Janis Sharp – written evidence (EXL0080)

House of Lords Extradition Law Committee
Submission from Janis Sharp - Mother of Gary McKinnon

REASONS FOR EXTRADITION:
Prior to the 2003 extradition treaty, extradition was mainly used to capture and return fugitives to a country they had fled from after committing a heinous crime. However since the current extradition treaty came into use, many of the reasons given for extradition requests include ever more flimsy offences, often for alleged crimes that are the furthest thing from heinous or terrorist offences than could be imagined. As being a fugitive is a legal requirement for extradition to take place, we surely cannot allow people to simply be labelled as fugitives, when they have never fled from or even set foot in the requesting country and clearly do not meet the definition of the word fugitive.

ATTEMPTED SUICIDE. INNOCENT UNTIL PROVEN GUILTY NO LONGER APPLIES.
Paul & Sandra Dunham, a couple in their late 50s, took an overdose on the eve of their extradition to the U.S but were fortunately saved in the early hours of the morning by journalists camping outside their home who called the emergency services when they became concerned for their welfare.

David McIntyre, a former British soldier suffering from PTSD was extradited to America on 3rd July 2014 for alleged fraud. Mr McIntyre served as a soldier in the British Army and as a reservist in the Military Police and has seen active tours of duty in Afghanistan, Bosnia and Northern Ireland and provided security services to the US authorities in Iraq.

Whilst stationed with the Military Police at Camp Bastion in Afghanistan, on 4 July 2012, Dave McIntyre was informed by his senior officers that he was being sent back to the UK to be arrested on the basis of an American extradition request.

It transpired that a former business colleague had been prosecuted in the US and in order to successfully reduce his own sentence, had made allegations against Mr McIntyre of overcharging whilst contracted to provide security services to a US NGO.
As long as people such as British soldier David McIntyre would rather be fighting and being shot at in Afghanistan than to be extradited to the U.S for alleged overcharging/fraud, and vulnerable people such as Mr & Mrs Dunham try to take their own lives to avoid extradition to the U.S for what is basically an employment dispute/alleged fraud; it seems clear that changes to the extradition treaty are urgently required to provide much needed safeguards.

**PLEA BARGAINS. NO EVIDENCE REQUIRED.**

The U.S prosecutors know that in 96% of cases they will never need to prove guilt or need to defend their position in a trial, as at least 96% of all cases are dealt with by plea bargain in the U.S and never go to trial.

In cases involving the extradition of British citizens to the U.S I believe the percentage of plea bargains is significantly higher.

The U.S prosecutors therefore have virtually no need to concern themselves with whether or not they could convince 12 jurors of guilt, as the need to prove guilt beyond reasonable doubt will rarely arise in cases where British people have been extradited to the U.S, as plea bargains are generally the order of the day whether or not those accused are innocent.

A former U.S federal prosecutor has stated, including in evidence to this committee, that It is very rare that a Grand Jury stands in the way of an indictment and that it is basically a rubber-stamping excercise.

**DIPLOMATIC RELATIONS AFFECT ON DECISIONS BY U.K JUDGES AND U.K PROSECUTORS TO EXTRADITE IN CASES OF CONCURRENT EXTRADITION**

I believe that Theresa May introduced Forum in the understandable belief that our Prosecutors and Judges would be more inclined to refuse extradition in cases where concurrent jurisdiction applied.

However it is highly likely that U.K prosecutors and our judges take into account the view of U.S officials who have stated, including in evidence to this committee, that our overall diplomatic relationship would be affected, even in a small way, if the U.K refuse to extradite someone that the U.S has applied for.
This is undoubtedly an added pressure on the CPS to refuse to prosecute in the U.K in cases of concurrent jurisdiction and on our judiciary to favour rather than to refuse extradition to the U.S.

In cases of concurrent jurisdiction, there are currently no proper safeguards in place to avoid the cruel and extreme punishment of extradition. Ensuring that priority is given to prosecution here in the U.K. would go a long way to help, which, I believe, was the intention of Mrs May when she introduced a forum bar.

