Extradition US-UK

Extradition - Home Affairs Committee Contents

Written evidence submitted by Ms Gareth Peirce, Birnberg Peirce & Partners

I am writing to the Committee at the suggestion of Sadiq Khan, the Member of Parliament for two British men whose extradition is currently being sought by the USA, Babar Ahmad and Syed Talha Ahsan.

I am aware that the Committee has received a considerable amount of evidence from individuals and organisations relating to UK / US extradition arrangements.

The reason for Mr Khan's suggesting that we might have additional information of assistance to the Committee, stems from the experience of the past three and a half years in particular, during which the European Court of Human Rights has frozen Mr Ahmad's extradition and that of his alleged co-accused, Mr Ahsan.

Mr Ahmad was one of the first two persons to have been made the subject of a US request after the "fast track" procedure was introduced by the 2003 Act. The issues raised in their respective cases (and in other cases subsequently) have caused the Court to give the most careful consideration as to whether any issue raises a potential violation by the UK of their Convention rights were they to be extradited. It is extremely unusual for the Court to have accorded this degree of interim protection to any extradition case and its consideration has addressed facts and issues of law that go far beyond the circumstances of one particular case. For example the Court has asked the UK to address the question of whether their confinement in extreme isolation, potentially for life, and / or the imposition of a sentence of life imprisonment without parole would violate the right to freedom from torture or cruel and inhuman punishment (the question being asked by the Court of the UK is whether the Eighth Amendment to the US Constitution provides protection equivalent to Article 3 ECHR).

In investigations of a range of potential violations of the ECHR that might occur if extradition to the USA were to take place (almost all of which would be entirely avoided if any of the many individuals to whom they might apply were to be tried in the UK), we have discovered a range of measures taken by other European countries which protect their citizens from exposure to such risks.

May I apologise for writing to you so late in the day. I do so as Mr Khan has suggested that it may be that some of the research we have carried out into these cases (and others which are also now frozen by the European Court for similar reasons) might be of assistance to the Committee before it concludes its deliberations.

I will be pleased to make available all of the written submissions in the case, and accompanying evidence, or if it were to be more manageable to do so in light of the now very extensive evidence that has been submitted to Europe, to summarise that evidence for the Committee and to do so in person if the Committee were so to request.

I would be very pleased to discuss with you any ways in which, if it was thought appropriate, I and colleagues in this office might assist the Committee.

December 2010

Written evidence submitted by Ashfaq Ahmad

I write further to your discussions with my daughter Dr. Amna Ahmad regarding my son Babar Ahmad, who has been imprisoned since August 2004 whilst awaiting extradition to the US under the US-UK Extradition Treaty 2003.

I now enclose a recent letter signed by twelve Muslim community leaders regarding Babar's case, including Sir Iqbal Sacranie and Lord Nazir Ahmed.

I would be grateful if you could consider this letter as part of our family's submissions regarding my son Babar's extradition case. Babar's solicitors will be making further more detailed submissions later this week.

I thank you for taking the time to consider these submissions and am happy to assist you further in any way that I can.

APPENDIX

LETTER SIGNED BY MUSLIM COMMUNITY LEADERS REGARDING BABAR AHMAD'S CASE

We, the undersigned representatives of some of Britain's largest Muslim communities, wish to express to you our deep concerns about the case of Babar Ahmad, who has been held in prison without trial since August 2004, fighting extradition to the US under the controversial "fast-track" procedures.

Babar Ahmad is a prominent member of Britain's Muslim community and over the last six years, our congregations have voiced to us their collective outrage at what is widely held to be a grave miscarriage of justice. We in turn have repeatedly conveyed these frustrations, in private and public, to senior officials in the previous Government.

Extradition treaties exist to apprehend fugitives seeking refuge from their crimes in a foreign country, not for citizens subject to over-expansive jurisdiction whilst living in their homeland. Babar Ahmad has not committed any crime in the US so he is not a "fugitive." Even according to US prosecutors, "at all times material" to the allegations against him, he was living in the UK.

This prompted Senior District Judge Timothy Workman, the UK's most senior extradition judge, to rule on his case on 17 May 2005: "This is a difficult and troubling case. The defendant is a British Citizen who is alleged to have committed offences which if the evidence were available, could be prosecuted in this country." As you will be aware, several MPs and peers from all parties, including Deputy Prime Minister Nick Clegg, have raised concerns about his case in Parliament.

The Coalition Government has pledged to rectify our unfair extradition arrangements with the US. We acknowledge the Home Secretary's intention to draw a line under the past by reviewing controversial anti-terror legislation and holding an inquiry into the abuse of torture suspects. However, we find it difficult to comprehend how extraditing Babar Ahmad to the US, where he may languish in prison for further years on end whilst awaiting trial, will enable us to move on from the past and repair the damage to community relations caused by the events of the last few years. In light of the recent announcement that a review of the extradition laws led by Lord Justice Scott Baker is due to begin, we believe it only reasonable that Babar Ahmad's extradition be stayed until such time as the review has been completed.

In an interim decision on Babar Ahmad's case on 8 July 2010, the European Court of Human Rights declared that prosecuting Babar Ahmad in the UK is a viable alternative to extradition. We understand that the Attorney General Dominic Grieve has been made aware of fresh developments in Babar Ahmad's case, including the recent decision of the Crown Prosecution Service to prosecute four police officers in relation to the assault on him during his arrest.

There cannot be two parallel systems of justice whereby some British citizens facing extradition to the US are afforded rights that others are deprived of, regardless of the seriousness of the allegations. We also note that the Home Secretary has recently frozen the extradition to the US of computer hacker Gary McKinnon (whose case is similar to Babar Ahmad's) and that Prime Minister Cameron has held talks with President Obama regarding that case.

In light of all of the above, over six years after Babar Ahmad's incarceration, we urge you in the strongest

possible terms to help stop his extradition and put him on trial in the UK. Such a gesture will not only end this lengthy miscarriage of injustice but it will also win the hearts and minds of the Muslim communities in Britain.

Sir Iqbal Sacranie OBE)
Chair of Trustees, Balham Mosque

Lord Nazir Ahmed of Rotherham
Former Secretary General, Muslim Council of Britain (MCB

Farooq Murad
Secretary General, Muslim Council of Britain (MCB)

Fuad Nahdi
Executive Director & Founder, Radical Middle Way (RMW)

Shaykh Ibrahim Mogra
Imam, Leicester

Mohammed Ali
CEO, Islam Channel

Nabil Ahmed
President, Federation of Student Islamic Society (FOSIS))

Massoud Shadjareh
Chair, Islamic Human Rights Commission (IHRC

Mohammed Sawalha
President, British Muslim Initiative (BMI)

Ismail Adam Patel
Chair, Friends of Al-Aqsa

Salim Mulla
Chairman, Lancashire Council of Mosques

Moazzam Begg
Director, Cageprisoner

Home Affairs Committee - Minutes of Evidence

Extradition

Here you can browse the Minutes of Evidence which were ordered by the House of Commons to be printed 30 November 2010.

Oral Evidence
Taken before the Home Affairs Committee
on Tuesday 30 November 2010

Members present:

Keith Vaz (Chair)	Steve McCabe
Nicola Blackwood	Alun Michael
Mr Aidan Burley	Mark Reckless
Lorraine Fullbrook	Mr David Winnick

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Managing Director, Kaim Todner Solicitors was in attendance.

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Examination of Witness (Questions 1-27)

Q1 Chair: I call the Committee to order. This is a one-off session on the extradition issues, which will also cover the European Arrest Warrant. I refer all those present to the Register of Members' Interests where the interests of all Members are noted. Are there any specific interests that Members of the Committee wish to declare before we start?

Our first witness today is David Blunkett. Mr Blunkett, thank you very much for coming to give evidence to this Committee.

David Blunkett: Good morning, Chairman. Thank you.

Q2 Chair: We have called you to give evidence today because you were the Home Secretary at the time the extradition treaty—specifically the treaty with America—was signed. Of course, if there are other issues to do with other treaties or the general issue of extradition, I'm sure Members will want to ask you questions on that as well.

