David Bermingham – Written evidence (EXL0052)

Written Submission to the House of Lords Extradition Committee

David Bermingham

Introduction

I am one of the so-called ‘NatWest Three’, extradited to Texas in July 2006. I am not a lawyer but would hope that my personal experience on the subject matter at hand gives the following evidence some weight. In that regard:

1. Prior to extradition in 2006, I was heavily involved in efforts by the Conservatives and Liberal Democrats to introduce a ‘forum’ amendment to the Extradition Act. I wrote numerous briefs for MPs and Peers during the passage of the Police & Justice Bill, which efforts continued after my extradition.
2. I have direct knowledge of the workings of the US criminal justice system.
3. I have direct knowledge of the US penal system, having spent time incarcerated in 5 separate institutions there.
4. I have direct knowledge of the workings of Convention on the Transfer of Sentenced Persons, having been repatriated to the UK from America in late 2008.
5. I have extensive knowledge of most of the high profile US extradition cases since 2004, as I regularly give help and advice to people facing extradition to the US.
6. I have given oral and written evidence to the Joint Committee on Human Rights (see http://www.parliamentlive.tv/Main/Player.aspx?meetingId=7722)
7. I have given oral and written evidence to the Home Affairs Select Committee (see http://news.bbc.co.uk/democracylive/hi/house_of_commons/newsid_9674000/9674227.stm)
8. I made a detailed written submission to the Scott Baker review, although I was not called to give oral evidence.
9. I wrote a book about our case which includes extensive commentary on the practical workings of the Extradition Act, the politics behind it, and the impact that it has on those on the receiving end of it. http://www.amazon.co.uk/A-Price-Pay-David-Bermingham/dp/1492890170
10. I regularly give keynote talks at business conferences about the practical aspects of US long arm enforcement, and how the US authorities go about their business.

This note focuses exclusively on the UK’s extradition arrangements with the US, on which the Committee has already taken certain oral evidence. I would be most happy to give oral evidence to the Committee if called, and I believe I have something to contribute to the process.
Executive Summary

This note deals with three specific areas within the purview of the Committee:

1. The practical consequences of the Treaty imbalance
2. The hard realities of the US criminal justice system
3. The ‘forum’ amendment

Members of the Committee should be in no doubt that the almost certain consequences of extradition to the US are a plea bargain and consequent conviction. The current system not only permits but encourages aggressive US prosecutors to seek the extradition of people who may never have set foot in America, safe in the knowledge that conviction is all but assured, irrespective of the merits of the case.

The lack of any requirement for a US prosecutor to support a request for extradition with any evidence effectively means that we are subjecting our citizens to a regime in which accusation becomes guilt, and all concepts of innocence until proven guilty, let alone habeas corpus, are entirely eradicated. It is incredibly difficult to understand why Parliamentarians continue to support this situation, given that the first duty of any Government should be the protection of its own citizens, something which all other countries (including most notably America) seem to understand.

The extent of the one-sided nature of the arrangements and their advantages to US prosecutors is perhaps best demonstrated by the zeal with which the American embassy has lobbied over the last few years to maintain the status quo even when successive Parliamentary Committees have urged meaningful change.

Practical Consequences of the Treaty Imbalance

There are three most obvious consequences of the imbalance in the Treaty, which permits US prosecutors to request extraditions of UK citizens without the need for any evidence.

1. An increase and imbalance in the volume of extradition requests by US prosecutors.
2. A wholly disproportionate number of requests for the extradition of UK citizens, many of whom have never previously set foot in America.
3. A growing tendency by UK prosecutors to ‘outsource’ our criminal justice system by encouraging the US to prosecute a case which demonstrably belongs in the UK.

Increase and imbalance in the volume of US extradition requests
Home Office statistics reveal a significant rise in the number of requests from America after the coming into force of the Extradition Act on 1 January 2004. During the period to 30 June 2014, there have been a total of 173 requests, as against 65 requests in the other direction.

Disproportionate number of requests for the extradition of UK citizens.

