couple of questions because we have the Attorney coming in.

Q428 Mr Winnick: Mrs Tappin, you made the point that the guilt or innocence of your husband was not examined by the judges here. It is not for me to justify the position, but of course the judges would say they were restricted by the treaty that we are looking into, the UK-US Treaty. Having said that, presumably you contacted your Member of Parliament over the issue and the Member of Parliament, as one would expect, took it up with the Home Secretary. Is that the position, that the Member of Parliament in your—

Elaine Tappin: Yes. Jo Johnson is the Member of Parliament for Orpington. He told us that he had kept a close eye on the case throughout. However, when my husband asked to speak to him in his surgery he would not see him. He said it was sub judice. Then he did ask a question at Prime Minister's Question Time last week, but that is all.

Q429 Mr Winnick: Leaving aside the Member of Parliament, who I am sure would defend what he did and we don't sit in judgment on parliamentary colleagues, did you write to the Home Secretary or try to have an interview with her?

Elaine Tappin: Did we?

Mr Winnick: Yes.

Elaine Tappin: Not personally, no. We left that to our legal team.

Q430 Mr Winnick: Yes, who presumably tried to do so—tried to get the Home Secretary to intervene to stop your husband being extradited.

Elaine Tappin: I would have thought that if that were an avenue for them to explore, they would have explored that, yes.

Chair: Mrs Tappin, Mr Tappin, thank you very much. That is very helpful. It will very much aid our inquiry into these very important matters. You are welcome to stay to hear the Attorney-General giving his evidence. Thank you very much.

28 February 2012 Dominic Grieve QC, MP and Keir Starmer QC

Examination of Witnesses

Witnesses: **Dominic Grieve, QC MP**, Attorney General, and **Keir Starmer, QC**, Director of Public Prosecutions, gave evidence.

Q431 Chair: Mr Starmer, thank you very much for coming to give evidence today.

Keir Starmer: Not at all.

Chair: I should say, welcome back. Attorney, thank you very much for coming to give evidence to the Committee. This is the very last session of the Committee's inquiry into extradition, and you and the Director of Public Prosecutions are our last witnesses. So we have saved the best until last.

Your views on current extradition laws are very clear—they are crystal clear. On 7 October 2009 you said this: "Our extradition laws are a mess. They're one-sided. A Tory Government will re-write them". You presumably remember saying that.

Dominic Grieve: I do.

Q432 Chair: Do you still believe that to be the case, or has something changed?

Dominic Grieve: I certainly don't think that they are in the condition in which I would think ideally I would wish them to be. Perhaps I might put it this way. I think that if on a personal basis—I think I speak for my colleagues—I were being asked to start from somewhere, I am not sure I would have started from the 2003 Act. But we have the 2003 Act and we have international treaty obligations to a large number of countries—I think 44¹—that flow from it, both from the European Arrest Warrant and under part 2 states, which derive directly from it. So I am sure that the Committee can appreciate, without very much more thinking, how complex an issue that is inevitably going to be. Granted you will also be aware, if you look at my remarks at the time, that I made absolutely clear that the principle of extradition is a very important one in a world where we wish to see crime successfully combated. Having a system by which we facilitate transfer to countries that meet the necessary criteria of fairness, so as to curb crime, is absolutely indispensable as well.

Q433 Chair: Indeed. I think nobody on the Committee disagrees that we should have extradition laws, but I think what you were saying in 2009 is what kind of laws. In 2009, you said, "The European Arrest Warrant was introduced to fast track extradition of terrorist suspects, but has been expanded well beyond that. It allows British citizens to be whisked away to face trial for things that are not criminal in this country, on limited evidence, and in countries with lower standards of justice". So, both in relation to the European Arrest Warrant, and the treaty, you obviously have enormous concerns.

Dominic Grieve: With the European Arrest Warrant, as you will be aware, there are 32 listed offences—if I remember correctly—in which dual criminality is not

involved. Again, there are policy issues, and I think I should emphasise that I am here as the Attorney-General, so my role is to advise legal advice to Government. Policy making in this area is a matter for the Home Secretary, as you will appreciate, not for me, and also for the Government collectively. So my personal viewpoint, whatever personal viewpoint I may have, should not be interpreted as how Government policy need necessarily be informed. Like all good policy, it has to be informed by the coming together of the different views of its constituent members.

Q434 Chair: Of course. But you are a very distinguished lawyer in your own right, before you became the Attorney, and you described the current treaty as being one-sided. So if it is one-sided and it is currently in existence, then it must be made more evenly balanced, surely?

Dominic Grieve: Which treaty are we talking about? Sorry, just to be clear what we are talking about, because—

Chair: We are talking about the UK-US Treaty.

Dominic Grieve: I think, if I remember rightly, I may have commented in the Chamber, I may also have done in the media at various times, because I was both Shadow Attorney-General and I was at one stage for a short time Shadow Home Secretary, and—

Q435 Chair: Just to explain, that was your speech to the Conservative Party Conference?

Dominic Grieve: Yes. I am just remembering and locating where we are in the scheme of things. You will recall that part of the problem with the UK-US Extradition Treaty was that it was implemented unilaterally by the United Kingdom at a time when, in fact, there was no reciprocity because it had not been ratified in the US. I think it is probably right to say that it got that treaty off to rather a bad start. There are other problems in relation to the treaty, and I think they are rather highlighted by recent events. There is a lack of public confidence in the US criminal justice system, which is a rather wider issue and more complicated than the minutiae of the treaty agreement. That said, I should make the position quite clear. There have been so far no successful challenges invoking the European Convention on Human Rights in respect of somebody being extradited to the United States, but I think one only has to look at the public response to the cases, which of course may differ. If they think somebody is a terrorist, they may think it is a very good thing that they should be going to the United States. But, as I have said before on a number of occasions, including to the US Ambassador, there are perceptions in this country that the US criminal justice system can be harsh and its penal policy can be harsh, and its sentencing policy can appear disproportionate by European and British standards. There are aspects of it, therefore, which tend to make

¹ The witness later clarified this figure relates to those territories that are not required to provide a prima facie case for extradition cases, as covered by part 1 of the 2003 Act. The UK actually has extradition agreements with over a 100 territories, details of which are on the Home Office website.

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people uncertain and uneasy, and I am not sure that that is readily curable.

Q436 Chair: You are not on your own in your view about the unbalanced nature of the treaty. Your predecessor, Baroness Scotland, at the time the treaty was going through the House—this has been alluded to by Sir Menzies and other witnesses today—also mentioned the fact that it was not balanced, as did the Home Secretary who negotiated the treaty, who gave evidence to us over a year and a half ago, David Blunkett. So you are not alone. Indeed, the Prime Minister said this, “It should still mean something to be a British citizen with the full protection of the British Parliament”. What puzzles me is that the Attorney-General, the previous Attorney-General, the Home Secretary who negotiated the treaty, the Prime Minister and the Deputy Prime Minister all think that this treaty is unfair, but it is still there and British citizens are being extradited under it. This is what puzzles me and some members of the Committee.

Dominic Grieve: As I think I said at the beginning, this treaty obligation was entered into by the last Labour Government and it was ratified by Parliament at the time. It is an existing fact, and existing facts are matters that have to be taken into consideration when one is assessing what one can do with it.

Q437 Chair: Is it right that British citizens should be extradited, even though it is an existing fact on the law that the current Attorney-General believes is one-sided? This is what I find very odd.

Dominic Grieve: I think we need to be a little bit careful on the one-sidedness. This is why I came back to the point I made. If you look at what I have said, I have often said very clearly that we should not be critical of the United States in this matter. We came to a treaty agreement with the United States. In doing that, we removed some of the previous inhibitions to extradition and we also effectively removed the Executive from this process, although not quite entirely, and perhaps just left the Executive in sufficiently to give the Executive a difficult time, but without the Executive necessarily being able to do a great deal about it. There are then suggestions that changes might be made that could remedy the matter, and I keep on listening to the proposals that come forward. But underlying this, as I say, I think there are some fundamental problems that are not very easy to address. We do have to balance—and I do accept this—the real public desirability of extradition and bringing people to justice with the other things that you have just mentioned. I don’t think it is a simple question to answer. As you posed the question why isn’t something being done about it, I shall look forward with interest to reading what your Committee has to say on this subject, but I think I would describe it as one of the more difficult questions that the Government have to look at.

Q438 Chair: But are you also waiting to read very carefully what the Home Secretary says about this? We are all waiting for her too, and we have been waiting for 17 months, as Sir Menzies has said.

Dominic Grieve: The Home Secretary, as you know, firstly, and I would suggest very sensibly, went to get some independent advice and that independent advice has been secured. Having got that independent advice, she is now having to consider it and talk and discuss and think through what the options might be to try to address the matter. It is noteworthy that, approached from the point of view of the review carried out, the review considered that, while some changes might be desirable, it did not think that the way the treaty and the extradition arrangements were operating was in any way wrong.

Q439 Lorraine Fullbrook: Attorney-General, when the previous Government signed this treaty unilaterally and when David Blunkett gave evidence to this Committee in November 2010, I asked him if he thought it was right that, when signing this treaty he was giving more rights to American citizens and taking away rights from British citizens because there wasn’t reciprocity in the US Extradition Treaty, to which he gave me—well, basically, he did not answer the question. What is your view?

Dominic Grieve: I think we have to be careful on the reciprocity front. Of course, when we first unilaterally applied the treaty for the benefit of the United States, the United States was not applying it for our benefit, which was an extraordinary state of affairs and led to a major debate, as I seem to recall, in Parliament in 2006, when real anger was expressed at the way in which we were proceeding, because it seems to me that reciprocity is absolutely fundamental. Then there has been the issue as to whether the evidential test on which extradition would take place does not amount to true balance and reciprocity. There I do think that one has to be a little bit careful. At one time, we had to show probable cause in the United States and the United States had to show a prima facie case here. Arguably, I suppose, the United States could argue that the balance was in our favour, in the sense that there were more safeguards for United Kingdom nationals than there were for nationals in the US, or people who were being extradited from the US.

Q440 Lorraine Fullbrook: But that changed though?

Dominic Grieve: Yes, it did change, but then we get to a rather complicated argument, to which I have to accept there is not an easy answer, which is what the differences in reality are between a prima facie case, a probable cause and reasonable suspicion. This can start to become quite arcane. I am informed by the CPS—something that the DPP will be able to confirm—that in reality the United States is consistently supplying material on which to found extraditions well over and above the reasonable suspicion test. In fact, I suspect it is probably the old probable cause test because that is what they have to do in their own jurisdiction. On that basis, while there is always an inherently unsatisfactory feeling if you have two different tests to be applied in two different jurisdictions, I think we have to be a little bit careful about suddenly concluding that if that were to be changed, for example, it would lead to some

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dramatically different outcomes, because I am not sure it would.

Q441 Mr Winnick: Attorney, would you be at all surprised by how so many people in Britain were surprised and shocked at the way in which Mr Tappin was treated, arising from the interview he gave on television; that a British citizen could be treated in this way with no indictment against him in Britain but facing what is described as justice in the United States?