If I could start with this question: on reflection, do you think that in signing the treaty we gave away, on balance, more to the Americans than was anticipated at the time?

David Blunkett: We're all working from hindsight, including virtually all—not entirely, but virtually all—parliamentarians in both Houses at the time, and I'm subject to reflections in hindsight like everyone else. Firstly, I think it was a mistake not to indicate that we would not ratify ourselves until we were clear that Congress was going to do so and that left a period of limbo; secondly, that we'd more readily explored the world of cyber—in other words criminal activity which goes beyond the normal geographic boundaries; and, thirdly, given the change in technology, whether there could have been greater understanding seven years ago about the potential use of that technology to deal specifically with the US circumstance, where they have a particular view of anything that happens in the rest of the world that affects them.

Q3 Chair: But with the knowledge that you have at the moment, if you were re-signing this treaty, would you think again about the balance that was struck between what we are expected to do in sending one of our citizens to America and what the Americans are expected to do as far as they are concerned?

David Blunkett: If I were doing it now, I would reflect on the experience, the debate, the discussion over the last seven years. I have to say that we were trying to achieve a balance—particularly given that the treaty had run out—in terms of ensuring that UK citizens, or anyone that we chose to transfer back to US jurisdiction, were not subject to the death penalty and I do think we need to bear that in mind. It bore very heavily with me and I think it's very important. So the US were giving up something that, whether we like it or not, they consider to be a part of their judicial armoury and something that many states take as being a given, regrettably. So we had to protect interests of people in the most obvious way possible, namely their life.

I think it's very important to understand this. The seven years have taught me one thing, which is that the theory of what we signed may have been improved but the practice has been very different. I can't think of anything in the seven years, including the very high-profile cases that have been dealt with—like the NatWest Three or current ones—where the Extradition Act and treaty have taken away someone's rights in a way that wasn't the case before.

Q4 Chair: But, accepting all that, you welcome the Government's review of extradition, bearing in mind the last seven years?

David Blunkett: Yes, I do.

Q5 Chair: And do you think that is an opportunity maybe to get the balance right?

David Blunkett: I think it's an opportunity, not just with the American treaty and Act but also with the European Arrest Warrant, where we thought we'd got de minimis rules in terms of what would be subject to the EAW. We believed that people would act rationally in terms of the time that had elapsed before cases were pursued. In both those cases I think there is room for improvement with the EAW, just as there would be in reviewing the treaty with the US. And, of course, the odd circumstance with the European Arrest Warrant is that it doesn't have to be applied to the country of origin in which someone is living; people can be picked up elsewhere. I have a constituency case at the moment where somebody was picked up in Spain for an EAW issued by Luxembourg on civil rather than criminal grounds—because they have a dual civil and criminal procedure—which wasn't issued in this country. So there are some anomalies that we certainly didn't see seven years ago in either of those Acts.

Q6 Chair: Indeed. One of the points of having the new treaty was to take some of these decisions, or all of these decisions, out of the hands of politicians—

David Blunkett: Yes, it was. And look where we are now.

Chair: —and give it to the judges to make this decision. I wonder whether you have been following the WikiLeaks issue, because one of the leaked cables refers to a one-to-one appeal by Prime Minister Gordon Brown. Clearly, you weren't the Home Secretary when this was done but I would like your comment on this: Gordon Brown's one-to-one meeting with the American ambassador, asking the Americans to reconsider the case of Gary McKinnon. If indeed that was the purport of the new treaty—to take it out of the hands of politicians, placing it in the hands of judges—were you surprised to learn from these cables that Mr Brown met with the ambassador seeking to get that decision changed?

David Blunkett: No, I wasn't. I agreed some years ago that it was a really good idea, for all our sakes. I remember discussing with Ken Clarke in a private meeting that it would a good idea not to end up with these cases being a political football. But inevitably in life—as we see right across the board, not just in these issues—you can't ignore something that becomes extraordinarily high profile. As I've already indicated, in cases such as that of Gary McKinnon—I'm not going to deal with the specific case, but in such cases—there is massive public attention. And although the treaty itself is not responsible for the immediate removal of Gary—otherwise he wouldn't be here—cases like his would have been dealt with summarily. There was an issue for senior politicians to make representations.

I have spoken to the Department of Justice myself and I communicated with the previous Home and Justice Secretaries. I won't say on what basis, except to say this. Were we looking at a case like Gary McKinnon's seven years ago and someone had put to me, "In this cyber age it is possible for someone to commit a crime from one jurisdiction directly into another with substantial potential effect. Do you want to try and deal with this in a different way?" we probably would have reflected on that. We certainly can't say that we can't have a system where a country that is badly affected can't expect to take action, because where would that leave us with China, for instance?

Q7 Chair: So you would retain that discretion: the ability of a Prime Minister to see an ambassador or, indeed, David Cameron when he raised it directly with President Obama recently? You want to see that bit of discretion retained?

David Blunkett: In order to try and find a solution. For instance, is it possible in the modern era, with technology that has advanced enormously in the last seven years—we forget just how enormously—as has cyber-attack, which has been reflected in the Government's recent very welcome statements on organised crime and potential terrorism with cyber-attack, that we might be able to use video-conferencing much more effectively if someone is in a circumstance—it might arise in all sorts of arenas—where the court hearing is in one country, the jurisdiction from which the attack took place is in another and they are friendly countries with a proper treaty arrangement?

Chair: Indeed. Thank you very much. You have been very helpful so far. If you could keep your answers a little briefer, I would be most grateful.

David Blunkett: Only because it is dangerous territory I'm on, Chairman. So I'm trying to give as full an answer

as possible.

Q8 Lorraine Fullbrook: Thank you, Chairman. David Blunkett, I have two questions. The first one, going back to your point about the death penalty, I suggest this is a spurious argument because, as you know, there is an absolute prohibition, unless the Secretary of State receives an adequate written assurance from the requesting state that the death penalty will not be imposed or not be carried out if imposed.

David Blunkett: Well, we wouldn't have a treaty. I mean, what you are really raising is: do you believe in extradition arrangements on the lines we've developed with the US and with the rest of the European Union?

Q9 Lorraine Fullbrook: My second question goes to that. What exactly did you hope and expect the new treaty and the Extradition Act to deliver, given that the new treaty requires from the United States, when requesting extradition from the United Kingdom, probable cause in their law courts, but there is no corresponding requirement by the United Kingdom from the United States—a blatant imbalance when we signed the treaty.

David Blunkett: No, that's because of the nature of the US judicial system, not because we decided that we were going to have an unbalanced Act. That applies with the US, whether we had renewed the treaty and introduced the new Act or not. And, as I've already indicated, in the seven years since the signing of the treaty and the passage of the Act, I can't think of a single case where the judicial process in this country has not been explored to the full.

Q10 Lorraine Fullbrook: But when you signed the treaty did you not understand that you were giving more rights to American citizens and you were giving away British rights of British citizens, as a Minister of State at the time?

David Blunkett: As Home Secretary I understood entirely what we were doing from our position, in terms of what was available to British citizens and, as has been explored over the last seven years, they have been able to use their rights to the full, which is why I am confident in being able to say what I've said this morning. Yes, I was aware that the judicial system in the United States was different, but we accept their judicial system as being fair and democratic and if it isn't, then I think it is beholden on Committee members to say so and why they believe that.

Chair: Are you done?

Lorraine Fullbrook: Can I carry on, Chairman, please?

Chair: One more question quickly.

Q11 Lorraine Fullbrook: Complete reciprocity has never been a feature of our extradition arrangements, according to Baroness Scotland. And I suggest that the United Kingdom, when you signed this treaty, were putting the United States on a par with Albania, Turkey and Romania.

David Blunkett: You can presume what you like, but the former Attorney General is entirely right: we haven't. And I've given an example this morning in relation to Luxembourg.

Q12 Lorraine Fullbrook: But you think it is okay not to have prima facie evidence given to the UK?

David Blunkett: I'm not using terms like "okay". I think it is very wise for countries in the modern era to have sensible extradition arrangements with friendly countries.