Over the last few years, the supporters of the Treaty have argued that as America has roughly five times the population of the UK, it is quite logical that it should make more extradition requests of the UK than the UK makes of it. Indeed in her evidence to this Committee Ms Amy Jeffress ran this argument, much as the US embassy had done to the Scott Baker Review team, who dealt with the matter at paragraph 7.85 of the review:

There has been some comment about the respective numbers of extraditions between the United States and the United Kingdom. The United States has a population about five times the size of the United Kingdom. However, the United States has less than twice as many people extradited to it than the United Kingdom. Therefore, the difference in population would be one factor that would suggest that the United States would have more people extradited to it.

There might be some force to this argument but for an analysis of the nationality of those whose extradition is sought.

To support the argument, the US should logically be seeking the extradition of US nationals from the UK, because they are five times more populous, which would then justify the difference in overall numbers of requests, as explained by Sir Scott Baker above.

On the contrary, however, Home Office statistics show that the US most routinely requests the extradition of UK citizens. In the period 1 January 2004 to 30 June 2014, 73 out of 173 people whose extradition to the US was sought were UK citizens, or 42% of all extradition requests. By contrast, only 40 (23%) were US citizens.

In the opposite direction, the ratio is reversed. The UK pursues the extradition of very few US citizens (only 10 out of a total of 65, or 15%, in the period January 2004 to June 2014), and largely concentrates on its own (32 out of 65, or 49%).

In other words, whilst the US may have five times as many citizens as the UK, apparently the vast majority of the criminals are British (accounting for an aggregate of 105 requests), and very few are American (50). Some people might regard this as a little odd, and it certainly does not support the conclusion reached by Sir Scott Baker’s panel. Quite the contrary, in fact.

Attached at Appendix 1 is the Freedom of Information Request that provides the above statistics.
Outsourcing of the UK Criminal Justice System

There have been a significant number of cases where the UK authorities not only had jurisdiction to bring a case, but on any sensible analysis of the case most definitely should have done if there were any evidence to support it. The case of the NatWest Three was probably the first of such cases, but there have been many since, some truly shocking.

Perhaps the most egregious example was the case of Babar Ahmad and Syed Talha Ahsan, extradited in October 2012 on the same plane as Abu Hamza and two other terrorist suspects (with whom Ahmad and Ahsan had absolutely no connection, other than in the eyes of Home Secretary Theresa May).

Ahmad and Ahsan were charged with running websites at the turn of the last century and through to the middle of 2002 which incited violent jihad in Chechnya and Afghanistan. Neither man had ever been to America. The only nexus with America was that one of the websites was temporarily hosted on a server based in Connecticut, and that the men had been in receipt of an unsolicited e-mail from a US citizen attaching a classified US document (with which they did nothing).

The Metropolitan Police had found no basis to charge the men, after arresting Ahmad at his home in December 2003 and seizing his home and work computers and large amounts of documentary material. During the course of the arrest Ahmad sustained very serious injuries for which he was eventually awarded £60,000 in compensation by the police. Having been released without charge in December 2003, Ahmad made a complaint to the Metropolitan Police Complaints Authority about the assault during his arrest. In August 2004, he was re-arrested on an extradition warrant from the US, after the Met had sent all of the materials that they had seized from him to America. Ahsan was arrested in connection with the same allegations in 2006.

After their extradition in 2012, having spent many years incarcerated in the UK pending extradition, the two men were held in solitary confinement in a Supermax prison in Connecticut, in conditions described by the US public defenders’ office as horrific and inhuman, before finally entering into a plea bargain on one count of providing material support to terrorism.
At sentencing in July of this year, the judge was at great pains to say that she saw no terrorist tendencies whatsoever in either of the men, whom she described as being fundamentally good people. She sentenced Ahsan to time served (he returned to the UK a few weeks ago), and Ahmad to a further 13 months incarceration (the US was seeking a sentence of 25 years).

Most recently, the Libor fixing cases have produced some examples of the US charging British citizens (resident in Britain) in cases which have no obvious connections whatsoever with the US, and with the full concurrence of the UK authorities.

**The Hard Realities of the US Criminal Justice System**
The iniquities of our extradition arrangements with the US are only properly understood by reference to the practical workings of the US criminal justice system. The Committee has already highlighted certain areas of concern such as excessive use of plea bargaining, and elected judges.