Dominic Grieve: Clearly, any circumstances in which a person of Mr Tappin's age is going to be extradited to a foreign country, a very long way from home, separated from his family, to be involved in the criminal justice system with an uncertain outcome from his point of view—I can't comment beyond that on the merits of the case—is going to be stressful and distressing. It applies to anybody, in fact, who is taken through any criminal justice system anywhere.

Did Mr Tappin have the safeguards of the law and was his case given very full scrutiny and consideration, as opposed to just in some way being rubberstamped on a US request and his being extradited? I think the evidence suggests that there was rather considerable scrutiny. But the interesting point—and I suppose it takes me back to where I started—is that, notwithstanding that scrutiny, one only has to look at the coverage in newspapers—I don't know what the public more broadly may feel—to see that the circumstances cause disquiet. It may be linked to Mr Tappin's respectability, the fact that, as far as I am aware, he is not a person who has been in any sort of trouble before, and his age, in contrast, for example, to an individual who may attract public opprobrium and be seen in one way or another as rather undesirable.

Applying my mind as a lawyer to these things, I tend to have to put in some rigour to my approach to these matters. I have nothing to suggest to me that Mr Tappin did not have a full judicial scrutiny of the issues that he wished to raise, including the protection that he might derive from the European Convention on Human Rights, in respect of reasonableness, proportionality, all of which, of course, go to the heart of some of the arguments that he has been putting forward.

Q442 Mr Winnick: But the scrutiny—this is a very important point, and Mrs Tappin gave evidence to us a few minutes ago—according to the treaty, is not really the subject of controversy. Within the treaty process, correct procedures were undertaken. The point at issue, Attorney, and one that obviously the family, and indeed, if I may say so, many people in this country, are concerned about is that the guilt or innocence of the person was certainly not examined in this country because under the treaty there was no way it could be done. So the shock is that a person of his age and circumstances, and all the rest of it, is being sent abroad without the courts here coming to the conclusion that he was guilty of the offences as is alleged.

Chair: Attorney, before you answer, you were not here when Mrs Tappin gave evidence; you were in

Cabinet. She told the Committee that when this matter went to the Court of Appeal Lord Justice Hooper specifically said time and again this was not about guilt or innocence. That is what Mr Winnick is referring to.

Dominic Grieve: Lord Justice Hooper, if I may say so, is absolutely correct. The circumstances on which extradition is grounded, even under the old systems that we had, was making a prima facie case. That is the basis on which you used to get committed to the Crown Court for trial. It doesn't determine your guilt or innocence; it doesn't take into account your own representations on the facts. In fairness, in this country, as far as I am aware, there has never been a time when extradition has been founded on a review of the likelihood of guilt or innocence in this country first, provided that a prima facie case under the old rules could be established. So, Mrs Tappin is correct, but that has never been the basis of extradition. The basis of extradition is that there is a prima facie case, or probable cause, or at least a case made out, which is deemed to be satisfactory and, under the protection of the European Convention on Human Rights, there is a satisfaction that the trial system of the country to which the person is being extradited and the other circumstances, including the risk of the death penalty and other matters, are such that their human rights will not be infringed.

Q443 Mr Winnick: As the Chair has quoted, you and other Conservative spokespersons in opposition were so critical of the treaty, saying in effect that it was unfair, a view that I happen to agree with, although it was undertaken by my Government, which is not in dispute. Time and again your party in opposition criticised the treaty and said it was unfair and unjust to British citizens. Now, nearly two years into government, the treaty remains exactly as it was. Why?

Dominic Grieve: Firstly, because it would be a policy decision for Government, but the treaty being in operation, I assume that if we wished to depart from the treaty we would either have to renegotiate it or denounce it. Those are obviously policy considerations for Government that have to be weighed also against the Government's stated view that it is desirable that crime should be properly addressed on an international basis.

Q444 Mr Winnick: Not quite what you were saying in opposition, if I may say so.

Chair: Can we—

Dominic Grieve: I don't think I can let that pass. I do think that if you look at everything that I said in the various debates that took place, I stressed the desirability of extradition mechanisms and the need to have them.

Chair: Yes, we have to have extradition, there is no question. I think the Committee agrees with you on that.

Mr Winnick: That is not in doubt, but—

Chair: Sorry, could we have a bit or order because we need to get through this very quickly.

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Q445 Nicola Blackwood: To follow up a little bit on the point of trying guilt or innocence as part of the extradition process, obviously, that has not ever been part of the extradition process, but having an evidentiary hearing in which the evidence under which the extradition process was going through has previously been part of the extradition process and is possible. It could be possible as a part of the extradition process in the UK in which a defendant could challenge the evidence, or at least understand the evidence that was being brought before them, could it not?

Dominic Grieve: Yes, it would be possible to have such a system. Yes, of course.

Q446 Nicola Blackwood: At the moment that is not the case under the UK-US Extradition Treaty?

Dominic Grieve: No, we have moved. As you will appreciate, there has been a massive shift on an international basis. It doesn't just concern the United Kingdom; there has been a massive shift to a new basis of extradition. Whether that is because there is greater confidence in each country's systems, and the fact in Europe that we have the European Convention on Human Rights as a basic fallback safeguard, has changed the previous attitude of many states towards extradition. After all, a country like France, for example, at one time was unwilling to extradite its own nationals anywhere. It simply wouldn't do it. It was only the arrival of the European Arrest Warrant that first prompted the French Government to accept the notion that a Frenchman could be extradited to any other place. We have not done that. I think I am right in saying that our first extradition treaty was with Denmark in 1661. So we have been extraditing people, including our own nationals, to various countries with which we had some confidence in our relationship for some considerable period of time.

Q447 Nicola Blackwood: Thank you. If I could just move on to the issue of the forum bar. The Baker Review came to the conclusion that prosecutors are better placed to negotiate factors that go into making the decision about forum, and that were guidelines to be tightened up that was all that was necessary to fix the issue of forum in cross-jurisdictional cases. What is your opinion on that particular conclusion?

Dominic Grieve: I think it might just be worth going back—forgive me for doing it—to where the forum bar originated because, as you will know, it was introduced into the 2006 Act—I know it as the Policing Act. I can never remember its full title—I apologise.

Nicola Blackwood: The Police and Justice Act.

Dominic Grieve: The Police and Justice Act 2006. We had so many of those Acts at the time that I begin to lose track of them. It was a way of highlighting the Opposition's very great disquiet, particularly because at that stage we had not yet had ratification in the United States. The Government accepted the amendment but, of course, it needed to be triggered to be brought into operation. The following year, the then Attorney-General, Lord Goldsmith, issued, for the first time, guidelines in relation to extradition between the UK and the US. I simply make the point

that, in terms of forum, in the nearly two years that I have been in office I do not think I have ever had one single referral to me, as the Attorney, of a problem issue over a forum case, where there was a dispute over forum or where the CPS did not have great clarity or did not feel there was perfectly good clarity as to where the forum should lie.

Q448 Nicola Blackwood: What about the Gary McKinnon case?

Dominic Grieve: If you look at the judicial decisions in the McKinnon case and the arguments that were put forward, the court in the McKinnon case was left with no doubt at all that the ability to prosecute in this country would be very limited compared to the extent of the alleged criminality that was disclosed in the United States. One of the things I have to say I have gently considered over the last 18 months is whether a forum bar would be helpful. There are two ways of looking at this. On the number of cases that I have seen at the moment, it seems to me that the number of cases where the forum bar, if it were in, would have led to a different outcome is pretty minimal. The difficulty with a forum bar—and I have always recognised this—is that it will delay proceedings very considerably because it will give rise to a considerable amount of satellite litigation. So, again, my colleagues who have to determine policy are going to be faced with a complicated and difficult choice. One could implement a forum bar, but there will be downsides to it.

Chair: We need to speed up again, sorry.

Dominic Grieve: I am sorry. We could implement a forum bar, but the question is will it ultimately have the sort of effect that I suspect some members of the public would like it to have, and I think there its impact may be exaggerated.

Q449 Nicola Blackwood: There are two issues related to the forum bar: one is whether prosecutors are indeed making correct decisions and whether there would be a different outcome; the second is actually public confidence in those decisions, because prosecutors deciding between themselves as to the correct forum would not have the same level of public confidence as a judge making that decision. Do you not see the strength of that argument?

Dominic Grieve: Yes, I do see that that is a perfectly valid argument although, as I say, even now without a forum bar forum issues have been canvassed in court, and this is why I simply raise the issue as to whether it would have as much of an effect as some people believe it would. But yes, you are absolutely right about that; it would require that consideration and that—as I made the point previously—would add to time and cost, but that might be something that is worth having in order to give greater scrutiny and greater public confidence in the system.

Q450 Nicola Blackwood: If you were to consider that a forum bar would be the right way to go, would you think that it should be as is drafted already in schedule 13 of the Police and Justice Act, or do you think that we would require a rewritten version with some other amendments?

Chair: A quick answer.

Dominic Grieve: I think it is always worth while looking again at anything that Oppositions draft in order to present to Parliament without the help of parliamentary draughtsmen.

Q451 Chair: All right. So you will look at it again. We should really bring in the DPP. He has been sitting here patiently. We are talking about prosecutors. You must have some role in all of this, otherwise you would not be here, Mr Starmer. What is your role?

Keir Starmer: Is it helpful if I deal with the forum issue specifically—

Chair: Please.

Keir Starmer:—rather than the wider issue, which I will do if the Committee finds that helpful. As far as forum is concerned, obviously this does fall to be considered in a number of cases. Everybody knows that cross-border crime has increased dramatically and is increasing and, therefore, it is becoming increasingly likely that investigations into the same criminal conduct are likely to be happening in two different jurisdictions.

So the first question that we confront as prosecutors is, how do we make sure we know that there are investigations in two different jurisdictions? That is a critical issue. The decision as to where the case is going to be tried has to be made at a very early stage in these cases because if the investigators have already decided that the investigation is going to proceed in one jurisdiction rather than the other, by the time prosecutors come to consider it, the answer to the question where should the prosecution take place might be considered at rather a late stage. So the first question is, how do we get the best information?

Q452 Nicola Blackwood: The investigators are deciding.

Keir Starmer: In a number of situations, investigators in two different countries will be investigating the same criminal conduct. Arrangements are in place, for example, at Eurojust—

Chair: Could we concentrate on the treaty here, the UK-US Treaty, and when the DPP gets involved in that, because Eurojust has nothing to do with the UK—

Keir Starmer: I thought I was being asked about the forum bar. So far as the forum bar is concerned, this is a question of general application. That is how section 19 was drafted. The first point I am making is that information about where there are investigations is critical. Very often, investigation may run almost to completion in one country without another country knowing about it. If that happens, it is likely to have a profound impact on where the prosecution—if there is to be one—is going to take place. So if there is to be a meaningful decision, we need early sight of what investigations are going on.

There are arrangements in place between us and the US to make sure there is early sight in particular cases. There are more extensive arrangements as far as Eurojust is concerned. There is a Council decision, as you probably know, requiring that information to be shared. The prosecutor may or may not be involved at that stage. The police here do take our advice in

relation to certain matters, and through Eurojust we provide advice, but we are providing advice to the investigators, if we are involved at that early stage, as to where might be the appropriate forum once the investigation is complete, and most of the discussions are actually had in that way in that forum.

Chair: That is very clear.