The U.S is inexplicably awarded precedence in almost all such cases. In fact I am not aware of a single case of concurrent jurisdiction where the UK has successfully extradited someone from the US.

In such cases the UK does not appear to seek extradition but instead affords the U.S justice system the respect and trust, that they are capable of trying and dealing with offenders who have committed crimes while physically on U.S soil, without having to resort to extradition and the outsourcing of their justice.

It seems however that we are not afforded the same respect and trust by the U.S to deal with our own citizens. Successful safeguards that existed for centuries in British extradition law have all too hastily been discarded.

EQUAL RIGHT TO CONTEST EVIDENCE IN COURT PRIOR TO EXTRADITION

_Innocent until proven guilty has effectively been dispensed with in cases of extradition_, as people in Britain can now be punished by extradition on hearsay, with no right to contest either evidence or hearsay in a British court before extradition can take place.

In extradition cases from the U.S to Britain; the initial determination from a judge in the U.S that there is probable cause for arrest, can be challenged in a U.S court hearing prior to extradition being decided upon.

People in Britain should at the very least be given the same rights as their American counterparts to challenge evidence or hearsay in a British court before the extreme punishment of extradition can take place. It is wholly unreasonable to continue to disadvantage our countrymen by denying them equal rights in this regard.

ALLEGED EVIDENCE BEING HELD IN THE U.S
In the case of my son Gary McKinnon and in the case of Richard O’Dwyer, Talha Ahsan and others; the British Police handed over the alleged evidence to their US equivalents, otherwise it would have remained here in the U.K, thus giving the CPS the wherewithal to launch prosecutions against them here in the U.K, providing the evidence was strong enough to warrant it.

Astoundingly, more than a decade after the U.S indictment; on the 14th December 2012 the CPS announced that they were refusing to prosecute my son Gary as they did not believe they had the evidence that could lead to a conviction and additionally because of the passage of time.

In the words of Lord Justice Stanley Burnton in court in 2009 after first reading the CPS report detailing the acute lack of evidence against Gary submitted by U.S prosecutors; Justice Stanley Burnton said:

“Do you realise how embarrassing this would be if Mr McKinnon were to be tried in the U.K”? The CPS lawyer answered “Yes my Lord”.

OVER ZEALOUS U.S PROSECUTORS PURSUING EXTRADITION EVEN WHEN DISPROPORTIONATE

Prima Facie worked well in Britain and afforded the protection needed. Controversy on extradition arose when the 2003 extradition treaty began to be used in late 2004 and U.S prosecutors simultaneously became overzealous with numerous extradition requests for offences that would never previously have warranted extradition.

Extradition in the case of heinous crimes that a fugitive has fled from the scene of is clearly in the interests of everyone. However extradition is deemed by the public to be disproportionate for many of the crimes that people in Britain are now being extradited for, hence the disquiet currently existing here in many quarters.

In the case of Richard O’Dwyer, it was clearly not in the public interest to extradite a young student for a copyright offence relating to part of his studies at university.

IMBALANCE
In information from the Home Office provided under the FOI act; in 2010, 33 people had been extradited from the US to the UK, and only three of those were known to be US nationals under the new arrangements, with the 2003 treaty and Act. In that same period, 62 had been extradited from the UK to the US; 28 were known to be British nationals or had dual citizenship. That shows, in that period, more than nine times the number of British nationals were being extradited to the US than vice versa and, given the different sizes in population, you would expect that to actually be the reverse. The statistics reflect the imbalance that exists.

We are told that the United States has never, ever denied the U.K an extradition request. However to my knowledge the U.K has never, ever requested the extradition from America of anyone who had never set foot in Britain or of anyone who was physically in the U.S when their alleged crime was committed, whereas the opposite is true in regard to extradition requests from U.S prosecutors.