It would be wrong to say that all US prosecutors or judges are bad people. This would be a preposterous statement. But no more preposterous than blindly assuming that all US prosecutors and judges are good people, which is what our extradition arrangements do. Our extradition courts take it on trust that what is contained in a prosecutor’s affidavit or charging document is true. They take it on trust that if extradited to the US, a defendant will receive a fair trial before an impartial jury. And they do this largely because the US has strong constitutional protections that are designed to guarantee both of these assumptions.

Regrettably, life just isn’t like that. Human nature isn’t like that. There are bad people working for the Department of Justice just as there are in the police force and almost all other walks of life. It would be nice to think that we had some checks and balances against such people before carting our citizens off to the other side of the world in chains to be incarcerated in some hellhole prison pre-trial, but seemingly we do not feel this is necessary, and that strikes me as a dereliction of Parliament’s duty to protect its citizens.

By way of example, I believe that the Committee should read the following recent report (March 2014) from the US Project on Government Oversight, citing the Department of Justice’s own internal investigations unit the Office of Professional Responsibility, which has released statistics showing that literally hundreds of prosecutors have engaged in abusive behaviour. [http://www.pogo.org/our-work/reports/2014/hundreds-of-justice-attorneys-violated-standards.html](http://www.pogo.org/our-work/reports/2014/hundreds-of-justice-attorneys-violated-standards.html)

As the report states, the violations include instances in which attorneys who have a duty to uphold justice have, according to the internal affairs office, misled courts, withheld evidence that could have helped defendants, abused prosecutorial and investigative power, and violated constitutional rights.

One of the most egregious examples was the prosecution and conviction of Senator Ted Stevens, which cost one of the Senate’s longest serving members his seat, and altered the balance of power in the Senate. The prosecutorial abuse might have gone undiscovered had it not been for a whistle-blower inside the FBI, and a judge in the case who diligently and tenaciously uncovered what had been going on (witness tampering, withholding patently
exculpatory material and other violations). He was so incensed that he ordered a criminal investigation into the prosecutors, one of whom subsequently committed suicide. Senator Stevens’ conviction was overturned, but by then he had narrowly lost his seat in the Senate. If members of the Committee are interested in the subject matter, I would recommend the book Licensed to Lie by Texas defense Attorney Sidney Powell, which deals in detail not just with the Stevens case, but also the conduct of the Enron prosecutions, in which Ms Powell labels accusations of gross abuse not just at the prosecutors, but at the presiding judge who in her view routinely turned a blind eye to clear examples of prosecutorial abuse. See http://www.amazon.co.uk/Licensed-Lie-Exposing-Corruption-Department/dp/1612541496

Indeed, former Enron CEO Jeff Skilling (convicted in 2006 and sentenced to 24 years in prison) eventually agreed in 2013 to drop a motion alleging gross prosecutorial abuse in return for the prosecutors not opposing him being resentenced to 14 years, which would see him released from prison in 2017.

It must be reasonable to assume that if the DoJ’s own internal investigations unit have uncovered this amount of abusive behaviour, then the true scale of the problem is likely to be larger, since many more cases of abuse have almost certainly not been discovered. During the time that I was in Texas post extradition, there was a very public example of prosecutorial abuse in the case of several students at Duke University who were accused of raping a stripper at a frat house party in 2006. The conduct of the case by District Attorney Mike Nifong led to his removal from office and disbarment.

As noted above, the fact that there are bad people working in the Department of Justice, and judges who may condone or turn a blind eye to their behaviour, does not mean that all prosecutors or judges are bad, but it should give us pause for thought, and in particular when it comes to sacrificing the liberty of our citizens on the word of a prosecutor, it should give us cause to consider some checks and balances.

The most notable such checks and balances would be a restoration of the requirement for a evidence (called for by the Home Affairs Select Committee in their March 2012 Report) and the introduction of a sensible and workable forum provision (ditto).

It is not just corrupt prosecutors that we need to protect ourselves from, however. Prosecutors make honest mistakes too. A classic example would be the case of Lotfi Raissi, a man of Algerian extraction living in the UK at the time of 9/11, and whose extradition was sought by the US shortly thereafter on allegations that he had trained the 9/11 pilots. As the case pre-dated the Extradition Act 2003, the US was required to submit evidence in support of its allegations at the magistrates hearing on extradition.