Q453 Michael Ellis: Attorney, the Scott Baker report says that the UK-US Treaty arrangements are not one-sided. We keep hearing people say and quotes being sourced from years ago about how one-sided the arrangements are, but are you able—or you, Mr Starmer—to indicate any case law examples of where there is evidence of an imbalance in the United States between arrangements for the extradition of people to this country and vice versa? Are there any case law examples, because Sir Scott Baker could not find any in the year of his investigations?

Dominic Grieve: As far as I am aware, the United States has honoured its side of the treaty since ratification absolutely.

Q454 Michael Ellis: Do you agree with me that as a position to take we, the British, would want the United States to allow the extradition of someone who fled there from the United Kingdom who committed an offence here. That is in the interests of us, is it not?

Dominic Grieve: Very much so.

Q455 Michael Ellis: The position is that the arrangements are said to be imbalanced. The numbers, however, indicate slightly more people being sent to the United States. There is, of course, a difference in population that might account for that. Would you agree with that?

Dominic Grieve: Yes. I don't think the numbers issue is particularly relevant unless one could, on examination of the numbers issue, note that there was some serious problem with extraditions failing for some reason, as a percentage of the total requests that were made.

Q456 Michael Ellis: Yes, although some people try to make a point about the numbers, which is why I raise it, but I agree with what you have said. You have read the Scott Baker report and he says that the words that are used by the different criminal jurisdictions are effectively the same thing expressed differently. Do you agree with that analysis—probable cause and reasonable suspicion?

Dominic Grieve: At one time it used to be said that probable cause and a prima facie case were not very different from each other. Then when reasonable suspicion came in it was said that reasonable suspicion and probable cause were not very different from each other, and perhaps the truth is that in reality, in the way that evidence is often presented or the material is often presented, there is not a huge difference between any of those three terms. It is true that in one case you can put down what is effectively a hearsay statement—"This is the statement and summary of fact". In another case you are actually going to be filing a statement. Whether at the end of the day this makes very much difference I think may

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well be doubtful, which is why I made the point I did earlier when I was asked whether it would make some substantial difference to outcomes if this terminology was changed. We could move to a situation where we had probable cause in this country, although we would have to define it by statute because it is actually not a term that is known to our own legal system. It is a term that has evolved in the US.

Q457 Chair: Can we do that? Can we define it by statute?

Dominic Grieve: Well, if Parliament passed the necessary primary legislation I would have thought it would be perfectly possible. We would have to think through exactly what we meant by it but, yes, I would have thought that to some extent it could be done.

Q458 Michael Ellis: Can I move on to the European Arrest Warrant for a moment? We have heard from the Senior District Judge who gave evidence earlier on that in his approximate estimation a quarter or a third of the cases that he deals with would not receive a sentence of more than six months' imprisonment were they to be dealt with in English or Welsh jurisdictions, possibly even a non-custodial sentence. Are you concerned that there is a lack of proportionality and that the European Arrest Warrant is seriously flawed, for that reason if not for others?

Dominic Grieve: There is no doubt that the European Arrest Warrant is facilitating the departure to foreign countries of, in some cases, very large numbers of people for what appear to be relatively trivial offences, yes. You only have to look at the number of individuals extradited to Poland to see that. The interesting feature of the Polish criminal justice system, as I understand it, is that the prosecutor has no discretion as to whether or not to prosecute an offence. So an offence that is brought to the prosecutor's attention has to be prosecuted and there is no test that is applied by that prosecutor. Of course, some offences may, for all I know, carry sentences of under 12 months, in which case, generally speaking, it will not be extraditable. But in some cases people accused of the most trivial offences might be able, in terms of the likely consequence in reality, to be extradited, and there is no doubt that it puts quite a burden on the CPS. The DPP will be happy to talk about this, but the CPS has to process all these cases, quite apart from anything else.

Q459 Chair: Can we bring in the DPP again on this?

Michael Ellis: Yes. I was just going to say, do you have anything to add to that, Mr Starmer?

Keir Starmer: Only this: one of the difficulties in the cases from Poland is—there are a large number of them, I think everybody recognises that—as the Attorney says, the lack of discretion in the Polish authorities as to whether or not the prosecutor can apply for and bring a case. When we are considering whether to apply for a European Arrest Warrant on our own behalf I can issue guidance, and have done so, to say that we should do so only in appropriate cases. So we have a discretion built in before we apply for the European Arrest Warrant.

Q460 Michael Ellis: What is meant by “appropriate cases”?

Keir Starmer: We would then apply the sort of considerations as to proportionality and likely sentencing, perhaps, on the particular case. That is not happening in Poland at the moment in the same way and, therefore, the rigidity is such that the prosecutors are applying more often from Poland than we would in this country. To solve this issue, you have to get a European-wide approach to applying for a European Arrest Warrant, and considerable thought has been given to that.

Q461 Lorraine Fullbrook: Attorney-General, I would like to go back to an answer that you gave to Mr Winnick earlier. With regard to the Extradition Act 2003, and given the problems with it—reciprocity, reasonable suspicion being a lesser test than probable cause, forum, lack of discretion for judges, all of which require the confidence of the public—would it not be the best thing for the Government to go back to base and rebuild an Act that allows for extradition but in a just way, and that would command public confidence?

Dominic Grieve: That is an intensely political question; a perfectly valid one, but it would require demolishing the current architecture that the previous Government put in place in 2003, and which is being adhered to by large numbers of other states. I don't think you need me to say more than that to highlight how complex in reality that is likely to be, for the obvious reason that if you are going to do that, you are firstly going to have to have a new treaty base, you are going to have to denounce the existing treaties, you are going to have a new Act, and you are going to have to get other countries to adhere to the new arrangements. The European Arrest Warrant, of course, comes up for review automatically in 2014 as part of the Lisbon process. So there will be an opportunity at that moment to revisit it. As regards the other part 2 states, then the issue would have to be looked at in respect of each individual country. It is quite complicated. I suggest it is likely to be quite complicated diplomatically.

Chair: The Committee will look into that.

Lorraine Fullbrook: Chairman, I have another question about the European Arrest Warrant.

Chair: Please, Mrs Fullbrook.

Q462 Lorraine Fullbrook: Is the volume of the European Arrest Warrants, particularly from certain countries, causing problems for the courts system?

Dominic Grieve: Again, I think the DPP may be the best person to answer. I have the figures here for 2010–11. Poland is top with 2011. Germany comes next with 788, Romania with 584. You can get these figures for yourselves. I will not carry on repeating them, but I think—

Q463 Lorraine Fullbrook: What does that mean in context? Is that a problem or is that not a problem?

Keir Starmer: Firstly, can I just make clear that those are requests rather than surrenders. The number of surrenders to Poland was about 700 in the year 2009–10.

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Q464 Lorraine Fullbrook: Whether it is a request or a surrender, it has to have a court procedure?

Keir Starmer: Yes.

Q465 Lorraine Fullbrook: These numbers in context, is it a problem or is it not a problem?

Keir Starmer: There is no problem in presenting these cases to the court. The more you have of them, the more of a resource issue it is. Sitting here as DPP, head of the CPS, the more of these cases that come through, the more resource it takes from us, and the same would apply, I am sure, if anybody was sitting here representing the courts. The volume in itself presents a resource issue. It doesn't present us with a difficulty in the particular cases.

Q466 Lorraine Fullbrook: So there is no problem with handling these warrants through the courts? There are no delays?

Keir Starmer: I don't want to be put in a position of saying that there are no limitations for us, because there clearly are. The more of these that we have to process through the courts the more of a burden it is on us as prosecutors. Certainly, I take the view that if some of the countries from which we have a large number of requests reduced that volume that would be better all round, and we have been working with others towards that position. But it is not a problem with a big P; it has implications for us. In my view, I would like to see those numbers come down from some of those countries.

Q467 Mark Reckless: Attorney-General, my understanding is that 2014 is the last opportunity by which we have to decide whether to opt out of the third pillar arrangements as they were, including the European Arrest Warrant. Are you suggesting that the Government will not be looking at this until 2014?

Dominic Grieve: No, I was suggesting that by 2014 the Government will have to have looked at this and come to a decision. I think that has been made quite clear, because it covers obviously not just the European Arrest Warrant but all the old third-pillar agreements and is a subject that I think has already been raised in Parliament on a number of occasions.

Q468 Mark Reckless: So it is possible you may do it before 2014?

Dominic Grieve: Forgive me, that is not a matter for me and I would not want you to take that impression away at all. What I do know is that the Government are considering the issue. The Government have to come to a decision by that date.

Q469 Nicola Blackwood: I understand that in the UK European Arrest Warrants can only be issued by an appropriate judge, but in some other jurisdictions they can be issued by prosecutors. Do the British courts provide any safeguards for somebody whose extradition has been sought with no prior judicial process? Do you find in those cases that there are any additional proportionality problems or that those cases are more likely to fall because of lack of information on the warrant? Perhaps Mr Starmer would answer that.

Keir Starmer: I am reluctant to get drawn into this question, because that issue is very much before the Supreme Court at the moment in the Assange case. It is the legal point that was certified and is being considered, namely, whether a warrant that is issued by a prosecutor, in the circumstances in which that warrant was issued, accords with the rules and laws in relation to European Arrest Warrants. So I do not want to get drawn into it because the Supreme Court is about to come to a judgment. Equally, I do not want to get drawn into it, because I have a dual role. I prosecute in England and Wales as DPP and head of the CPS here. I also head up the CPS, acting on behalf of the judicial authorities in Europe.

Q470 Nicola Blackwood: Perhaps the Attorney might want to answer the question then.

Chair: The Attorney, would you like to answer it?

Dominic Grieve: Well, I am not sure I can say any more. The fact is that it is a live case concerning Assange, so I don't think I want to be drawn further.

Chair: We will accept that.

Q471 Michael Ellis: Just briefly, on the issue of resources that has been raised, there are those who suggest that there is an unfairness because evidence is not examined before a person is extradited to a country. There is simply a legal process that is gone through and there is no questioning as to guilt or innocence. What would be the resource implications if we had a system whereby evidence did have to be examined in extradition cases?

Dominic Grieve: Pretty horrendous. If we were having a preliminary trial here to determine what we thought of guilt or innocence before we sent somebody abroad to be tried on exactly the same issue, then I think the length and complexity of that would be quite extraordinary.

Q472 Chair: In order to complete this session, can I go back to where we began and what you said to the Conservative Party conference about extradition laws. The purpose of the Act was to make sure that politics was taken out of extradition, so that Home Secretaries were not put under pressure and politicians were left out of it. It clearly has not happened. As you have said, the difficult political questions are for you and the Home Secretary to answer, even though you do not make the decision in this. In a case like the Gary McKinnon case, for example, even though it has been left to the judges, this matter has been raised by the Prime Minister with President Obama and is likely to be raised again by him when he sees him in March. You cannot really keep the politicians out of this, can you?