Q13 Alun Michael: I have two questions. The first is—going back to this question of principles because this is a two-way process, isn't it—do you stand by the basic principles of reciprocal extradition arrangements and how would you improve the system if you had the opportunity now?

David Blunkett: Reciprocal arrangements, in terms of accepting the democratic nature of the judicial process and the right to request and to have that request for extradition responded to, yes, I do accept that. But I think we just explored complete reciprocity in terms of the nature of the judicial systems. We wouldn't get anywhere if we didn't do that. We have a different system to Scotland, of course.

Q14 Alun Michael: The other thing is that you mentioned in your earlier evidence internet-related or cyber-

crime. Would you agree that internet-related crime has to be dealt with via extradition processes, if we're not to have very heavy international legislation as an alternative?

David Blunkett: Yes, I would and that's why I'm just posing ideas as to how we might deal with that in the modern era. We certainly can't ignore it. It's something entirely new that would not have been expected years ago, and I think we're all coming to terms with that.

Q15 Mr Winnick: You said, Mr Blunkett, that a condition that you consider—as indeed we all would—that was favourable to the signing of the treaty is that we wouldn't hand over anybody who would be subject to the death penalty. Would I not be right in coming to the view that no British government could possibly have agreed otherwise?

David Blunkett: I'm hoping you are, but we have had debates over the years, before my time in Parliament, on these issues. We've obviously signed up to the European arrangements from 1951 onwards, which is why, of course, we don't transfer people out of the country to those areas of the world where we believe they'll be killed or tortured, and that gives us a moral stand that we need to stand by. The issue we were dealing with in 2003 was whether you had any extradition arrangements with the US or not.

Q16 Mr Winnick: On the substance of the matter, the point that has been repeatedly made, and not only confined to what at the time were the Opposition benches, is that the treaty is hopelessly—I emphasise "hopelessly"—one-sided; that under the treaty American prosecutors no longer need to show there are reasonable grounds for someone to be extradited to their country. The United States only has to demonstrate that there is a statement of the facts of the offence and that is the end of it.

David Blunkett: Well, the judgment has to be made whether probable cause has been demonstrated, whether there is a case to be heard, and I have already said this morning that our judicial process has worked extremely well over the last seven years in protecting people's right to go through and challenge that assumption. That is what people have done over the last seven years.

Q17 Mr Winnick: But, if it's so as far as a request for extradition made by the United States is concerned, would I not be right in saying that the treaty means that anyone that the United Kingdom requires to be extradited from the United States we will have to produce far harder evidence than otherwise to the United States?

David Blunkett: That is the issue of not having full reciprocity and you are right about that. That is the side of the coin where there is an argument to be made: should we have demanded that their judicial process should be weakened in order to have absolute complete balance? We can have a discussion about that. That is a fair point, but it is a different one to complete imbalance.

Q18 Mr Winnick: Why did you sign a one-sided treaty, Mr Blunkett?

David Blunkett: Sorry, you put to me that there was a complete and total imbalance and you then went on to use the presumption that people from this country would simply be removed almost on the nod and they weren't, and they haven't been and they won't be. That is the point I am making back to you. Yes, it is true; it is harder, theoretically, to get people out of the United States to Britain than it is out of Britain to the US. In practice that hasn't been the case.

Q19 Steve McCabe: Some people argue that we should just abandon the idea of speedier extradition with countries where the judicial systems are different. What do you think would be the downside of taking that advice?

David Blunkett: Well, the inability of friendly countries working with us in every other sphere, including in Europe, who have signed up to the ECHR, such as France. When I came in as Home Secretary, one individual had been resisting extradition to France for nine years.

Steve McCabe: Thank you.

Q20 Chair: On the issue of other European countries, there is the case of Learco Chindamo, the young man who murdered Philip Lawrence. We do have a problem, do we not, with other European countries where somebody has been resident in this country for a long period of time? The public may feel that this particular man should be sent back to his country of origin, but European law prevents us from doing so.

David Blunkett: Yes, it does. It is much wider than the discussion we are having this morning but I think there is an issue. Of course, then you get into questions of where freedom of movement ceases: what individuals no longer have freedom of movement inside the EU? A very interesting theoretical question, which I haven't thought enough about to give you a sensible answer this morning.

Q21 Chair: Do you think this kind of issue ought to be pressed at the JHA when Ministers go over there?

David Blunkett: I think it should be explored, but I think it would need someone with greater legal knowledge than I currently have available to me to give you a sensible way of dealing with that.

Q22 Nicola Blackwood: As we've already mentioned, the Home Secretary has announced a review of the extradition process and in this discussion we have heard a few suggestions from you, such as looking at the EAW de minimis requirement, which I think would be particularly relevant for extraditions to Poland. I understand the Polish system requires a trial for every criminal allegation, no matter how trivial, which is obviously quite out of step with the way in which we conduct justice in this country. So where exactly do you think we could reframe the extradition process in order to gain the advantages that you originally intended, but to get rid of some of these very real disadvantages, which we're observing and which are impacting British citizens?

David Blunkett: Firstly, a time limit on when extradition can be triggered, particularly in circumstances like Gary Mann, where arrest had already taken place and release had been authorised and then six years later he's back in the same position. I think that is not an acceptable situation—not one that any one round the table in 2003 foresaw.

Secondly, on the issue of de minimis, we had a struggle with this because, just to give an example, Germany have very strict laws in relation to pronouncement—particular provocative speech—arising out of their experience with the Nazis, and we had to debate at the time how we would deal with the situation, which arose later in relation to one of our so-called historians, in terms of what would happen in those circumstances. I'm much more interested in the practical daytoday of someone who would receive a community sentence or even a warning here, but who might be given a prison sentence in another European country, but would be subject to the EAW. I think we have to negotiate our way through that so that we have fewer cases—and you've used Poland as a correct example—where people find themselves caught up in someone else's judicial system way beyond what would have been the case here.

Q23 Nicola Blackwood: I'm struck as well, though, that in the amendments to the Police and Justice Act in 2006 there was a measure put in to try and prevent extradition where a significant part of the alleged offence had been committed in the UK, but it required that a resolution of both Houses would be passed in order for that to commence. That didn't happen. Could you explain why?

David Blunkett: No, I can't. I'd need notice of that question because I was no longer Home Secretary and, although I've taken a real interest in both home affairs and justice since, I haven't to the point where I can give you an answer to that question.

Q24 Nicola Blackwood: Do you think that we should be trying to move forward on that point?

David Blunkett: I think it's important that, where the substantive nature of offences takes place on our home territory, we deal with them as a domestic offence.

Q25 Chair: Mr Blunkett, let us get this right for the record. You signed the treaty, given the circumstances that were before you, having accepted, of course, all legal advice that every Home Secretary would have and I'm sure you had much legal advice at the time before you signed it. But with hindsight and with all that has happened, in terms of the evidence—for example, just three Americans have been brought to Britain under the Extradition Act since 2004, whereas 28 UK nationals have gone the other way—if that treaty was brought before you now and placed before you, would you sign it again on the same terms?

David Blunkett: I would raise the issues that have been raised this morning, in the context of the answers I have given you, Chairman.

Mr Winnick: A very good answer, Mr Blunkett.

Q26 Chair: You are quite satisfied that, even though the Act took politicians out of the sphere of decision making, because of the workload that Ministers had to face with looking at every single extradition case, you are

quite happy that Prime Ministers and Home Secretaries are able to make representations and intervene in cases of this kind?

David Blunkett: I think it's inevitable and I think it's because new cases, in new circumstances—moving on as the world is—throw up issues that sometimes could have been, but more often could not have been, seen to have been the case when treaties were signed, which is why I welcomed the review when the Home Secretary announced it.

Q27 Chair: Finally—I know you don't want to comment on individual cases, but you must have a view, based on what you read in the newspapers and the documents that you have seen—as far as the Gary McKinnon case is concerned, do you think that would be an appropriate case for a Home Secretary to basically say, "He can't go back."?