The prosecutors could not, as it turned out, because Raissi was wholly innocent, and a video that the US produced which purported to show Raissi with one of the hijackers was in fact a video of Raissi with his cousin at a barbeque.

The presiding magistrate, District Judge Timothy Workman, testified to the Home Affairs Committee in November 2005 that if the case had bene brought under the 2003 Act, where no evidence was required, he would almost certainly have been powerless to prevent the extradition.

Judge Workman also presided over the later case of Babar Ahmad, conducted under the new Extradition Act, which he described as ‘deeply troubling’, because it so clearly belonged in the UK, and yet he was indeed powerless to prevent it because there was no evidential
requirement and no forum provision in the legislation. This is a chilling thought, given the recent experiences of Messrs Ahmad and Ahsan in US custody, even eleven years after 9/11 when much of the heat and righteous fury of America has perhaps being drawn from the subject matter.

The Committee has taken oral evidence from Amy Jeffress, formerly the Department of Justice Legal Attaché to the US embassy in London, and Roger Burlingame, formerly a Federal Prosecutor. Both have attested to the constitutional protections offered by the US criminal justice system, and in the case of Mr Burlingame to the practicalities of reaching charging decisions and discussions between prosecutors where there is concurrent jurisdiction. Both would have the Committee believe that there is no cause for concern.

I beg to differ. Mr Burlingame in particular managed inadvertently to highlight many aspects of the practice of bringing prosecutions in the US on which the Committee should have serious concern.

Agreeing that the rate of plea bargains in the Federal system in America is in the high nineties percent, Mr Burlingame was at pains to attribute this statistic to the rigorous standards set by US prosecutors when making charging decisions, indicating that prosecutors in the US indict only on a ‘guilty beyond reasonable doubt’ standard. With respect to Mr Burlingame, this is palpable nonsense, for a variety of reasons.

The first is that it is belied by the evidence of prosecutorial abuse described above. The second is that the case of Lotfi Raissi demonstrates that prosecutors have a habit of charging first and endeavouring to find evidence later. The third is that the sentencing judge in Ahmad and Ahsan ridiculed the prosecution theory (which was the central plank of their extradition) that the defendants were engaged in a conspiracy to murder US citizens. The fourth is that the Innocence Project in the US exists largely because there are so many innocent people in prison in the US.

Beyond the above, however, the legal process of charging itself is worth examination because it does not exactly scream ‘checks and balances’:

The Federal Grand Jury is a panel comprised of up to 23 and no less than 16 members of the public, whose job it is to review a case produced by a prosecutor to determine whether, in their view, there is “probable cause” of an offence. This panel, which sits secretly and will likely hear only the prosecutor’s side of the case, involves no judicial scrutiny whatsoever. The defendant has no rights, can produce no evidence, and indeed may not even be aware that the proceedings are happening. Mr Burlingame has attested to all of the above.

To that extent, it is widely regarded as a rubber stamp, the plaything of the prosecutor, and rarely comes up with an answer other than “a true bill”, meaning that the indictment (the charging document) can be brought against the defendant. The defendant has no rights in the Grand Jury proceedings, and indeed may not even be aware that they are happening. In 1985, Sol Wachtler, former chief judge of New York’s court of appeals, was quoted as saying that a determined prosecutor could get a Grand Jury to “indict a ham sandwich.”

If that were not bad enough, however, even an indictment is not required in order for a US prosecutor to bring an extradition case. He can do so on the basis of a criminal complaint, which as Mr Burlingame explained is a much more informal version of the charge, dispensing with the need for a grand jury, and simply asking a magistrate to sign a piece of paper.
Mr Burlingame was asked by the Committee why a prosecutor would use this route rather than opt for an indictment. Historically, in fact, a criminal complaint would be used where there was a real risk of flight, and the possibility of the defendant becoming aware that a grand jury was sitting in contemplation of an indictment, and fleeing the jurisdiction. And yet criminal complaints are now absolutely standard practice across a whole variety of cases, but in particular white collar cases, because (as Mr Burlingame hinted) they give the prosecutor leverage over a defendant before any charges become formal, and this is an absolutely critical feature of the modern US criminal justice system, which is all about threat and bargain, and largely explains why so few cases ever make it to trial. It works as follows:

In a white collar case, the standard prosecutorial position is to allege a conspiracy, which by definition involves more than one person. Prosecutors do this for two reasons. The first is that having a co-operating witness for the prosecution is close to being a guarantee of conviction at trial, and defendants and their lawyers know it, irrespective of the merits of the case. The second reason, which is linked to the first, is that by alleging a conspiracy, the prosecutor can then engage in game theory, using what is called ‘the prisoner’s dilemma’, which in effect means that they will approach a potential target, and offer him either immunity or a massively reduced sentence if he agrees to plead guilty to something and give evidence against others. But if he does not accept this, then they will move on to one of the others with the same proposition, such that the first person now becomes the hunted rather than the hunter.

And this is where the criminal complaint comes in handy. As an informal charge, it does not appear on any Federal statistics in the way that an indictment does (an indictment will have a specific Federal judge assigned to the case, and so becomes a statistic). So the prosecutor can use it as leverage to get the first witness to turn, because he can see a charging document, but the prosecutor is at liberty either to rip it up, or turn it into an indictment.

In reality, therefore, the criminal complaint is now a standard tool for prosecutors to coerce co-operation out of witnesses or potential defendants.

A criminal complaint has been used in many of the UK extradition cases. Our case began with a criminal complaint, but back in 2006 we had no idea as to how the game was played, and that what the prosecutors were really doing was sending us a message that they wanted our co-operation against Enron officers. Our failure to play by the prosecutors rules ensured that the one count complaint would be turned into a seven count indictment, therefore increasing the sentencing penalty from five to thirty five years.

A good example of how the flexible criminal complaint can be used was the case of Richard O’Dwyer, whose extradition was sought on allegations of copyright infringement. Because the case had never been indicted, Mr O’Dwyer’s attorneys were able to negotiate a deferred prosecution agreement which saw him pay a sum of money and promise to be good, in return for which the charges against him would be withdrawn. This would have been significantly more difficult if the case had been indicted.

In the Libor fixing scandal, the man allegedly at the epicentre of the global conspiracy is an Englishman called Tom Hayes, who used to work for a Swiss bank in Tokyo trading Yen swaps. Mr Hayes was charged by the US in December 2012 using a criminal complaint. The SFO charged him in the UK shortly thereafter, causing no small angst in the corridors of the DoJ in Washington. Some two years later, the criminal complaint is still outstanding, and Mr Hayes has never been formally indicted.
Prosecutors use the threat of a multi-count indictment (and potentially hundreds of years in prison as a consequence of conviction) to secure plea bargains and co-operation agreements from people who may be entirely innocent. With a co-operating witness, potentially complex white collar cases (which are difficult to try because juries have trouble understanding voluminous documentary cases) become much simpler for prosecutors, because if forced to go to trial they will rely much more on their witness, who is primed to remember whatever suits the prosecution, and who will already have admitted his own 'culpability', thereby rendering them far more powerful as a witness.

The above is at least partially responsible for the plea bargain rate of over 97% in Federal cases, which knocks Stalinist Russia and China into a cocked hat. When Mr Burlingame told the Committee that prosecutors will only indict a case where they are sure of a conviction, I found myself agreeing with him, therefore, but perhaps not in the way that he would imagine.

The Committee should take note of the US prison statistics that show that the US incarcerates more people both in absolute terms (2.3 million) and per head of population (nearly 800 per 100,000) than any other country on earth. The US has roughly a quarter of the entire world’s prisoners, despite having only five percent of its population.

To put it in perspective, if the UK were to incarcerate the same proportion of its population we would have half a million people in prison, as opposed to below ninety thousand which is the current historically high level of UK incarceration.

Once extradited, the overwhelming likelihood is that a UK citizen will be incarcerated in a Federal Detention Center. Mr Burlingame explained why this was the likely outcome and I agree with his analysis, particularly with respect to flight risk which tends to be determinative.