Dominic Grieve: I think that is a very interesting point because, yes, there is a lot to suggest that, as there has been a progressive move towards removing the Executive from the decision-making process, not just in this country but throughout the participating states, the public's demand, interestingly enough, is the other way. They want Executive intervention when they feel that in some way that would cure some perceived

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unfairness. If I may say so, that goes to the very heart of the dilemma, the ethical and political dilemma, that I think we face in this area. How do we find the correct balance that reassures the public that we are not being cavalier with the rights of individuals, particularly nationals, people who are living under the Queen's peace in this country, sending them abroad, even though they are not facing trivial offences? I should make this clear. How do we provide that reassurance without ending up with a very selective interference in the criminal justice system, which in fairness is also doing its best to act fairly within the set of legal rules? That is the unresolved question and it is a very interesting one, both for politicians and for lawyers.

Q473 Chair: But also satisfy the Prime Minister when he said it should still mean something to be a British citizen with the full protection of the British Parliament. So it is not just the public; it is actually very senior members of the Government who are concerned about this.

Dominic Grieve: On the whole, my experience is that the views of the public are often reflected in Parliament.

Q474 Chair: But does this delay worry you, bearing in mind the fact that there are still live cases, such as the Tappin case, the McKinnon case and many others, that are going through the process and we still do not have the clarity that you obviously believe is very important? Of course it is a complex issue—you have a complex job as the Attorney- General—but at the end of the day decisions have to be made. People are being extradited under laws that you regard as being a mess.

Dominic Grieve: At the end of the day, decisions have to be made, but at the same time it is worth pointing out that perhaps one of the reasons why we have got ourselves to where we are today is that we rushed things in 2003.

Chair: I do not think anyone on this Committee would disagree with that. Attorney, DPP, thank you very much for coming in today. Thank you.

Written evidence

Written evidence submitted by the Home Secretary

Extradition Review

In the Coalition's Programme for Government document of 20 May 2010, a commitment was made to "review the operation of the Extradition Act—and the US/UK extradition treaty—to make sure it is even-handed".

You will recall that in September 2010, I announced an independent review of the UK's extradition arrangements to Parliament. The review was undertaken by a panel of experts led by former High Court Judge and Lord Justice of Appeal, Sir Scott Baker. The review examined a number of issues linked to the UK's extradition arrangements, namely:

- The operation of the European arrest warrant including the way in which its optional safeguards contained in the European Union Framework Decision on the European arrest warrant have been transposed into the law of the United Kingdom.
- Whether the forum bar to extradition should be brought into force.
- Whether the United States/United Kingdom Extradition Treaty is unbalanced.
- Whether requesting States should be required to provide *prima facie* evidence.
- The breadth of the Home Secretary's discretion in an extradition case.

I know that your Committee and you have taken a keen interest in the review.

I attach the review panel's report which was published today.¹

Broadly the panel finds that the UK's extradition arrangements are working satisfactorily and makes the following conclusions:

- Improvements to the EAW can be made to ensure it functions more effectively through both legislative amendments and enhanced dialogue and co-operation at EU level.
- The forum bars to extradition should not be introduced. However, guidance for prosecutors on shared jurisdiction should be agreed and published.
- The UK's extradition arrangements with the US are not unbalanced. There is no practical difference between the information submitted by the UK and the US.
- Requesting states should not be required to provide *prima facie* evidence when making a request to the UK. However, the Government should periodically review the designation of extradition partners.
- The breadth of the Home Secretary's involvement in extradition should not be extended. Instead the panel recommends that cases in which a supervening event occurs after the end of the extradition process should be considered by the High Court rather than by the Secretary of State.

The report also makes further findings on issues including legal aid, extradition cases before the European Court of Human Rights and the appeal process.

Given the length of the report, and the nature of the panel's findings, we will reflect further before announcing what action we will take in respect of the review panel's recommendations.

I would, of course, be very happy to discuss this further with the Committee whenever that would be convenient.

18 October 2010

Further written evidence submitted by the Home Secretary

Thank you for your further letter of 16 March concerning the USA's request for the extradition of Gary McKinnon. In particular, you enquire on the Home Affairs Committee's behalf as to why it is taking so long to decide the case. I am sorry not to have been able to reply within your suggested deadline of 24 March.

The process is certainly taking longer than I would have anticipated when I appeared last December before the Committee. The position, however, can be stated fairly briefly. Upon coming to office last May, I indicated my readiness to consider afresh the issues raised by the case. To that end, I received a body of further representations from Mr McKinnon's solicitors. These rely upon two main psychiatric aspects—specifically, the fact of Mr McKinnon's Asperger's Syndrome and the risk of him taking his life being such that it would be wrong to allow extradition to proceed.

¹ A Review of the United Kingdom's Extradition Arrangements (Following Written Ministerial Statement by the Secretary of State for the Home Department of 8 September 2010) Presented to the Home Secretary on 30 September 2011.

As I have said many times, this is not a decision to be taken lightly; and it is one which also needs to be taken in accordance with the sole applicable, legal test. As the courts have affirmed, this is whether to proceed with extradition would breach Mr McKinnon's human rights.

In these circumstances, I have judged it right to commission my own medical advice; and, to apply total impartiality to my choice of medical experts, I approached the Chief Medical Officer (CMO). Given the twofold nature of the psychiatric representations, the CMO suggested I instruct two experts to report on Mr McKinnon's Asperger's Syndrome and upon the risk of him taking his own life.

Mr McKinnon's solicitors accept that I am reasonably entitled to proceed in this way. There is, however, an outstanding issue of medical consent as to which particular expert or experts may be allowed to examine Mr McKinnon. As to that, we are in close touch with his solicitors whose latest reply is awaited. Assuming the matter of medical consent can now be resolved and a report provided by the medical experts nominated by the CMO, I hope much better headway can be made—because, like you, I too am anxious to bring the case to a conclusion. I have already undertaken to Mr McKinnon's solicitors, however, that—as a matter of continuing procedural fairness—I shall disclose and invite comments on any psychiatric report provided to me before I take a decision in the case.

I hope that assists; and I look forward to reporting further progress to the Committee.

31 March 2011

Correspondence submitted by Clare Montgomery

Extradition Law

Thank you for your letter of 24 March 2011. I am extremely sorry not to have replied earlier. I am afraid it is due to the pressure of work.

I am very grateful for your offer of the opportunity to comment on the current state of extradition law and what might be done to improve it. However, given to my current extradition case load, (which includes not only the case of Shrien Dewani to which you refer but also the case against Julian Assange) I do not think it would be appropriate for me to make any comment on the subject at present.

Please accept my apologies and convey them to the Committee.

6 April 2011

Written evidence submitted by David Bermingham

I am one of the NatWest Three. I believe I can be of assistance to the Committee in two distinct ways. First, in giving an insight into the practical difficulties faced by individuals extradited to stand trial in the US. Second, in challenging some of the conclusions of the Scott Baker Review. In this brief, I deal only with the latter, because I am aware that the Committee will shortly take evidence from Sir Scott Baker himself, and so may wish to be aware in advance of some of the arguments that might be made.

Brief Background

1. I was charged by the United States in June 2002, along with two former work colleagues, of defrauding our London employer, a division of National Westminster Bank PLC (by then wholly owned by the Royal Bank of Scotland), out of \$7.3 million in a transaction involving two senior officers of Enron. The entire basis for the case against us consisted of information that we ourselves had given to Britain's Financial Services Authority in November 2001.

2. In February 2004, some six weeks after the Extradition Act 2003 had come into effect, the US sought our extradition.

3. In February 2005, we brought an action in the High Court against the Serious Fraud Office for refusing to investigate our case.

4. In February 2006, we lost our High Court appeal against extradition, and our case against the SFO. The High Court certified three points as being of public importance, and we sought leave to appeal to the House of Lords.

5. In March 2006, we were responsible for the drafting of the original "forum" amendments that were proposed by the Conservatives and Liberal Democrats during the passage of the Police & Justice Bill.

6. In June 2006, the House of Lords refused to hear our appeal against extradition.

7. On 12 July 2006, there was an emergency debate in the House of Commons, proposed by Nick Clegg MP. MPs voted 246 to 4 in favour of halting the extradition and changing the law.

8. On 13 July 2006, we were extradited to Houston, Texas. Because of the direct intervention of the Prime Minister and Attorney General, we were not incarcerated on arrival, but were granted bail. We were subject to electronic monitoring and curfew, could not travel outside the Houston area, could not see one another other than in the presence of an attorney, and were required to put up all of our liquid resources, in cash, as bail surety.

9. On 27 November 2007, after several delays to the trial date, we agreed to enter into a plea agreement with the Department of Justice. We pleaded guilty to one count of failing to inform our employer of the opportunity to make an investment, and were sentenced to 37 months in prison. A key term of the deal was that the Department of Justice agreed to expedite a transfer back to the UK under the terms of the prisoner transfer agreement.

10. In December 2008 we were repatriated to the UK to serve the remainder of our sentences under UK rules.

11. We were released on electronic monitoring and curfew in September 2009.

12. I made a written submission to the Scott-Baker review, which is attached hereto, dated 30 December 2010.² I asked to be allowed to give oral evidence to the Review panel, but was never called.

13. I gave oral evidence before the Joint Committee on Human Rights in February 2011. The transcript is available on the Human Rights Committee web page.³

The Issues with the Scott Baker Review—General Observations

14. Sir Scott Baker's team appear to have construed their terms of reference exceptionally narrowly, limiting themselves tightly to the wording of the questions posed by the Home Office. This would appear to be an opportunity missed, because in reality what was needed was a proper analysis of what our extradition laws really should be about. The result could best be described as a treatise on expeditious process, rather than a more balanced analysis as to the workings of our system, and what role extradition should play. It makes the fundamental assumption that all extradition requests should be honoured unless there are some strong factors mitigating against, rather than asking whether in fact extradition should be seen as a last resort in the interests of justice, given its potentially catastrophic effects on individuals and their families. It is perhaps for this reason that it has been so roundly attacked.

15. Sadly, not one defendant or counsel representing defendants was asked to give oral evidence to the Review panel. During the period 4 April to 22 June 2011, the Review Panel took oral evidence from a significant number of individuals and organisations, but an analysis of those interviewed (listed at pp 341–343 of the Review) shows that the vast majority were either directly involved in the prosecution of cases, or the administration process, or Government. A neutral observer might conclude that the Review's findings reflect in large part the testimony of those interviewed. I have no idea whether other defendants or people with practical experience of extradition were interested in giving evidence, but the fact that I asked and was never called says something in itself, given the significance that our arrangements with the US have in the Review.

16. This lack of balance by way of evidence is in stark contrast to the inquiries by both the Home Affairs Select Committee and the Joint Committee on Human Rights, where several individuals have been called who have direct experience of extradition.

17. Also in contrast to the Parliamentary Committee inquiries is the fact that not one single submission to the Scott Baker inquiry, nor the transcript of any oral evidence session, is available to the general public, making it all but impossible to see whether the Review's findings are even representative of those that have made submissions or given oral evidence. All evidence to the JCHR, for instance, whether oral or written, can be found on their Parliamentary web page.

Specific Issues

18. I will limit my specific criticisms of the Scott Baker review to three distinct areas where I believe, bluntly, that the Review panel has got it wrong in their findings. These areas are “forum”, the US/UK Treaty, and the issue of repatriation of sentenced persons. I believe I am qualified to speak on all three given that ours was the first high profile case on forum and the US/UK Treaty, and I have actually been repatriated as a sentenced person under the terms of the Repatriation of Prisoners Act 1984.