David Blunkett: The reason why the current Home Secretary is taking her time over it is because of the nature of the complications and the difficulty that has been presented to previous Home and Justice Secretaries since the case arose—not just in terms of our relationship with the United States, which is critical to Britain's well-being, but because of the implications down the line and the precedent set. I have said this morning, Chair, as far as I can go, I think it would be a good idea to explore whether, if the US insist that the case should be heard within US jurisdiction—which is their right and would have been before the treaty was signed—we might be able to use new technology as a way of getting round what is a very specific case, with a specific claim of illness arising out of Asperger's and the danger to an individual's health. I think that is why the Home Secretary is taking her time.

Chair: Indeed. Mr Blunkett, you've been extremely helpful. Thank you very much indeed for coming in this morning. Thank you.

Could I call to the dais our next witnesses from Fair Trials International, Justice and Liberty?

Examination of Witnesses (Questions 28-59)

Q28 Chair: Thank you very much for coming, Mr Russell, Ms Blackstock, Ms Chakrabarti. You've heard the Committee's exchange with Mr Blunkett and I think that we have some questions to you. You don't all have to answer every single question, but if you do I'd be most grateful if you could be as brief as possible. We are very keen to find differences between all of your organisations, rather than necessarily agreement, simply because I think we would like to get as balanced a picture as possible.

If I could start by asking: why do people keep maintaining that the extradition treaty benefits US citizens more than British citizens? Mr Russell?

Jago Russell: I think because they smell a rat. 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.

Q29 Chair: Ms Blackstock?

Jodie Blackstock: I should say my experience is in the European Arrest Warrant, largely over the US-UK extradition treaty arrangements. But I think it is right to say that our concern largely rests on the forum issue, more than anything, in relation to the fact that there was this amendment that has rightly been pointed out by Ms Blackwood. Without that, there is a real possibility that offences that are occurring in this country are still at risk of being sent back to the US under the treaty arrangements, where we would certainly consider that they ought not to be. But there are real human rights implications that I'm sure Liberty can speak to you on better than I can.

Q30 Chair: Yes, we will come on to the European Arrest Warrant slightly later. Ms Chakrabarti, is it unfair?

Does a US citizen get more out of this than a British citizen? Is it unbalanced?

Shami Chakrabarti: It is unbalanced but, of course, it's not just about reciprocity, because we don't want a race to the bottom. The Americans have it right. They have a protection that their people should have and our people should have as well, which is, in my view, that no one should be taken to another jurisdiction—whatever that jurisdiction is, even if they have a wonderful trial system—without a prima facie case being shown in a local court. Because 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.

Q31 Chair: Do you think the Act should be repealed or do you think that there ought to be changes made to it?

Shami Chakrabarti: To some extent that is a matter of drafting, but there needs to be a fundamental change. I want to say, at the outset, that I do support the idea of extradition and I do have some sympathy with Mr Blunkett. I listened to his evidence carefully. I've been a student of home affairs for many years, and years ago it was a very convoluted system. It was particularly convoluted because there were roles ascribed both to politicians and to the courts, and there was inevitable ping-pong between the two. Whenever you give the Home Secretary or other politicians lots of discretion, inevitably there can be judicial review of the exercise of that discretion.

I think the mistake was to squeeze out the discretion of the courts. I think it would be better to take politicians out of something that is essentially a legal process, but give sufficient discretion to the courts so that, first, nobody goes anywhere without a prima facie case; secondly, no one goes anywhere if the offence alleged would not be an offence here in Britain; and thirdly, leave the courts the discretion to refuse to extradite in cases, such as Gary McKinnon's, where justice would be better served by dealing with him here at home.

Q32 Chair: Mr Russell, what is surprising is that when Alan Johnson, as Home Secretary, was asked by Members of this House, including members of this Committee when he came to give evidence, about intervening in these cases, he was very clear that the ability of a Home Secretary to intervene was very limited. We hear this morning—thanks to WikiLeaks—that Prime Minister Brown had had a meeting with the American ambassador pleading Gary McKinnon's case. Is this a surprise to you that this was going on?

Jago Russell: No, it's not a surprise to me. In fact, I am delighted to hear that that has happened. What has happened, as Shami has rightly explained, is that many of the safeguards that you need for a fair and effective extradition treaty have been squeezed out of this Extradition Act and, as a result, the courts don't have the necessary discretion to prevent extraditions where the result would be injustice. Where that happens, frankly, you cannot sacrifice an individual to the principle that this should all be dealt with by the courts. You can't sacrifice an individual like Gary McKinnon or Gary Mann, which Blunkett referred to, to that constitutional issue. So, I'm not surprised. I know that there are many cases in which this is the way that diplomacy works, in which individual cases that are considered to be unjust are sought to be dealt with at a diplomatic level. They should be dealt with—

Q33 Chair: Why do we need to change the Act? If, at the end of the day, an ambassador can be called to see a Prime Minister—and indeed Mr Cameron raised this with President Obama the last time they met—surely we should just leave the Act as it is and allow this inherent ability of Prime Ministers and Home Secretaries to make representations. Why should we change it?

Jago Russell: I think there is a very simple, practical reason. If you look at the number of extradition requests that the UK is dealing with every year, it would simply be impossible. There were 1,000 arrests just under the European Arrest Warrant scheme in 2009-10. You couldn't realistically expect the Home Secretary or diplomatic services to get interested and to make representations on all of those cases. But there is also a constitutional issue. Ideally, the court should have the discretion to deliver justice in individual cases—to hear both sides of the story, to consider the evidence and to make a public and reasoned judgment. The problem we have now is that they simply don't have the powers and are not using the powers that they have in order to do that.

Q34 Lorraine Fullbrook: You will have heard my position. Frankly, I'm astounded that the US-UK extradition treaty was signed in its state at the time. There is currently a review ordered by the Home Secretary. In your view, what amendments would you like to see in that review, so that we can move forward? I know what my views are, which is really about the prima facie evidence. Across the board, what amendments would you like to see out of the review?

Shami Chakrabarti: As I have said, in principle I think that no one should go to another jurisdiction, whether within Europe, to the United States or anywhere, without those three factors: prima facie case, dual criminality and this ability of the courts to say justice would be better served in the particular case here at home. In relation to the United States, that can all be dealt with by bilateral negotiation. It's not an EU issue. Frankly, even before you renegotiate the treaty with the United States, you can deal with the third point—the Gary McKinnon point—which is forum. It is possible even under the existing treaty with the United States to put that little bit of mercy back into the system so a court can say, "The facts of this case relate largely to activity in the UK, whether on the internet or otherwise, and this case can be dealt with here." So that forum amendment—I think Ms Blackwood mentioned the amendment from 2006—could be activated immediately. There's no requirement to renegotiate the treaty. That could happen tomorrow to help some future cases. It's not perfect but it's a start.

Q35 Lorraine Fullbrook: I agree entirely, if I could ask the other two witnesses, please?

Jodie Blackstock: As I say, the caveat still applies: it's not my area of expertise. I would certainly agree, the same issues that Shami has raised there are important. I think it is right to acknowledge that there are safeguards within the treaty as it exists, and to scrap that treaty and start again would be unnecessary. Most of it does work in practice, in terms of the safeguards that are there—for example, things like ensuring identification of the right suspect. We still need to have a reasonable suspicion in this country under the treaty arrangements. And, indeed, taking the treaty with the Extradition Act, the two together work well, save for the elements that have been identified.

Q36 Lorraine Fullbrook: Of course, reasonable suspicion isn't the same as probable cause or prima facie evidence.

Jodie Blackstock: It's not the same as prima facie evidence, in that you would expect a court here, in any other category 2 case, to be able to look at the evidence that is going to be put before a court in another country upon which to try that person. Of course, reasonable suspicion goes to whether there is an offence in the first place that can even be prosecuted.

Jago Russell: On this reciprocity point, it's not just an issue of principle; it is also a practical issue. In fact, former District Judge Workman recently gave evidence to this Committee and said that in the Lotfi Raissi case, it would not have been possible to have prevented Lotfi Raissi's extradition to the United States under these new arrangements.