In article three section two of the us constitution it states:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed

**NO EVIDENCE REQUIRED TO LOSE YOUR LIFE**

The devastating effects that fighting extradition has and is having, on individuals and families that the Extradition Treaty was never meant to apply to cannot be overstated.

People, who are extradited under the current extradition treaty, stand to lose their jobs, their homes, their families and their lives....and all without any contestable evidence of guilt having to be provided. Evidence that can be contested in a court by the accused prior to extradition has been dispensed with.

My son Gary McKinnon denied the U.S allegations of damage which made the alleged crime extraditable. Allegations that appeared to be used to turn a section 2
computer misuse offence with a then 6 months to one year sentence, into an extraditable crime with a potential 60 year sentence (10 years per count)
After a decade of mental torment, Theresa May thankfully refused to extradite my son under article 3 of the Human rights act, and for that I am forever grateful.

FORUM. TECHNOLOGY REPLACING EXTRADITION

Something that might be acceptable to all and would help to quell the current disquiet, is for people in Britain who have never set foot in the requesting country, to automatically be tried in the U.K by a jury of their peers.
Evidence from the U.S could be presented via video link, which in this high tech age would be relatively simple and would avoid the extremely cruel punishment of extradition and incarceration in a foreign land, of our countrymen who have the absolute right to avoid punishment and be considered innocent until proven guilty beyond reasonable doubt.
U.S born Mr Stanley Tollman was allowed to plead guilty and to be sentenced via video link in the U.K in 2006, thus avoiding the trauma of extradition to the U.S. I can see no reasonable argument not to extending the use of technology, as opposed to continuing with the outdated alternative of extradition. Extradition is a cruel and unnecessary punishment being inflicted on those supposedly presumed innocent until proven otherwise.

PRIMA FACIE EVIDENCE NOT PRESENTED IN 2002 DESPITE IT BEING REQUIRED AND THE 2003 EXTRADITION TREATY NOT YET HAVING BEEN WRITTEN

Had Gary been allowed to challenge the allegations of damage subsequent to his arrest in March 2002 when Prima Facie evidence was required but not presented, or after his re-arrest in July 2005, (when no evidence was required to extradite) then my son and our family would not have had to endure the worst ten years of our lives. Gary has lost ten years of his youth and I have lost ten of my twilight years.
Surely there should be a statute of limitations with regard to the pursuit of extradition when the allegations do not relate to murder or other heinous crimes.
The requirement of evidence that can be contested by the accused in an English court must surely be reinstated if our judicial system is to once again become fair and credible and afford British citizens the protection they are entitled to. Our forefathers fought and died to gain and to retain those rights to protect British citizens. To betray those rights is to betray the brave men and women who died to uphold them. To betray those rights means that the terrorists have won.

PUNISHMENT GOES ON.
Those who have been extradited even when innocent, have to start all over again when they return to the U.K. They have no job, no income and sometimes no home to come back to and the breakup of family or the death of family members may have taken place.

My son Gary’s punishment continues as his father who lives in Scotland has had a stroke but as Theresa May’s decision not to extradite applies under English law, Gary cannot travel outside of England or Wales without risking extradition to the U.S. Gary cannot visit his father in hospital in Scotland and will be unable to attend his dad’s eventual funeral, which pains him deeply.

However we are incredibly grateful that Gary’s life was saved and that we have him with us and consider ourselves to be infinitely more fortunate than most, thanks to Theresa May’s courageous decision and to all the good people who helped us.

Do not believe that the extradition squad will never come knocking on your door, or grabbing you in the street and bundling you into a car as they did in Gary’s case. Without protections being reinstated, it could very easily be any one of your family next. These protections are needed for your children, your great grandchildren and your descendants beyond.

Thank you for taking the time to read my views. I personally have great faith in the Lords and believe that you will take the brave decisions needed to be taken to safeguard and uphold the values and retain the rights that so many young British men and women died to achieve.

With deepest respect
Yours Sincerely
Janis Sharp (Mother of Gary McKinnon)

19 November 2014