Forum

19. The Scott Baker Review deals with Forum on pp 205–230. In brief, it concludes that there is no need to activate the forum bar that currently sits inactive in the legislation, either for Part 1 or Part 2 territories (ss 19B and 83A respectively).

² Not printed.

³ *The Human Rights Implications of UK Extradition Policy*, Fifteenth Report of the Joint Committee on Human Rights (Session 2010–12) HL Paper 156/HC 767 Qq 59–76, www.parliament.uk/documents/joint-committees/human-rights/Fifteenth_Report_Extradition_Oral_Evidence.pdf

20. At paragraph 6.67 of the Review, the detailed explanation for the decision is set out:

6.67 In our opinion, the implementation of the forum bar would have a detrimental impact on the scheme of extradition with no corresponding benefit to outweigh the disadvantage. We have reached this conclusion having regard to the following matters:

- (i) The decided cases suggest that the issue of forum does not in fact create unfairness or oppression. In each of the cases in which it was raised, the forum argument was dismissed and for the reasons set out above, the cases would have been decided no differently if sections 19B and 83A had been in force.
- (ii) The forum bar would only operate in circumstances where the courts had decided that extradition was otherwise appropriate. In other words, it would only have any application in circumstances where extradition was not barred for any statutory reason.
- (iii) The forum bar would only operate in circumstances where the courts had decided that extradition was otherwise compatible with the Convention rights in the Human Rights Act 1998, including Article 8.
- (iv) The forum bar would require a detailed investigation of the circumstances of the particular case, this would be a source of delay and undermine international cooperation in the fight against crime.

21. Dealing with each of the above in turn:

- (i) This is a quite astonishing statement. How could the panel possibly judge what might or might not have been the result of detailed legal argument based on the forum amendments, when no such legal or factual arguments were ever run because there was no such forum amendment in operation?
- (ii) This is a rather bizarre statement. You could make exactly the same point about any single bar to extradition within the Act. No bar to extradition would fulfil its purpose as such unless the extradition would otherwise proceed.
- (iii) Ditto.
- (iv) This is not necessarily true. The conclusion that a detailed investigation would be necessary was predicated on the Review's assumption that the forum bar would be as currently drafted (see paras 6.10 to 6.18, and in particular para 6.10). The original forum bar as proposed by the Conservatives and Liberal Democrats in 2006 would have had a presumption against extradition if the case could be heard in the UK. The significance of this is twofold. First, it embeds into our legislation a presumption that a trial in the UK where there is UK jurisdiction is preferable to extradition as a means of ensuring justice. Such a concept would do no more than bring the UK into line with almost all other countries in their attitudes to extradition.

Secondly, an almost certain consequence of having such a provision would be a significant fall in the number of extraditions sought by foreign countries. If the prosecutors knew that they would have to make a reasoned case before a judge as to why it was better that the trial should be held abroad, then in all probability only those cases where extradition really is the best option would be brought. In all other cases, the prosecutors would agree that the UK authorities could deal with the matter, or the case would not be brought at all. This could not possibly be construed as "undermin[ing] international co-operation in the fight against crime". It would act as a measure to ensure that extraditions are only sought in cases where they are genuinely appropriate as a means of ensuring justice.

22. Para 6.26 details a number of high profile cases in which forum was said to have been raised during extradition proceedings. The purpose of this paragraph is evidently to demonstrate that the result would have been no different had s 19B or 83A been in force. This paragraph is particularly striking, for the following reasons:

- (i) Every single case cited involves a request by the US. Inadvertently, perhaps, the Review panel has highlighted why it is that the US arrangements cause such controversy. The US routinely adopts an extremely aggressive extra-territorial approach to its jurisdiction, criminalising the conduct of people who may never have set foot on its soil. No other country with whom we have extradition relations adopts such a policy.
- (ii) The Review seeks to demonstrate that just because a case could be heard in the US, therefore the argument on forum would have been lost. For instance, citing our case at para 6.26 (i):

In *Birmingham*, the District Judge and the High Court found that the case had very substantial connections with the United States and was perfectly properly triable there: the prosecution witnesses were in the United States and there was a "significant US dimension to the whole case". Laws L J stated, "It would be unduly simplistic to treat the case as a domestic English affair."

The point is that if s 83A had been operative, we would have been able to produce a wealth of materials demonstrating why a UK trial would have been eminently more appropriate. But we could not. If you applied the Eurojust Guidelines to the circumstances of our case, it is inconceivable that we would have lost an argument on forum argument.

- (iii) Absent from the analysis is one single European Arrest Warrant case, or indeed the troubling US case of Babar Ahmad, where the Senior Magistrate Timothy Workman commented as follows in his judgment: “This is a troubling and difficult case. The defendant is a British citizen who is alleged to have committed offences which, if the evidence were available, could have been prosecuted in this country ...”
- (iv) In every single one of the cases cited except that of Abu Hamza, David Perry QC (a member of the Scott Baker panel) represented either the US Government in the extradition, or the UK prosecuting authorities in refusing to consider a UK prosecution. In Hamza, David Perry had previously prosecuted Hamza in the UK courts for incitement to murder.

23. At para 6.69 on page 228 there is a quote from Lord Lloyd:

6.69 As Lord Lloyd of Berwick noted during Parliamentary debates on the forum bar:

“The question of whether to prosecute must be for the prosecuting authorities and it follows that the question of where to prosecute must also be for them. Where there are two competing jurisdictions it can only be resolved by agreement between the prosecuting authorities in the two different countries. I cannot see how it could conceivably be resolved by a judge in this country.”

24. It is difficult to understand the relevance of this quote in the Review. By way of balance, the Review might have noted, but did not, that their Lordships debated the issues of the forum amendments and the US/UK Treaty at significant length during three sessions in the period 11 July 2006 to 7 November 2006 during the passage of the Police & Justice Bill. On 11 July 2006, the vote was 192 to 109 in favour of both forum and Treaty Amendment. On 1 November 2006, the vote was 189 to 152 in favour of forum and Treaty amendment. Only on 7 November 2006, when the Tory Peers were ordered to abstain so as not to force the Government to use the Parliament Act, did the Upper House vote against forum and Treaty amendment, by 174 to 96.

25. Consequently, a neutral might observe that while Lord Lloyd is quite entitled to his view, his is demonstrably the minority view in the upper chamber. His quote in the Review, therefore, seems out of place.

26. At paragraph 6.77 on page 230, the Review states that “Whilst a small number of high profile cases have highlighted the issue of forum, we have no evidence that any injustice is being caused by the present arrangements.” Perhaps if the Review panel had taken evidence from some of the people who have been through extradition, they might have had cause to change their view on this.

27. At paragraph 6.78 on page 230, the Review states that “The extradition judges at City of Westminster Magistrates’ Court could not think of any case already decided under the 2003 Act in which it would have been in the interests of justice for it to have been tried in the United Kingdom rather than in the requesting territory”. This is at odds with the inference by District Judge Workman in the case of Babar Ahmad, but since the evidence of the extradition judges to the Review is not publicly available, it is impossible to second guess what may have been said.

The US/UK Treaty

28. The Review panel has confined itself to the narrowest possible analysis of the Treaty. As it states at para 7.32 on page 238: “For the purposes of our Review we believe it is necessary to consider whether there is any difference between the probable cause test and the reasonable suspicion test.”

29. Thereafter follows an exhaustive analysis of the practical differences between the two, which of course are concluded to be minimal.

30. The Treaty imbalance exists not in terms of a standard of evidential test, but in the total lack of one in the UK courts. In effect, the adjudication as to whether a case meets the tests of either probable cause or reasonable suspicion is done in the US, whether an extradition request is outbound or inbound. To put it another way, if someone in the US is wanted by the UK authorities, that individual has the right to a probable cause hearing in a US court at which the evidence is discussed. If someone in the UK is wanted by the US, there is no such evidential hearing in the UK.

31. The principled position of the US Government, as evidenced by its bilateral treaties with nearly 130 nations, is that it is happy to provide evidence in support of its requests for extradition. Since the US Constitution requires that other countries provide such evidence for incoming requests, this should hardly be a surprise.

32. Indeed, the US does not have to provide evidence in support of its requests to only three countries; France, which will not extradite its own citizens to the US; Ireland, which will not extradite if the crime could be deemed to have been committed on Irish soil or if the Irish prosecutors have already investigated and declined to prosecute; and the UK.

Repatriation of Prisoners

33. The Review touches on the issue of whether the Extradition Act should contain provision for the courts or the Home Secretary to require that someone being extradited should be returned to the UK to serve any sentence if convicted. The Review acknowledges, at paras 4.26 to 4.33 on pages 83–84, that article 5(3) of the Framework Decision permits countries to make such conditions a term of extradition.

34. Seemingly without any detailed analysis, however, the Review concludes at para 11.53 on page 329:

“So far as Article 5(3) is concerned, we see no reason to enact a specific provision to cater for the return of nationals and residents to the United Kingdom for the purpose of serving any custodial sentence passed in the issuing Member State. We have concluded that this is adequately catered for by the Repatriation of Prisoners Act 1984 and the recent Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. However, if the Framework Decision does not result in more nationals and residents serving their sentence in the United Kingdom, rather than being subject to European arrest warrants, then the Government may wish to consider introducing a provision to reflect this guarantee”.

35. The above conclusion is noteworthy for the following reasons:

- (i) No consideration whatsoever has been given to implementing such a provision for Part 2 countries.
- (ii) The introduction of such a provision would be extremely straightforward for Part 1 countries, although in the case of Part 2 countries it would probably need bilateral agreements.
- (iii) The conclusion betrays a lack of understanding of the practicalities of the Convention on the Transfer of Sentenced Persons and the Repatriation of Prisoners Act (“RPA”).

36. As to the last of these, we were a very good example. We broke all known records for speed of repatriation from the US under the RPA, because we had secured the agreement of the prosecutors to expedite any transfer as part of our plea agreement. Even so, the process took just over six months and could not begin until we had entered the US prison system. In many cases it can take years.

37. The US system is covered by a Federal Bureau of Prisons Program Statement.⁴ It is a cumbersome process involving multiple layers of approval, with the ultimate discretion lying with the Office of Enforcement Operations (“OEO”), within the International Prisoner Transfer Unit in Washington DC.

38. OEO routinely refuses any request where the defendant has not served at least half of the sentence, or where there is any monetary penalty still outstanding. I was in prison in the US with several inmates who had had successive applications turned down. No reason needs to be given by OEO, and once a refusal is handed down, the inmate cannot then reapply for two years.

39. The British former chief executive of RefCo, Phillip Bennett, was jailed for 16 years in the US for fraud in July 2008. His request for transfer to the UK was recently refused.

40. The British chief executive Ian Norris was required to serve all of his sentence in the US (where there is no parole in the Federal system). This is because his sentence of 18 months was handed down only after he had already spent several months in prison after conviction. By the time of sentencing, therefore, he had only around 12 months left to serve. As the process will take an absolute minimum of six months, and as the UK cannot accept a prisoner who has less than six months remaining on his sentence at the point of transfer, there was therefore no point in Mr Norris making an application. The consequence was that he served the equivalent of a UK sentence of nearly three years (because in the UK he would have been entitled to automatic release at the halfway point of his sentence, and indeed would in all probability have spent only four and a half months in prison and four and a half months on electronic monitoring under the Home Detention Curfew scheme), in a US prison cell some 4,000 miles from his aged wife.