Q37 Chair: For those of us who don't have such long memories, briefly what was that about?

Jago Russell: Lotfi Raissi was wanted by the United States on suspicion of having been involved in training people involved in 9/11. When the British courts looked at that case, because there was a requirement to provide basic evidence of guilt, the courts in the UK threw it out and said, "We're not going to extradite him because there's no evidence." So it's not just a principle issue. In practice, it can and has made a difference. In terms of the amendments in the review, for us at Fair Trials International the key issue is whether or not this review is going to get to grips with the issues around the European Arrest Warrant and, in particular, whether the review will make recommendations for amendments that are needed at European level to deliver a system that is just and fair.

Chair: We are coming to the European Arrest Warrant very shortly.

Q38 Mr Burley: The case of Learco Chindamo has been in the papers again recently—as you know, he murdered Philip Lawrence—and, as I understand it, it is article 8 of the ECHR that is preventing him being sent back to his homeland, despite being a known and highly dangerous criminal, because he now has a settled life in the UK. Can you understand the public's anger about this situation and do you think it's time that we now amend the Extradition Act, so that if you take away someone else's human rights—in particular the most basic human right, the right to life—you forfeit some of your own human rights?

Shami Chakrabarti: I have to disagree with that interpretation of the judgment, which I have read. That judgment was essentially, as Mr Blunkett suggested earlier, about free movement within Europe. Article 8 was mentioned in passing, but it is essentially a free movement within European Union issue.

Leaving the law aside, as a matter of practice I think in that case Mr Chindamo was a very small child when he first came to Britain, so there is an issue there about whether you're going to play nationality with perhaps a baby that came or a toddler. My bottom line on this—and this is something I would try and express better to the public—is that dangerous criminals shouldn't be on the Eurostar. They should be in prison. Then you can

argue about which country should be keeping them in prison, but that is the issue you should be debating. He doesn't need to be on the Eurostar. If he has done what is alleged, then no doubt he will be recalled to prison.

Jago Russell: I haven't read the judgment but I agree with Shami's comments and I have nothing to add.

Q39 Mr Winnick: To the Director of Liberty, I wonder—recognising that those who don't particularly like the Human Rights Act being incorporated into British law may seize the opportunity of raising the question of the person who murdered Philip Lawrence—do you recognise not only the public feeling but, what is perhaps even more important, the feeling of the widow and the way she feels the law has not acted in any way to recognise the deep feeling? She has lost a husband and her children a father. Many of us consider Philip Lawrence in the same way we consider Stephen Lawrence. Both were murdered and both were very brave people. I am just wondering if there is some aspect of the law that would allow the person I've mentioned to be extradited.

Shami Chakrabarti: Just to be clear, this is not an extradition case. The argument that was at large in this case was the question of deportation rather than extradition. So this is whether the British Government could deport this criminal, as opposed to whether another government was requesting him to seek trial. There is a subtle but important difference there. My heart goes out to Mrs Lawrence. I think she's been appallingly treated, not just by the criminal but, frankly, she has been misled to some extent by the media and I think maybe by—

Q40 Chair: In what way was she misled?

Shami Chakrabarti: I am now relying on my memory of the original events—the original row a few years ago—about the fact that this man would not be deported. I think she had been given some information or suggestion that Mr Chindamo could be deported and then that wasn't an option in the end. I also think, more recently, there are suggestions she wasn't given sufficient information about the time of release, where he might be living and very real human concerns.

Chair: Mr McCabe, here, looks very puzzled.

Q41 Steve McCabe: I would just like to clarify. You said that he had been misled by the media—the media told her that he could be deported and gave her that information or someone else. I didn't quite understand that.

Chair: Can we draw this to a close because Mrs Lawrence isn't here. Mr Russell, do you have anything to add?

Jago Russell: No.

Q42 Mr Burley: I think she has been dreadfully treated and I recall her being berated by the Probation Service for not showing enough remorse in public. I mean it's absolutely outrageous. I agree with you, Shami, in terms of leaving the intricacies of the law to the side for the minute. But, in terms of free movement, you mentioned the Eurostar. Don't you think we have a right in this country to say: first, we don't want to pay for this person to be in a prison here because there is a cost there and, frankly, they should be deported and some other taxpayers in their country of origin should pay for that prison sentence; and secondly, if he has been let out and then commits more crimes, that is further weight to the argument to say he can be let out to commit more crimes in the country of origin?

Shami Chakrabarti: This is essentially a question about the European Union and the bigger question about how much integration and how much free movement you're going to have within the European Union. It has to be said, in fairness, that you can, in exceptional cases, deport people to other countries even within the European Union. I think what happened in this particular case, as I recall, was, because the man in question was very young when he first came to Britain, it was not considered to be an appropriate case. But it was a judicial decision. It was not considered, rightly or wrongly, to be appropriate for deportation.

Chair: We will come on to the European Arrest Warrant shortly. Ms Blackstock, do not worry, we have questions for you. But before that Alun Michael has some questions.

Q43 Alun Michael: Two questions, really. The first one is—returning to extradition—looking at it from the point of view of the UK victim, what victims want is an issue put to bed quickly so that they can get on with their lives, and justice delayed is justice denied, as we are always told. So with all the caveats and concerns

that the three of you mentioned, isn't it important to speed up extradition in terms of quicker justice for the victims of crime in the UK?

Shami Chakrabarti: I think that speedy justice is important for everyone—for defendants and for victims—but I also believe that one can have speedy justice that is also proper justice and is fair. My basic proposition is that you can speed up extradition by avoiding this constant interchange between political discretion and judicial review by giving proper discretion back to the courts.

Q44 Alun Michael: Sure, but I was asking you specifically, with all the caveats that I understand you have, isn't that a good principle to pursue?

Shami Chakrabarti: Yes, I think we can do fair extradition and speedy extradition. I believe that's possible, yes.

Jago Russell: I entirely agree with that. One of the interesting things that have come up in a number of our cases is that you have very speedy expedition, followed by very significant delays in another country after a person has been extradited; so speedy extradition doesn't necessarily mean speedy justice or speedy trials. We have one client, Andrew Symeou, extradited last summer, who spent over a year in Greece awaiting trial. Now, it was a relatively speedy extradition, but the family of the man that died then still had nowhere near receiving—

Q45 Alun Michael: Yes. But those, again, are about ways of improving the system—so that there is fairness, there is balance, there is proportionality—rather than about the principle of speeding up justice.

Jago Russell: I am absolutely in favour of a fair and effective extradition system.

Chair: Steve McCabe—on the European Arrest Warrant, Ms Blackstock.

Q46 Steve McCabe: Yes, maybe I can ask this to Ms Blackstock and to Mr Russell. I wonder if you could just briefly tell us what changes your organisations would like to see in the way the European Arrest Warrant operates?

Jodie Blackstock: The key problem with the European Arrest Warrant at the moment is proportionality. There wasn't a proportionality test put into the framework decision when it was originally passed. At the time the focus was on the problem of terrorism and ensuring speedy extradition. In a way that has worked; the extradition arrangements now in the EU are extremely effective. There were 11,500 people surrendered last year across 18 Member States. That is all very positive if you consider the system to be a positive system in general.

The problem with that is there was insufficient scrutiny of the differences that still exist between different Member States. We assumed—the collective EU—that all of us were signed up to the European Convention on Human Rights and that therefore meant that our systems in relation to criminal matters were far more similar than they are in practice. The proportionality is the most important issue because it means that people are being returned to other Member States for very minor offences, which in this country we simply would not consider seeking surrender for.

Q47 Chair: You have given us a figure of 11,000. Do you know how many warrants we have issued? You said 11,000 were released.

Jodie Blackstock: I believe the figure last year was 91 from this country.

Chair: Ninety-one?

Jodie Blackstock: That is 11,500 across 18 Member States.

Q48 Chair: Because isn't there concern about some countries—Poland for example.

Jodie Blackstock: Yes, 40% came from Poland.