Federal Detention Centers are grim places which will ensure that the pressure to enter into a plea bargain is significantly increased, as if the pressures were not high enough already. Costs of taking a case to trial in a US court can run into millions of dollars, none of which is recoverable even if you are found not guilty.

The prosecutor holds all of the cards, therefore. He can negotiate a plea agreement that effectively locks in your sentence without any input from a judge (we entered into exactly such a plea agreement, over which the judge is just a rubber stamp). And if he is dealing with an extradited person, he has the ace card up his sleeve which is repatriation, because he has it within his power to stop any repatriation if a person goes to trial and loses. So a prosecutor will regularly tell a defendant that if he agrees to a plea bargain he will support early repatriation, and if he doesn’t then he will seek the maximum sentence on conviction and oppose any application for repatriation, which will inevitably be determinative because of the way the process works.

To re-iterate, therefore. Our extradition arrangements expose our citizens to this system with absolutely no checks and balances whatsoever. It remains incomprehensible to me all these years later why successive Governments are willing to allow this, other than through a collective failure of moral courage.

I would finally observe this on the topic. If the Committee is minded to accept Mr Burlingame’s testimony as to the evidential rigour that precedes a US charging decision, then it should surely be very straightforward for the US to provide sufficient of this evidence to satisfy a UK extradition court that there is a case to answer. It would produce no delay in the extradition proceedings because the timetable for Category 2 countries is the same whether they are
required to produce evidence or not. Given that the US Constitution requires a probable cause hearing in such circumstances, I have always found it odd that the US is so against the concept of reciprocity.

The Forum Amendment

The forum bar recently incorporated into the Extradition Act 2003 is a dog’s breakfast. It is extremely long, complicated, prescriptive as to what may be considered in the interests of justice, and horribly skewed against defendants. Mr Doobay’s observations to the Committee on 8th July on his fears about the prosecutor’s certificate were well founded in my view. It is difficult to escape the conclusion that the Home Secretary, faced with a mountain of evidence that a forum bar was necessary (see for instance the March 2012 Report of the Home Affairs Select Committee) asked her civil servants to concoct something that would enable her to say she had dealt with the issue whilst in fact ensuring that the status quo would remain, allowing the US to extradite whoever it would wish to.

Attached as Appendix 2 hereto is the written submission that I made to the Home Affairs Committee in December 2011 on the subject matter, which was in effect a critique of the Baker Review on matters including but not limited to forum. I believe that the vast majority of the subject matter remains relevant to this Committee and I would urge the Committee to read this note, not least because the Home Affairs Select Committee seemed to agree with most of what is in it, and their recommendations in their report of March 2012 largely mirrored my own thoughts. Perhaps my biggest criticism of the Baker Review is that the panel did not take evidence from one single person who had either been the subject of extradition or involved in the defence of these people, or who defends criminal cases in the US. Their witnesses were almost exclusively Government and prosecutorial authority representatives, and this seems to have coloured their views very significantly on matters including forum.

What the Home Office has implemented by way of a forum bar now effectively enables a UK prosecutor to ensure that the court cannot have any deliberation on forum by presenting the magistrates court with a certificate. In theory, the matter can be challenged on appeal in the High Court, but since automatic appeal rights have also now been curtailed, the practical consequence of a prosecutor’s certificate is likely to be that forum can never be discussed at all. The lunacy of this provision is that the new provision runs to literally pages of legislation, when the provision that it replaced (which was never brought into effect) ran to eight lines, and the original proposal put forward by the Conservatives and Liberal Democrats in 2006 ran to just four lines.

Indeed, every single member of the current cabinet that was then in Parliament, including Prime Minister, Deputy Prime Minister, Attorney General and Home Secretary, together with the current Immigration Minister James Brokenshire MP, was involved in an attempt in 2006 to introduce an infinitely simpler forum bar, which would actually have had some meaningful impact.