41. Without a Government to Government provision on such matters, the defendant becomes a hostage to fortune. The prosecutors in our case told us that if we agreed to plead guilty, they would agree in writing as part of the deal to support and expedite a transfer home. If, by contrast, we went to trial and lost, they would ensure that we spent our full sentences (estimated at around 10 years) in a US prison, without parole. This is a fantastically powerful weapon, and capable of ensuring that defendants will plead guilty to something they have not done, rather than run the risk of spending many years in a faraway prison. The prosecutors in the case of Gary McKinnon made much the same threat/inducement to him in 2006.

42. Various countries have such repatriation provisions in their treaties with the US, including the Netherlands and Israel. Leaving the situation as it is will be a guarantee that many British citizens will spend a very long time in foreign prisons, and there will be nothing that the UK Government will be able to do to secure their repatriation under the RPA, as is the case with Mr Bennett.

14 December 2011

⁴ www.bop.gov/policy/progstat/5140_040.pdf

Supplementary written evidence submitted by David Bermingham

This supplementary brief deals with an issue raised by Sir Scott Baker in his appearance before the Home Affairs Select Committee on 20 December 2011. At that session, Sir Scott told the Committee that neither he nor any of the extradition judges could think of any 2003 Act US extradition case which had resulted in injustice, or where having a *prima facie* evidence test might have made any difference. This comment is presumably based on the fact that all people so far extradited have either pleaded guilty as a consequence of a plea bargain, or been found guilty at trial.

I would like the opportunity to explain to the Committee how the process works in practice, that might shed some light on the outcomes on which Sir Scott's Committee seemingly bases its conclusions.

Sir Scott said that his Committee had looked "extremely hard" to find a case of injustice. A case that they presumably did not review was the very sad one of Alex Stone, extradited in early 2005.

Stone was a 30-something blind man from south London who moved to Liberty, Missouri, in November 2003 after meeting a woman called Alma through a specialist blind dating website.

Very shortly after Stone had moved in with Alma, her son Zachary was taken to hospital suffering from a persistent cold. While there, he was X-Rayed and found to have sustained fractures to both arms and legs. In the days that followed, suspicion fell on Alex. He was interviewed by the police and informed that he was a suspect, but not charged.

Stone instructed a lawyer who advised him that since there were no charges, and he was convinced of his innocence, he should return to the UK, which he duly did.

He had not been back in the UK long when he heard that he had been charged in the US with first degree assault on a minor, a felony offence carrying a penalty of 10 to 30 years in prison.

In November 2004 he was arrested pursuant to an extradition request. In mid-2005 he was put on a plane at Gatwick along with three other extraditees, and flown in chains to America.

He spent six long months in Liberty County Jail, locked up for 23 hours a day, his isolation made worse by his blindness. At the end of this time, his attorney put it to the prosecutors that they had no case. Indeed they did not. Expert witnesses for both sides agreed that the injuries sustained by Zachary had occurred substantially before Stone had ever set foot in America, and suspicion had by now fallen on another family member.

Rather than just let him go, however, the prosecutors told him that if he agreed to plead guilty to the lesser offence of leaving the country in the course of an investigation, they would recommend that he was sentenced to time already served. This, of course, was a clear breach of the specialty provisions in the US/UK extradition treaty. Faced with no option, however, Stone agreed, and was finally allowed to return to Britain in February 2006, saddled with a criminal record and debts of £50,000.

His case was reported by the BBC, and was the subject of a short documentary.^{5, 6}

To my mind, this case is the clearest possible example of an innocent man whose life has been all but destroyed by unjust extradition, in circumstances which would certainly have been avoided if the US had been required to produce evidence in support of their request for extradition, since no such evidence existed.

6 January 2012

Correspondence from David Bermingham to Michael Ellis MP

I watched with interest yesterday's session of the Home Affairs Select Committee, and was particularly struck by your reaction to the treatment of Michael Turner on his extradition to Hungary in 2009. I think most right-thinking people would agree with your analysis that he had been "unlawfully detained", that there had been a "misuse of the European Arrest Warrant", that it was an "appalling miscarriage of justice", and indeed a "violation of the principles of natural justice".

Regrettably, however, this is not the view taken by the courts of the United Kingdom in interpreting the provisions of the Extradition Act. Indeed, extraditions for the purposes of investigations, prior to any charges having been brought, are not uncommon, and are routinely granted. You are doubtless aware of the cases of Julian Assange and Shrien Dewani. Neither has been charged with any offence in the country seeking extradition, but the courts here have nonetheless ordered their extradition. I think we can safely assume that there are many more such cases in the system.

I understand and accept that you may perhaps bear some personal animus towards me, given the circumstances of my particular case. But I would hope that you would accept, as I tried to make clear in my evidence before the Committee last month, that the arguments that I am making are on behalf of the many, many people who don't have a voice, and who are suffering the consequences of this terrible piece of legislation without people such as yourself having any idea as to what really happens.

⁵ http://news.bbc.co.uk/1/hi/uk_politics/4792334.stm

⁶ <http://video.google.com/videoplay?docid=-1556263889322840243#>

This is exactly the point I was trying to make about the Scott Baker Report. It is a wonderful piece of dry legal analysis, which tells you exactly how things should work. Regrettably, it does not shed any light on how things do actually work in practice, which is what the likes of Michael Turner are capable of explaining, but only because this rotten law has put them through it.

The case of Michael Turner is instructive on two different levels. The first is that it supports very strongly my contention to the Committee that extradition is being used as a first resort, when it should be a last resort. Michael Turner will get on a plane next week and travel voluntarily to Hungary to face the charges that have finally been levied against him, nearly three years after his extradition. So what value, exactly, did incarcerating him for 23 hours a day for four months in some hellish Hungarian prison have in the administration of justice, other than perhaps to have persuaded lesser men than Mr Turner that they should plead guilty to something that they hadn't done, just in order to get home? Answer: none. So why did the Hungarian authorities do it? Answer: Because the Extradition Act 2003 doesn't just permit it, it encourages it.

The second point to make about Mr Turner's case is that his experience of incarceration in a prison far from home, in dreadful conditions, is not in any way unusual. On the contrary, it is the norm for those extradited, wherever they may be sent. There are countless countries within easy reach of the UK, to which we will now extradite our citizens without a second thought, which have wonderful climates, lovely food, great beaches, and legal and penal systems that would shame a banana republic. Just ask Andrew Symeou, who spent many months in the High Security Korydallos prison in Greece, whose conditions were condemned by the European Court of Human Rights as degrading and inhumane, and which was described by Amnesty International as the worst prison in Europe. Mr Symeou was extradited in July 2009 under the EAW despite the only evidence against him being testimony from other men beaten out of them by the Greek police, and immediately recanted on their arrival back in the UK. My Symeou was eventually acquitted by a Greek jury in July 2011.

The conditions in US prisons, of which I have been an inmate of five, are in many ways worse than those experienced by Mr Turner. You will doubtless have read in the papers this week that we are about to put a 65 year old businessman called Christopher Tappin on a plane in chains to Texas, to face charges that he tried to export missile batteries to Iran, the consequence of a "sting" operation set up by the FBI that would have been illegal in this country.

Can we seriously be proud of this? Do we honestly believe that this is what our citizens deserve? In the dim and distant past, carrying a British passport used to signify that the bearer had the protection and support of a powerful nation, who took responsibility for his safety and security wherever he was in the world. No longer.

So, I would implore you and your fellow lawmakers to consider very carefully your obligations to the people who elected you, and whose interests you represent. We are talking here about the most fundamental of rights and principles; *Habeas corpus*; the presumption of innocence; and perhaps above all the duty of any Government to protect those within its borders.

I will end by restating something that I said to the Committee. I am not anti-extradition. Extradition plays a vital role in the fight against crime. But its consequences for the defendant and his family are profound. As a civilised country, we surely have a duty to ensure that there are sufficient safeguards in place, which at the moment there demonstrably are not. And we should consider whether extradition in a particular case is actually necessary in order for justice to be done, because frequently it would not be. As Michael Turner and doubtless many others can attest.

I wish you well in your deliberations and I look forward to the publication of your report.

February 2012

Further supplementary written evidence submitted by David Bermingham

Yesterday's was indeed a fascinating session. I was particularly troubled by the Attorney General's attempts to distance himself by legal distinction from his clearly held position in the past, on both the US-UK Treaty, and the issue of forum.

To that end, please find attached two documents which the Committee might find of some assistance.⁷ Both are complete extracts from *Hansard*, but with certain sections highlighted in colour code to denote the identity of the speaker more easily. The first was an emergency debate in the House of Commons on 12 July 2006, the day before my extradition. Mr Grieve was in full flow, and his comments on both the Treaty and the separate issue of forum are not susceptible to misinterpretation I believe.

The second was a Commons debate on the Police & Justice Bill on 24 October 2006, when Mr Edward Garnier QC led for the Conservatives, but where Mr Grieve voted in favour of both Treaty amendment and the introduction of the forum bar.

One specific observation that I have on an answer given by the Attorney General to Mr Ellis yesterday towards the end of the session. Mr Grieve was asked whether an examination of the evidence in the extradition proceedings would be problematic, and he suggested that endeavouring to determine innocence or guilt within

⁷ Not printed.

the extradition proceedings would throw the entire proceedings into chaos and cause huge delay. This was disingenuous both in the question asked and the response given, in my view. The Extradition Act 2003 specifically requires that all Part 2 and 3 countries be required to make out a case by reference to evidence. It is only by designation by the Home Secretary by Statutory Instrument (as was the case with the United States in December 2003) that the requirement for evidence is removed. As such, the existing legislative framework already caters for an examination of evidence by the courts, on exactly the same timetable as for those countries who have been designated.

I hope the Committee may find these documents of use.

February 2012

Written evidence submitted by Julie O'Dwyer

RICHARD O'DWYER US EXTRADITION WARRANT—OUR OWN EXPERIENCES SO FAR

29 November 2010

When initially interviewed by the City of London Police at Sheffield Police Station Richard was coerced into saying he didn't want a solicitor by the Police who discouraged him by stating that this would take several hours, Richard wanted to attend his University class and so agreed not to have a Solicitor.

Interview was conducted whilst Richard was in tears, emotionally distressed.

During interview where two US ICE agents were in attendance (not present during interview) Richard was told by the ICE after shaking his hand "Don't worry Richard you won't be going to America" Going to America had not been mentioned previously and was not mentioned again.

23 May 2011

We heard nothing from the Police since November 2010 and attended Snow Hill Police Station to answer bail as arranged fully expecting that Richard would be charged, bailed again or no action taken. Richard was told by City of London Police that the criminal investigation into his case had been dropped. So far he has not received written confirmation of this. He was then re-arrested and had a US extradition warrant wafted briefly in front of his eyes. No information or explanation of any kind was given regarding extradition eg what to expect, process or rights. As a consequence, this was an extremely terrifying experience for Richard and myself. I consider it extremely poor to subject a person to the threat of extradition and then provide them with absolutely no information or support whatsoever.