Chair: Poland issued 5,000 European arrest warrants, including to a Mr Lewandouski, who was arrested outside court last Wednesday, aged 24, having lived in this country for six years, for a very minor offence that occurred when he was a teenager. Is there misuse, therefore, of this warrant?

Jodie Blackstock: Our argument certainly would be that there is misuse when you look at it from our legal system, but the problem in Poland, as has already been identified, is that if a matter is raised by a victim or a complainant in a case, it must be prosecuted. It must be followed forward under Polish law. That requires them to seek an arrest warrant without an amendment to the framework decision, asking them to consider necessity and proportionality. That is the European concept. It comes from the European Court of Justice.

We have seen it in cases under other civil areas of EU law. It's an issue that has already been contemplated and, as I understand it, agreed in relation to an investigation order piece of legislation that is currently being discussed in Brussels as a concept which can go into that instrument; which means, therefore, that there isn't a problem in Poland with proportionality per se. If it is to be imposed from the EU down, it's something that they can attempt to grapple with. I have spoken with colleagues in the Polish representation in Brussels who have said that they appreciate the problem. They have to charter these planes and carry people across—it's costly for them as well. But their law simply at the moment prevents them doing otherwise.

Q49 Chair: So the warrant does need to be looked at and it does need to be altered?

Jodie Blackstock: Absolutely, and all Member States are in agreement with that. There is a working party that has reviewed this. There are recommendations that the JHA Council has agreed.

Chair: Indeed. Mr Michael has a question on this very point.

Q50 Alun Michael: Yes, it is on the two issues: the proportionality and the human rights considerations. Clearly, it seems in relation to proportionality there is a requirement for an amendment of the European rule or the framework decision under which that applies. Is that your view, rather than bilateral arguments about what proportionality means? Secondly, on the human rights consideration, at the end of the day—I can appreciate the difficulties at the moment—does that come down to a change in the framework decision or does it come down eventually to judgments that will be made by the European Court of Human Rights?

Chair: If I can have brief answers, please.

Jago Russell: Absolutely. On proportionality, it's possible that you could create a proportionality safeguard in this country. Germany has done it; it has not yet been challenged. Ideally that's something that you do at European level. There are some things you can do purely domestically. You can put a forum requirement in easily. You can get British citizens serving sentences imposed by other courts in the UK rather than, as at present, extraditing them and then a few months later sending them back again to a British prison. You can do things around making the existing theoretical human right safeguard in the extradition treaty more effective.

What happens at the moment is that the British courts are effectively hiding behind this idea of mutual recognition—that we have to trust all other justice systems in Europe to do justice—and they're not getting to grips with the fact that many of these cases raise serious human rights concerns. So that is something that we could do domestically. There are things we have to deal with working with the rest of Europe, if we're to have a fair extradition system.

Q51 Chair: Ms Chakrabarti, do you think that is right? Should we amend this European Arrest Warrant? Has it gone too far?

Shami Chakrabarti: I agree that we should do what we can with what we have, but that is not enough. I think that Jago Russell and I agree that, as with the United States, we need fundamental reform, and we need those three elements back in what will still be a speedy and effective system: prima facie case, dual criminality and forum.

Chair: Mr Michael, did you have anything else?

Alun Michael: No, that's fine, Chair.

Chair: Lorraine Fullbrook has a quick supplementary, then Nicola Blackwood.

Q52 Lorraine Fullbrook: Thank you. It's just to follow on from Mr McCabe asking what changes you would like to see. What is your position on the Schengen Information System on the European Arrest Warrant alerts? Do you think that that should be as reliable and effective for the removal of those alerts as it is for the alerts to be made in the first place?

Jago Russell: There are a couple of very interesting points on that. One is the fact that sometimes mistakes are made and they're not picked up until somebody has been subjected to a European Arrest Warrant. That certainly needs dealing with. Then there is this other difficult point that we need to grapple with, which is the fact that if a court in one country says, "No, I will not extradite somebody to another Member State. It would be unjust to do so," there is currently no way whatsoever to get that extradition warrant removed. And so in a Europe that is meant to have free movement, you have people who are unable to leave the United Kingdom. We've had cases like this where people's lives have been torn apart because they're not able to visit elderly relatives in Spain, because France has issued an arrest warrant against them and France is refusing to remove it, despite the fact the British courts have said extradition would be completely unjust.

Q53 Lorraine Fullbrook: Do you think that should be done at the European level?

Jago Russell: It has to be.

Jodie Blackstock: Well, it has been. It has been. There is a convention with that very element in it for judicial scrutiny. You can bring a case under the convention in one Member State to remove the alert, but nobody has implemented it domestically. That is the frustration with many conventions at an EU level.

Q54 Nicola Blackwood: We have been talking a lot about principles of justice. I have a couple of quite practical questions. Do you think that the EAW or the US-UK treaty is having a more significant impact on UK citizens and which one of those do you think is going to present the most challenges to bring into place the changes that you have all recommended?

Jago Russell: I suspect the European Arrest Warrant will create significant challenges. We have to get 27 Member States to agree to amendments to put some of these safeguards in place and that is going to require a lot of concerted work. So I think that raises some significant challenges but, as we've said, there are certainly things that can be done and should be done straightaway, or as quickly as possible, to incorporate safeguards in UK legislation that don't require EU negotiation. So these things have to go in tandem, but let's sort our own Extradition Act out in the first place.

Shami Chakrabarti: You have to do both. This is a shrinking interconnected world. There should be co-operation between States. There should be effective extradition, no question about that. But people also need protections in return. They're sitting at their computers or they're going on holidays, everything that they should be doing, and they're very vulnerable to abuses of power at the moment.

Chair: Thank you.

Q55 Mr Winnick: To Liberty, if I may. I asked the former Home Secretary if he felt that the treaty was one-sided. Would that be your view, that it is one-sided?

Shami Chakrabarti: It is one-sided but, as he said, it is one-sided because there are constitutional protections for American people that I think there should be for residents of Britain, too. So it's not about, "Let's make it even-handed by a race to the bottom and no one gets protection." Let's take the American example and put prima facie case back in to the protections for our people, too.

Q56 Mr Winnick: You were in the room when the Chair asked Mr Blunkett if he would sign the treaty again. You heard his response. What is your response to what he said?

Shami Chakrabarti: I think that a lot of good things happen to former Home Secretaries. When former Home Secretaries don't have to drink the water of the Home Office anymore and they get to reflect, you do see some reflection and humility and I think we did hear a significant degree of that from Mr Blunkett who was honest about things that he wouldn't do again. We have all learnt from the experience of the treaty that was signed and from the European Arrest Warrant, both of which were passed—for laudable reasons I should say—after 9/11. But let us all learn from the experience and put a little justice back in the system.

Chair: A bit of humility? A bit of reflection?

Jago Russell: I think that is absolutely right and I'm delighted that we've also had from Mr Blunkett some humility and reflection on individual cases—Gary Mann's case, which he expressed some sympathy about. At one point Mr Blunkett was demanding that Gary Mann be nailed in the British courts. So I think there has been some humility.

Specifically on the European Arrest Warrant, I don't think that any of the Member States of the European Union expected that there would be 15,000 arrest warrants issued in 2009. It was sold to the public of Europe as a way of dealing with serious crime and terrorism, not as a way of dealing with people that have gone over their overdraft limits or that have failed to pay for a pudding and that's how it has been used.

Q57 Chair: Do you think we could use the word "abuse" here?

Jago Russell: I think that—

Chair: Or what word would we use? Frivolous?

Jago Russell: I think the problem was that not enough thought was given to it. It was rushed through, post 9/11, and they should have given more thought to how it might be used in future. So I think "careless" is what I would say, rather than "abuse" or "frivolous".

Chair: Careless.

Q58 Mr Winnick: So what would you like to happen now, if I could ask?

Chair: Sorry, just very briefly, I assume you all want it changed do you?

Shami Chakrabarti: Two points: emergency remedies in both systems; in particular, forum. You can do that under the existing European system and the existing bilateral arrangement with the US. And then fundamental reform at the European level on the arrest warrant and of the arrangement with the United States.

Chair: Ms Blackstock?