Attached at Appendix 3 is an extract from the Commons Standing Committee Meeting of 28 March 2006, during the Passage of the Police & Justice Bill. The Conservatives and Liberal
Democrats joined forces to try to introduce a forum bar which incorporated the simple presumption that if a trial could take place in the UK, then it should take place in the UK, and that it would be for the requesting state to demonstrate why extradition would be preferable. The wording of the entire clause was as follows:

*If the conduct disclosed by the request was committed partly in the United Kingdom, the judge shall not order the extradition of the person unless it appears, in the light of all the circumstances, that it would be in the interests of justice that the person should be tried in the category [1 or 2] territory*

The proposed amendments were rejected at Committee stage by the Labour majority, and then again in the latter stages of the Bill, becoming highly contentious in October and November 2006 because the Lords insisted on the amendments and the Labour Majority in the Commons consistently rejected them. Eventually Mr Cameron ordered his Peers to abstain so that the Parliament Act would not have to be invoked, much to the disgust of the Liberal Democrats. The Commons Hansard from 24 October and 6 November 2006 reveals that every single member of the current Cabinet that was then in Parliament voted in favour of the very simple forum formulation that appears above. It is puzzling as to why these same people should now be in favour of something so ludicrously complex that demonstrably provides no substantive protections whatsoever for defendants and constrains a judge in what he may consider as being in the interest of justice, even assuming that a prosecutor allows the judge to consider the matter at all.

Whilst early days, it seems unlikely that many if any cases will be defeated on forum grounds.

David Bermingham
12th September 2014
Appendix 1

International and Immigration Policy Group
2 Marsham Street
London SW1P 4DF

Tel: 020 7035 4848
(switchboard)

www.homeoffice.gov.uk

David Bermingham
Our Ref: 32460

12 September 2014

Dear Mr Bermingham,

YOUR REQUEST FOR INFORMATION IN RELATION TO UK-US EXTRADITION

Thank you for your email of 31 July 2014, in which you ask for information regarding extradition between the UK and the US. Your request has been handled as a request for information under the Freedom of Information Act 2000 ("the Act"). I am sorry for the delay in replying.

We are able to disclose the information requested, which is set out in the enclosed annex.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference 32460.

Information Access Team Home Office
Ground Floor, Seacole Building 2 Marsham Street
London SW1P 4DF

e-mail: info.access@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by colleagues who were not involved in providing you with this response. If you
remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FoI Act.

If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Yours sincerely,

Amanda Shiels
International and Immigration Policy Group

Switchboard 020 7035 4848
E-mail info.access@homeoffice.gsi.gov.uk

Annex - Freedom of Information request from David Bermingham (reference 32460)

You have requested the following information:

1. Since 1 Jan 2004, how many requests have been made by the US for the extradition of persons from the UK?
2. Of the numbers in 1 above, above, how many of the persons whose extradition were requested were UK citizens?
3. Of the numbers in 1 above, how many of the persons whose extradition was requested were US citizens?
4. Since 1 Jan 2004, how many requests have been made by the UK for the extradition of persons from the US?
5. Of the numbers in 4 above, above, how many of the persons whose extradition were requested were UK citizens?
6. Of the numbers in 4 above, how many of the persons whose extradition was requested were US citizens?

Information

As a person’s nationality has never been a bar to extradition between the UK and the US, the nationality of the person whose extradition was sought was not, before 2010, always recorded.

The information provided reflects this qualification.
Q1: Between 1 January 2004 and 30 June 2014, 173 extradition requests have been made by the US to the UK.
Q2: Of those 173 requests, there have been 73 requests from the US for the extradition of known UK citizens.
Q3: Of those 173 requests, there have been 40 requests from the US for the extradition of known US citizens.

Q4: Between 1 January 2004 and 30 June 2014, 65 extradition requests have been made by the UK to the US.
Q5: Of those 65 requests, there have been 32 requests made to the US for the extradition of known UK citizens.
Q6: Of those 65 requests, there have been 10 requests made to the US for the extradition of known US citizens.

The figures above include dual British and dual American nationals.

Please note that these figures do not include Scotland. The Home Office deals with extradition requests on behalf of England, Wales and Northern Ireland only. Scotland deals with its own extradition cases.

Appendix 2


Appendix 3

Appendix 3 referred to House of Commons Standing Committee D debate on 28 March 2006 (cols. 271-309) published online at http://www.publications.parliament.uk/pa/cm200506/cmstand/d/st060328/am/60328s03.htm