Richard was immediately taken to the City of Westminster Magistrates court by the Police and taken into custody. An unknown Barrister arrived late giving little time for her to be familiar with the case, this was later reflected in her inaccurate presentation to the Judge which was then detrimental to Richard's case and seriously affected the Judge's decision to allow Richard bail. The only time I had the Barristers full attention was when I had the misfortune to be trapped in a lift with her for two and a half hours at the Court.

Due to lack of knowledge of the relevant issues on behalf of the Barrister and Judge, Richard had to make his own suggestions as to what might be relevant bail conditions for himself.

The USA extradition representative in court presented several incorrect details regarding the case to the Judge which also affected his decision to allow bail and also seriously affected the level of the bail conditions to the extent that the Judge only allowed bail because Richard had University exams over the following days.

The court room experience was frightening we waited several hours until Richard was called quite near to the end of the day. During this time we witnessed one after another of Eastern European citizens being rubber stamped through for extradition which led us to believe that this would be happening to Richard too.

Due to the shambolic bureaucratic procedures at the court, Richard was forced to be transferred to Wandsworth Prison where he remained until mid- afternoon the next day. I was not permitted to see or speak to Richard from the minute we left Snowhill Police Station until he was released from Wandsworth Prison the next afternoon. Custody staff at the court were most unhelpful and unwilling to even pass a message to Richard to let him know that I would collect him from Prison as soon as possible. Richard was then left not knowing where he was going and also thinking that I would not know where he was going either.

In custody disorganised, bureaucratic procedures along with unprofessional behaviours among Custody staff in full public view do not instill confidence in the standard of the service given. Staff were more interested in "having a laugh" reading holiday brochures and gossiping amongst themselves.

23–24 May 2011

Whilst trying to meet Richards bail conditions. After arranging for my sister who lives in Teddington to act as surety then going to withdraw £3,000 cash from the bank, submitting it to Twickenham Police Station as agreed. At the Police Station staff there had no idea what to do with this money but were very helpful in liaising with the prison to ensure all of the bail requirements were in place to try to speed up Richard's release. I then received a phone call within the hour from the Prison saying that we needed to pick up the cash as it

wasn't required. This meant going back to Twickenham Police Station, more paperwork and then back to the bank to return the cash.

Meanwhile at home in Derbyshire my partner was trying to surrender Richard's passport to a local Police Station. This process took three trips to the Police Station and six hours spent waiting around as the Police did not have a clue what to do with the passport and in addition Wandsworth Prison refused to accept its surrender until they had fully "processed" Richard, this then could not take place until the next day due to the lengthy bureaucratic process involved.

Attending hearing at the City of Westminster Magistrates court, the Judge asked "where is the £3,000 bail money, the Governor of Wandsworth prison is asking for an Inquiry" and that Richard should not have been released!! Judge implied that this was our fault!! and that Richard had been forced to break his bail!! This meant that we had to return to court again the following day with my sister to sort out the bail again.

These days have been the most acutely traumatic so far and mainly due to lack of information and/or support along with many examples of bungling and bureaucratic procedures in the court system.

Extradition is a terrifying thought and is an additional punishment which in this case I am sure exceeds any punishment if found guilty. The US extradites its own people between states for us that would be like extraditing someone from London to Yorkshire, we wouldn't be too alarmed by it. Extradition to an alien country is totally different and I don't think the US realises why UK citizens especially those who have not been to the US to commit any crimes feel the need to fight so hard against it.

The US appears to be very capable of acting in an underhand and unlawful way to pursue aggressive extradition warrants as in the Norris and Tappin cases. In Richard's case they have sought his extradition before passing US laws enabling them to pursue Richard for conduct which was not then an offence in the US and still is not an offence in the UK and have manipulated their own laws to fit their purpose. This seems a common theme- so much for trusted partners.

In seven months this whole experience has destroyed my life, my career, relationship and extradition has completely taken over. Richard is in total denial about this and all due credit to him and with the support of Sheffield Hallam University has been able to continue his studies being the only student in his course group to have obtained an Industrial work placement this year whilst having this stress hanging over him.

4 January 2012

Written evidence submitted by Eileen Van Sant-Clark

1. My name is Eileen Van Sant-Clark. Van Sant is my middle name and Clark is my married name but I go by both names together. My maiden name is Sams. My date of birth is 6 June 1957 and I am 54 years old. I have three adult children. I have been living in the UK for many years and I had hoped to remain here permanently because my life and my children's lives are firmly rooted here now.

2. I have been diagnosed with a clinical anxiety disorder. I am also currently on a police tag. I fear that my mental state would not enable me to do attend to give evidence in person. I have been asked to give evidence to the Home Affairs Committee (HAC) which I am happy to do in writing.

3. I do not want to inundate the HAC with lots of detail about my case but I do need to impress upon you that I was a victim of domestic violence and psychological abuse for many years before I left my husband. What has followed my leaving him has been messy and difficult; but he has continued to pursue me over the years, I believe in large part because of his manipulative and bullying nature. The extradition arrangements between the US and UK have allowed him to do this with impunity and have afforded me no protection at all. I do not deny that there needs to be a strong reciprocal arrangement between the two countries for the purposes of dealing with criminal fugitives—but I am not that sort of person. I fled a dangerous and awful marriage and I took my children with me for safety's sake. I cannot believe that I am being extradited for having done so.

4. Please know that this is not information that I am only bringing up now as a last ditch attempt to stop extradition—the statements in my lawyer's possession attesting to what I am about to relate all dated from the mid 1990s and were taken at the time of the abuse or shortly afterwards.

My Personal Background and the History of Domestic Violence and Abuse

5. I am a US citizen. I have a BSc in Education and I used to teach dance and PE in Elementary School in the US. I also ran my own business as a health and fitness consultant. I met John Clark when I worked as a waitress in a restaurant he was running at the time. We were engaged shortly afterwards and married on 21 June 1986, in Atlanta, Georgia. When my children were born I decided to stay at home with them as a full-time mother. For the record, until this recent diagnosis of clinical anxiety disorder, I have had no problems with my mental health, save for some therapy following a car accident and a nasty mugging; and some mild post-partum depression for two months following the birth of one of my children, which responded well to treatment.

6. My partner and later husband John had always had a bad temper and he could be unpredictable. On one occasion before we were married, John hit me in the face and gave me a burst lip. This incident took place in the apartment John was living in at the time, in New Canaan, Connecticut. John's parents found out about this because we confided in them; and my colleagues also saw the burst lip. My sister knew about the split lip and that John had caused it. Despite this, and despite warnings from my sister, I insisted that I still wanted to marry him, ascribing his outburst to some stress he was having at work at the time.

7. Following our getting married though, he continued to bully and threaten me. Over time I gradually confided my fears in close friends and family and one of the previous lawyers instructed took a lot of statements from people who knew me in the mid 1990's. These attest to the fact that I was genuinely in fear of my husband. I have statements reporting that I had described specific incidents of abuse to friends at the time. These included: *****an occasion when he pushed me into a wall knocking all the breath out of me (this happened downstairs in the foyer in the house in Georgia as he was leaving the house, and I remember he said: "When I come back you need an attitude adjustment"); his regular threats of harm to me; the constant criticism and shouting; his controlling and manipulative behaviour around the children's behaviour or the cleanliness of the house; his degrading comments about my personal appearance which were designed to undermine me and damage my confidence; the extent of my terror when John was in a rage; his unwillingness to help me when I was sick; his searching through my drawers and personal belongings (he did this even when I was pregnant, convinced that I was having an affair); the occasions when I would wait to see if John had left the house before returning home after one of his rages; and the general unhappiness in my life. I look back on these years and see now that they were typical of an abusive relationship and that my reaction was not unusual at all, as a person subjected to abuse and controlled and frightened by their partner.

8. On 21 July 1994 I finally made a formal report to the police following a particularly nasty outburst. The day before, John and I had been in the kitchen. John had been pacing up and down—he shut the kitchen doors. He started shouting at me. I thought he would hit me or throw me around the room. I picked up the phone and tried to call 911 but he grabbed me. He pushed me across the room and into the next room and shoved me down onto a sofa. He was shouting and shaking me. I can't recall what happened next but he must have stopped. Once I had arranged childcare, I think the next day, I went to the police station. My lawyer has a copy of this police report. At that time the police advised me that a restraining order be taken out against John. I told the police that I was worried John would find out that I had reported him to the police and was afraid that this would make matters worse. I also went so far as to seek legal advice about this from a lawyer named Hilton Dupree—but the after a long discussion with the lawyer, I found myself saying that I should try again with John and I decided not to proceed with the charge against him. I really thought that the violence and threats would stop one day.

9. On three other occasions I called 911, once from the house and twice from a payphone. On one occasion I had just put the baby down to sleep—I was told by the person handling the 911 call that if I did not act to remove the children to a place of safety then I would be liable for being a "negligent parent". I left the house immediately and stayed at my friend's house for the night. After that I returned home thinking things would calm down.

10. On occasions John was frightening in his behaviour towards his sons. One of my sons suffered from croup as a baby and one night he needed oxygen—John took the car keys from me as I tried to leave to take the baby to hospital. John was drunk and I recall he said that he enjoyed watching me panic about my son. Once when one of my sons was about three years old, John became angry after we had all been outside—we all had to come in and he picked up my son, tossed him up towards the ceiling and he landed on the sofa. This was not done for fun, it was very frightening.

11. In the early stages of my third pregnancy, John told me that he wanted me to have an abortion and that if I went ahead with the pregnancy it would be my fault if I looked "like a lard-ass forever". Later on, when I was five months pregnant with my daughter, John threatened to "push (me) down the stairs and it will look like an accident".

12. I spoke to a priest about my personal situation—I decided not to go to my local church because I did not want to disclose personal information who knew me. I cannot now recall the name of the church but I think it was a Baptist church.

13. I told a female GP in Atlanta (an "OBGYN") about the violence.

14. John was fired from his job. He was out of work for about four months. He persuaded me that we should move to New Mexico with the children, to start a new life together. John set up a business making blinds for windows and I was intent on supporting him. I thought that if he could be his own boss, things would be better. I supported him financially by selling some remaining stock left to me by my grandmother.

15. Things did not remain calm for long. After we moved John started spending most of his time away from the house. He was drinking a lot. He seemed to think I was having an affair with one of his friends.

16. A couple of days before I left, he said to me, "I will hire a spick to knock you off". A "spick" is a really offensive word in the US for a Mexican person. I took this to mean that John was threatening to have me killed. He then told me to "Get out! Find a place for you and the children". Had he not been violent in the past I would have probably ignored him, but I perceived this demand as a threat and I knew I had to leave. He

was so angry. The night or two before I left I woke up and found him standing over the bed which was very frightening.

17. Overall I cannot say how many times John was violent to me over the years but I can say that it was on many occasions and I was genuinely frightened and fearful for my wellbeing and that of the kids.

18. Eventually I took the very difficult decision to leave our home and my marriage because it was the only way I could think to keep us safe. I left with the children but I did not intend at the time to leave forever. I left John a note saying that we were going on holiday as I wanted to leave enough time for him to calm down. I did not intend at the time never to return.

19. We stayed with a friend for some time. John left telephone messages for me there which were threatening—he said he knew where I was and that he would make me sorry. On one occasion my friend Susan told me that she had seen John one evening in New Mexico, leaving a bar—John and the male friend he was with approached her in her car and threatened her by rocking the car backwards and forwards until she drove away.