Jodie Blackstock: I absolutely agree. The framework decision has a forum article in it, which other Member States have used and we haven't, and that's incredibly important.

Chair: Mr Russell?

Jago Russell: I think we need to look at what cases we have seen over the last seven years; find out what has gone wrong and then work out how to fix it. Some of the things you can fix domestically; some of the things we need to work with the rest of Europe to fix.

Q59 Mark Reckless: We used to have a protection where the Home Secretary could exercise discretion to prevent someone being extradited. Wasn't the fundamental driver of our losing that protection the refusal of the courts to allow Ministers to exercise discretion conferred on them by Parliament?

Jago Russell: That was certainly one of the main reasons for the European Arrest Warrant. The other one was the fact that many countries didn't ever extradite their own citizens, so that was another major reason behind the European Arrest Warrant. The problem is, however, that we have got rid of political discretion to prevent unjust extradition, but we haven't replaced that with judicial discretion to replace unjust extradition. So at the moment there is no power to stop an extradition that is fundamentally unjust and you need one or the other. My view is, ideally, it should be a discretion for the courts.

Chair: Thank you, Ms Chakrabarti, Ms Blackstock and Mr Russell. I'm sure that we will see you again on future inquiries. Thank you very much for coming.

Examination of Witness (Questions 60-78)

Q60 Chair: Thank you, Mrs Sharp. Karen Todner is your legal adviser, is that correct?

Janis Sharp: Yes.

Q61 Chair: Mrs Sharp, it's just over a year since you last came before the Select Committee.

Janis Sharp: Yes.

Chair: And the Committee wrote to the then Home Secretary asking him to intervene and stop your son from being extradited to the United States.

Janis Sharp: That's right.

Chair: Welcome back. The campaign goes on, clearly.

Janis Sharp: It does, yes.

Q62 Chair: Were you surprised to read this morning, as a result of the leaks on WikiLeaks, that Prime Minister Gordon Brown had had a one-to-one meeting with Louis Susman, the American ambassador, to try and do, in a sense, a plea bargain with the Americans to allow Gary to remain in this country?

Janis Sharp: I was very surprised and I was very pleased. I wish we had known about that because he would have been given credit for it. I was also surprised at the American reaction, because had the boot been on the other foot and they had said, "Could you not extradite someone?" we would say, "Of course not." That's because this is what friends do. They know that it's a difficult position for this Government and yet they didn't seem to want to give leeway at all. There are, I feel, rogue prosecutors who are abusing the treaty, but the fact that the people at the top are so intransigent I find difficult to understand.

Q63 Chair: As you also know, Prime Minister Cameron raised your son's case with President Obama. This is slightly different to what both the Committee and others were told, in that politicians have no role in all this, but you are pleased that they do have, presumably?

Janis Sharp: Yeah, I was very pleased that he raised it and we were given quite a lot of hope by this. I had always been told that when a new Government comes in, if another Government asks them for something, it will be given almost automatically, but it hasn't been. I believe that America wants Gary as an example of computer crime and Gary, because of his naivety, had no lawyer during his police interviews and he admitted computer misuse, but even at the last court hearing the CPS said they have no evidence whatsoever of any damage; they have hearsay. We had evidence from Professor Peter Sommers, an expert in computers, and he said that the alleged financial damage was for security that they should have had installed in the first place. There is a judge here who, some time ago, in the case of Russian hackers who were in this country, ruled that having to upgrade equipment does not constitute damage. Without an alleged $5,000 of damage on each machine, it is not an extraditable offence what Gary has done.

Gary was arrested March 2002 and had the extradition request happened then—because Gary was indicted by America in 2002, there was an American arrest warrant in 2002—he would have had prima facie evidence. He would have had the right to challenge it in a British court and could have proved he did not do the damage. But frequently the American prosecutors use a loophole of using a superseding indictment, whereby they can trawl back decades and this denies somebody having the right to the prima facie case that they would have had at the time.

Q64 Chair: Indeed. As far as the current situation is concerned, the Home Secretary is conducting a review of this case and your Member of Parliament, Mr Burrowes, has been to see her either with you or on his own. What is the timetable for this because, of course, the Home Secretary announced a review almost immediately after the Government was formed? Are you being kept informed as to how long this is going to take?

Janis Sharp: No, I'm not being kept informed. Prior to this, Nick Clegg had said Gary—he'd spoken to top lawyers—absolutely could be kept here. We had David Cameron say that they would keep him here. We had Dominic Grieve, we had Chris Huhne. Now I am sure that these people wouldn't use a vulnerable man just in order to be re-elected because that would be horrendous. So I'm sure that they will keep their word and they will have the strength to say to America, "No."

I mean in the case of Roman Polanski, France said, "No." Britain has supposedly—well, we're hearing different now but we thought we had—a strong relationship with America, but, in actual fact, both of our Governments seem very afraid to stand up for their own citizens. But we voted our politicians in to do this and everyone here and all of our politicians have an absolute duty to stand up for British citizens, for us to have equality to Americans, and for—I mean tomorrow we could introduce probable cause.

Q65 Chair: Yes. You did say you were surprised at the WikiLeaks meeting the Prime Minister had that you didn't know about. Are you now satisfied that there is a process that is going on where you feel confident that there will be an outcome that will be sooner rather than later? Because this has now gone on for about seven months, hasn't it?

Janis Sharp: I'm hoping that the pre-election promises will be kept and Gary will be kept here. It wouldn't set a precedent as was feared—Alan Johnson said it might set a precedent. The European Court of Human Rights frequently doesn't allow people to be extradited—people who are suspected of terrorist offences. Whereas people, often for minor crimes— You have the case of Ian Norris, where the House of Lords ruled that price fixing was not a crime but the Americans still pursued him for obstruction of justice of the crime that wasn't a crime.

Q66 Chair: You sat in for the evidence of David Blunkett. Were you pleased with what he said; that, with hindsight, if he was given the treaty to sign again, he would look very carefully at what he was signing and he would take into consideration all that has happened over the last seven years? Is this all moving in the right direction for you?

Janis Sharp: No, I appreciate very much he said that. But I still don't understand why our Government signed our rights away, used the Queen's prerogative to do it. To me it's one of the biggest betrayals of British citizens ever under a Government—under Tony Blair's Government, as it happens.

Q67 Steve McCabe: Mrs Sharp, I don't want to put words in your mouth but I just want to be clear that I've understood you. Are you saying that senior members of the Government have given you a promise or an assurance that your son won't be extradited?

Janis Sharp: Pre-Government, pre-election, many people said that what was being done was horrendous and that Gary absolutely should be tried here and that they would take steps once elected. I probably have the wording here, which I can probably pass round to you shortly. There have been promises from many people that this was wrong and it wouldn't happen. But I believe those people would not use a vulnerable man purely to be re-elected. We all know our Governments can do what they want. An Israeli politician was coming over here; someone wanted to arrest them for war crimes. The Government said, "We'll change the law." Our Government can do what it wants and we know that.

Q68 Chair: Just for the record, what Mr McCabe wanted to know was this was before the Government was formed?

Janis Sharp: It was pre-election, yes.

Q69 Lorraine Fullbrook: Do you think Gary's case is exceptional or do you think the extradition treaty with the United States is inherently unfair?

Janis Sharp: Both. I think Gary's case is exceptional because of his mental health, because he was questioned by the police at his police interview without a lawyer being present, because I didn't know about it until afterwards, and because he thought he didn't need a lawyer. So in that case it's exceptional. Also people with Asperger's often relate more to computers than to people. And I think when somebody is physically in this country when a crime has been committed, they should automatically be tried in this country. I think that is absolutely right. Under the Magna Carta we have a right to be tried by a jury of our peers.

We absolutely should have equality to Americans. Why on earth should we not have to have prima facie evidence? 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.

On the treaty, tomorrow we could say "Probable cause and prima facie". Everyone knows it's not equal and I welcome the review but, on the other hand, we voted the politicians in because we wanted the change promised. I don't understand why full forum couldn't be introduced immediately. But I think it should be automatic: if you're physically in this country you should be tried in this country. Evidence should be shown for anyone. We've extradited 33 people from America since this treaty had been used. Thirty of them are not Americans and the remaining three have dual nationality. That speaks volumes. We apparently are not extraditing Americans.