20. We stayed away because it was the only way I knew to keep myself and the children safe.

Subsequent Legal Proceedings

21. On 13 June 1995 I was apparently charged in a New Mexico court with the offence of custodial interference. I did not appear at those proceedings because I knew nothing about them. I had never been served with the papers. Over a year later the custodial interference case was dismissed for lack of prosecution.

22. I should say that I had tried to seek legal advice about what I should do next after getting out of the house—but I was told that because we had not resided in New Mexico for very long (we had only lived there for about 4 months), I was not able to file for separation/divorce.

23. In February 1997 my marriage to John was dissolved. I was not involved in this process and I believe it must have been done on John's initiative. Eventually I met and married a man called Ron Woollsey. I remained genuinely fearful of John, thinking he wanted to kill me or harm me in some way. I had been given no indication that he had changed.

24. Ron and I travelled to the UK for a trip and we decided to remain here. Ron has Scottish ancestry and we thought it would be a great place to raise the children. Ron was offered work and we settled here happily. I home tutored the children for a number of years. This was not, as has been suggested by the US prosecutor, because I was afraid that the children would be found, but because we had always home tutored the children, something John had always known about and had never objected to. The kids were home tutored in New Mexico and in relation to the only child I had of school age at the time, in Georgia. I used the name of Eileen Van Sant Clark and did not hide my full name. I liaised with the Home Office using this name. My children were always known as Clark with the exception of Rebekah who from the age of 16 changed her name by deed poll to Van Sant Clark.

25. In 2004 my friend told me that I was on some FBI list. I instructed a lawyer named Robert Gorence to help me sort this out. By March 2005 I was told that my name had been removed from the FBI list and the custodial interference charges were dropped. As far as I was aware, this was the end of the matter and the proceedings were all over. The DA confirmed that the charges were dropped.

26. Then in 2007 Hayden saw that his name and those of his siblings were on a list of Missing Children in the US. He mentioned this to a medical professional who passed the information on to the police, who liaised with the US authorities in July 2008. I instructed yet another lawyer, David Foster. Following representations, they were removed from this list but shortly thereafter put on a list of endangered adults. Around this time Mr Foster called the US prosecutor about this problem and the US prosecutor made no reference at all to the fact that there was by now a fresh indictment of International Parental Kidnapping about which neither I nor my lawyer knew anything. For the avoidance of doubt, my children have never been under the care or supervision of social services or a similar agency and no-one has ever suggested that they are at risk in my care.

27. Law enforcement from New Mexico had contacted the UK authorities to see if a charge of custodial interference was an extraditable matter and they were told that it was not. The US Attorney General's office then charged me instead with something called "International Parental Kidnapping" and that indictment is dated 3 December 2008. The extradition request was made, in 2010—this was well over a year after the US authorities say they knew where I was, and 15 years after the collapse of my marriage.

28. It felt very much as though the offence was "upgraded" to fit the terms of the extradition treaty.

29. In August 2010 the New Mexico District Attorney confirmed to my US lawyer that his office did not seek my extradition anyway. However the US prosecutor has stepped in and is pursuing me very aggressively indeed.

30. Since then I have been fighting to prevent my extradition and it has been a long and difficult road. My mental and physical health has suffered from the stress of it. My previous legal representatives succeeded in persuading the court that I am not a "classic" fugitive from justice (ie that I did not come to the UK to evade the US proceedings), but even this has not apparently prevented my extradition. I believe that there is a very

significant possibility that the offence for which the US wishes to charge me will be time-barred under the US statute of limitations but was shocked to learn that even if this is the case, apparently the UK Extradition Treaty with the US would not prevent my removal. The judge finally ruled that it would not be oppressive to return me to the US. I have been told that the Extradition Act of 2003 allows for only a tiny range of very extreme factors to prevent extradition and that my case does not fall within it.

31. Liberty is now representing me. A last minute application was lodged to the High Court on 6 March 2012 requesting that the High Court certify three important points of law to the Supreme Court. If this does not succeed, then as long as the warrant remains intact, there will be nothing further to prevent my removal. At the time of writing the warrant has in fact been suspended while the US judge considers the medical evidence put to the court as part of an application to let me come back independently (ie not under the extradition arrangements).

Conclusion

32. I have felt at every stage, let down and frightened and in despair. The man who bullied me and hit me and who made my life so unhappy for so long has been allowed to continue doing so from afar. He is an influential man of means. I have no funds and am currently being represented by UK lawyers at Liberty who are representing me *pro bono*. I have run out of money to pay my US lawyer. I feel that the entire system has been weighted against me and that it has not been possible to properly put, as part of these proceedings, the context in which I fled this marriage and built a new life for myself here. How are other victims of domestic violence supposed to feel? I feel so terribly sad that what was essentially a nasty messy divorce and custody battle has been able to be dealt with in this way. If there was some built-in mechanism whereby a court or politician could look at the situation as a whole and come to a view as to whether the act of extradition was proportionate, this might have helped me. I appreciate that in the aftermath of 9/11, the US and UK wanted to co-operate as closely as possible and I can see the sense in this—but surely the type of scenario envisaged was one involving a person accused of a serious crime and/or terrorist related activity. I do not think it was designed to deal with people like me and this difficult personal situation. If convicted I could get anything from a fine to three years in prison (as opposed to “regular” kidnapping which can attract a sentence of up to 20 years). My children do not support the extradition request and want me to remain here where I can continue to support and care for them. One of my son’s has Asperger’s Syndrome and all three are in full-time higher education and based at home with me when they are not in college. I cannot fathom what my life will be like without them, and vice versa.

33. I thank the HAC for asking to hear from me. I respectfully urge the HAC to make whatever recommendations it sees fit but in particular urge the committee to consider the overall proportionality of the present arrangements with the US and its terrible impact on individual cases like mine.

15 March 2012

Correspondence from the Chair to the Prime Minister

I am writing in relation to your visit to the United States this week.

I welcome your decision to discuss the crucial issue of extradition with President Obama and to begin a joint review into the UK-US Extradition Treaty with our American counterparts.

Where there is the possibility of a British citizen facing trial in the UK it must be taken.

The extradition of British citizens to the US continues to cause great concerns in the British public. I hope the Government will now agree that any future extradition should be halted until this review is complete.

16 March 2012

Correspondence between the Chair of the Committee and the Prime Minister

Letter from the Chair to the Prime Minister, 20 July 2010

GARY MCKINNON

I am writing with regards to your visit this week to Washington to meet with President Obama. I am sure that this visit will prove a positive step in maintaining and developing relations between the US and UK on a number of important issues.

Whilst in Washington, I urge you to discuss the ongoing case of Gary McKinnon. You will remember that when this case was raised with the previous Government, you expressed your disappointment that there were Members of Parliament who “did not follow through when it came to the vote” on this matter. In addition, Deputy Prime Minister Nick Clegg declared that Mr McKinnon had been “hung out to dry by a British Government desperate to appease its American counterparts.”

Given the past support the Coalition Government has publically shown to Mr McKinnon and his constituency MP, David Burrowes, who has worked tirelessly on his behalf, I request that you discuss this matter with the President in order to come to a conclusion for the satisfaction of all concerned. As I am sure you can appreciate, the length of time that this case is taking is causing much distress and anxiety to Mr McKinnon and his family.

Rt Hon Keith Vaz MP, Chair

20 July 2010

Letter from the Prime Minister to the Chair, 13 September 2010

Thank you for your letter of 20 July in which you asked me to raise with President Obama the USA's request for the extradition of Gary McKinnon.

As you may have seen reported, I did take the opportunity to raise the case with President Obama when I was in Washington in July.

The recent history in this case is that there was to have been a High Court challenge in May by Mr McKinnon to a decision of the former administration upholding the order for his extradition to the USA. Those proceedings stand adjourned, however, because Theresa May, as Home Secretary, agreed to look again at the case.

As Theresa explained on 12 July to the Home Affairs Committee, she has now received and is currently considering further representations from Mr McKinnon's solicitors. I am copying your letter and this reply to Theresa and will ask her to write more fully in order to set out the latest position in this case.

Rt Hon David Cameron MP, The Prime Minister

13 September 2010

Correspondence from the Chair to the Prime Minister

I am writing to you in regards to the case of Gary McKinnon and the intent of the US authorities to extradite him on computer hacking charges.

Mr McKinnon's mother has been campaigning tirelessly to stop this extradition on the grounds that her son suffers from Aspergers Syndrome and therefore should face charges here in the UK.

Today President Obama began his State Visit to the United Kingdom. I therefore ask you to draw on our "essential" relationship with the US and take this opportunity to raise this issue with the President.

I know that whilst in opposition both you and the Deputy Prime Minister supported the campaign against Mr McKinnon's extradition. I am sure you will agree that it is time this matter was resolved for the benefit of Mr McKinnon and his family.

24 May 2011

Correspondence from Damian Green, Minister for Immigration to the Chair

Thank you for your letter of 24 May to the Prime Minister about the extradition case of Gary McKinnon. I have been asked to reply as the Minister with responsibility for extradition matters.

I know that you have taken a keen interest in this case and are aware of the background to it. President Obama and the Prime Minister were asked about the case at a press conference on 25 May. In response they referred in particular to the legal processes that must be followed in an extradition case, processes which continue as the Home Secretary considers the representations put before her in order to arrive at a just decision in her *quasi-judicial* role. Those representations focus largely on Mr McKinnon's diagnosis of Asperger's Syndrome. As you will be aware, the Home Secretary has consulted the Chief Medical Officer to assist her in the process and she is seeking to make a decision just as soon as is consistent with dealing fairly and properly with the relevant issues.

23 June 2011

Written correspondence from the Home Secretary to the Chair

Thank you for your letter of 22 July regarding the case of Gary McKinnon. I am very sorry not to have replied before now.

I recognise the continuing widespread interest in Mr McKinnon's case and I can assure you that I want to bring it to a conclusion as quickly as possible. However, I am sure that you will agree that I need to take the fullest account of all the circumstances of the case.

As you are aware, the sole remaining issue for determination in the case is whether- in light of the evidence concerning Mr McKinnon's medical condition extradition is compatible with Mr McKinnon's human rights. Against that background—I have as I explained in my letter to you of 31 March—been seeking to obtain independent medical evidence in order to allow me to appraise the issues in the case as fully and as fairly as possible. To this end I sought the advice of the Chief Medical Officer (CMO) who provided the names of two experts well placed to provide evidence on the relevant medical issues in the case. Since that recommendation was made I have been in detailed correspondence with Mr McKinnon's legal representatives in order to obtain his consent to be examined by the experts recommended by the CMO. I do not think it would be right to go into the detail of those ongoing discussions, but there have been a number of issues which have been the subject of lengthy discussions and which explain the time which it is taking to obtain the medical evidence in order to make a final decision in the case. During that same period, it is also right to say that further materials have been filed on Mr McKinnon's behalf.

You will appreciate, therefore, that while significant time has now passed since the adjournment of Mr McKinnon's judicial review proceedings a great deal of work has been taken place on all sides to bring us closer to a position where I can make a final decision in this case.

30 August 2011