Q70 Mark Reckless: Mrs Sharp, in terms of the review of extradition that the Home Secretary has announced, are your objectives regarding that confined to your son and him not being extradited, or do you have a sort of broader range of policy objectives you would like to achieve?

Janis Sharp: No, I really appreciate the Home Secretary doing this. I appreciate it so much, and, in that instance, it's confined to my son. I know that the Governments worry about setting a precedent but, because of the mental health history in the family, it could not set a precedent because no one else can invent mental health history in their family. I've found out a lot more about that recently, fortunately, and I'm so pleased that we have this in our family because it's a chance for Gary to be saved.

My concern is—because Gary has a grandmother who was mentally ill and a great-grandmother who was 50 years in an institution—I don't want to see my son ending up in an institution because his mental health is going downhill rapidly, or ending up dying in a foreign prison. I mean either a virtual death sentence or a real one is just not acceptable. His mental health has deteriorated so much; his withdrawal and detachment from everything. Next year it will be 10 years since the alleged crime was committed.

There was also a precedent set in November 2007 where the British court refused to extradite alleged terrorist Róisín McAliskey. There have been precedents set and mental health is an absolute. You cannot send people abroad to go through this horrendous fear and terror. Gary has been in this terror for many, many years—we all have. Almost no one could deal with this level of heightened stress every single day. We think about it. I think about this constantly. There is nothing else in my life but making sure my son stays here. And for him it is horrendous. I cannot even explain to you how bad it is.

Q71 Mark Reckless: You mentioned that the treaty had been agreed under the Crown prerogative and that promises were made to you prior to the election. Do you think, more broadly, that it is appropriate for elected politicians to have involvement in these types of decisions?

Janis Sharp: I think it absolutely is, but it's preferable to have the treaty equal in the first place so that these abuses can't happen, because there is no doubt that rogue prosecutors are using it frivolously and for things that it wasn't designed for. We were told it was designed for terrorism. You also have the case of Christopher Tappin, who they say was going to export batteries to Iran, but in actual fact it was all a sting. It doesn't exist. An American agent set up a fictitious company. So how could they be going to Iran when the whole thing is fictitious, as in a play, in the first place? This is another man in his 60s. Ian Norris was 67 and had cancer. What is going on when they decide, "This is who we'll target"? Are they short of terrorists?

Mark Reckless: Thank you.

Q72 Mr Winnick: We all admire, Mrs Sharp, the way in which, over quite a long period of time now, you have acted in the way you have on behalf of your son. One can only, as I say, admire the manner in which you have done so.

Janis Sharp: My son is very gentle. He's a very good person.

Q73 Mr Winnick: I just have one question. One recognises the campaign, which hopefully will be successful, in stopping your son from being extradited to the United States, but do you accept there is a legal case regarding your son, although in your opinion it should be done in the United Kingdom?

Janis Sharp: Absolutely. At the last court hearing, the judge said that Gary could be tried in the UK. So why, when somebody has a pathological terror of travel and is going through so much mentally, would they decide that he should be extradited? It's horrendous. If he can be tried in the UK—as the court has said, as Lord Carlile has said, as many, many senior QCs have said—he should be tried in the UK. Although the CPS say they don't have evidence for the extent of the allegations America has said, they could try him here and these could be included within it. There's no problem in that. I mean it should absolutely be done. Our justice has also always been compassionate and it should be fair, and this is not fair.

Mr Winnick: Let's hope that view prevails.

Janis Sharp: Oh, I do.

Mr Winnick: Thank you very much.

Q74 Chair: Mrs Sharp, why do you think the Americans still want him? After all these years, with all the problems they have with these cables being leaked all over the world and their own internal security operation, which is clearly not perfect, why would you think they still want Gary?

Janis Sharp: I think they want to make an example of him for computer crime because he was naïve enough to admit to the computer misuse. Gary also embarrassed them. He left lots of cyber notes on the computers saying, "Your security's almost non-existent," and he said he would keep doing this until someone at the top listened, and no one did. I think he embarrassed them. They had no passwords, they had no firewalls. He was using a dial-up connection in a bedroom in North London. It's not like some group of terrorists sitting somewhere. America doesn't like to lose. America likes to win. I think they don't see it as showing compassion or being fair. I think they see it almost like a game, "We win at all costs. People do as we say at all costs."

Q75 Chair: Just for the record, I should tell you, Mrs Sharp, that we did ask the American ambassador to give evidence to this Committee today, but he declined to do so.

Mr Winnick: That's a surprise.

Q76 Chair: As far as the process is concerned, I understand you have concerns with the doctor that has been recommended to go and see Gary, to see whether or not he has Asperger's. Is it right that he's not qualified to give medical opinion on this particular illness?

Janis Sharp: Yes. It wasn't to see if he has Asperger's because the court had ruled that was an absolute and Gary has seen four doctors. It was for depression and suicide risk, but all of the doctors who are expert in Asperger's say that it has to be a psychiatrist who is an expert in Asperger's or autism to judge a person who has it, because they react entirely differently to neurotypical people. The psychiatrist they recommended is a very good psychiatrist but he does not have a background in Asperger's, and it's essential that the person who assesses depression and suicide risk does have this expertise. Karen, Gary's solicitor, has written to Theresa May saying that Gary is not refusing to be reassessed. He simply wishes to be reassessed by somebody who has the appropriate background.

Q77 Chair: Other than these letters, you have had no contact with the Home Office or the American embassy or American officials?

Janis Sharp: No, never. I mean Gary hasn't ever been questioned by the Americans, which seems ludicrous. Certainly they shouldn't start now because he's gone downhill much too much, but I wish I'd been able to speak to them in the first place. I always feel if I had that maybe it wouldn't have reached this point because this sort of case should never have reached this point.

Q78 Chair: As a result of what we have heard today, I am sure the Committee will want to write again to the Home Secretary to ask what is happening about this case, and ask for an answer before 14 December.

Janis Sharp: That's my birthday.

Chair: And when the Home Secretary will be coming to give evidence to us on this matter. I am sure you will want to come and see what she has to say.

Janis Sharp: Absolutely.

Chair: Mrs Sharp, thank you very much for coming today

***Janis Sharp*:** Thank you.

Chair: And, again, Mr Winnick echoed the admiration of this Committee and the previous Committee concerning the work that you've done on behalf of your son. Thank you very much.

That concludes the evidence we are taking today on the extradition treaty. We are going to adjourn for a short time before our next witness comes on our inquiry into policing. He is the former head of the New York and Los Angeles Police Departments, who is on his way, not from America, but from another meeting.

UNCORRECTED TRANSCRIPT OF ORAL EVIDENCE
To be published as HC 644-v

HOUSE OF COMMONS

ORAL EVIDENCE

TAKEN BEFORE THE

HOME AFFAIRS COMMITTEE

EXTRADITION

TUESDAY 21 FEBRUARY 2012

MICHAEL TURNER

Evidence heard in Public Questions 280 - 333

USE OF THE TRANSCRIPT

Oral Evidence

Taken before the Home Affairs Committee
on 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.
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.
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.
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.

UNCORRECTED TRANSCRIPT OF ORAL EVIDENCE

To be published as HC 644-vi

HOUSE OF COMMONS

ORAL EVIDENCE

TAKEN BEFORE THE

HOME AFFAIRS COMMITTEE

EXTRADITION

TUESDAY 28 FEBRUARY 2012

JUDGE RIDDLE

SIR MENZIES CAMPBELL

ELAINE TAPPIN AND NEIL TAPPIN

DOMINIC GRIEVE AND KEIR STARMER

Evidence heard in Public Questions 334 - 474

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Oral Evidence

Taken before the Home Affairs Committee
on 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 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 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 core 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: No. Part of the exercise is designed 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, we 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.
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 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 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 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.

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?
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.

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 44-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 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 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.
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 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.

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 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.