

HOME OFFICE – JUDICIAL COOPERATION UNIT

EVIDENCE SESSIONS

Wednesday 5 April 2011

PANEL:

Sir Scott Baker (Chair)
David Perry
Anand Doobay

IN ATTENDANCE:

Tim Workman

Transcribed from the Official Tape Recording
Ubiquis
Clifford's Inn, Fetter Lane, London EC4A 1LD
Tel: +44 (0)20 7269 0370

SESSION TWO

1 CHAIR: Thank you very much indeed for coming.

2 MR WORKMAN: Well I fear that I'm rather nervous. It's amazing how much you
3 can forget in six months.

4 CHAIR: We've had Liberty and Justice and Fair Trials International this morning.

5 MR WORKMAN: Oh right. Oh right.

6 CHAIR: We don't expect to be hearing precisely the same from you. Thank you very
7 much for your paper and we had Lizzie Franey yesterday –

8 MR WORKMAN: Oh right, yes. Oh well she's certainly the expert.

9 CHAIR: And talked to her. We've tried to make this as informal as can. We can't get
10 a table to sit round, but we've adjusted the microphones up there.

11 MR WORKMAN: So you're happy I remain seated, even though I'm [crosstalk].

12 CHAIR: The – there is a transcript being prepared of what's said, but you'll have an
13 opportunity to make any alterations you wish, because there may be things on
14 it you wouldn't want to repeat publicly. And the plan is, I think, that it would
15 all be available to the public eventually – revised transcripts with the rest of
16 the hearings. It might just be helpful if we said that it quickly became
17 apparent to us that there's what looks like quite a nasty problem with the
18 absence of legal aid, as to which we'd quite like your help about. But we have
19 got the MoJ people looking at it quite urgently, because we'd much rather that
20 they were on the way to producing something rather than a recommendation
21 sort of coming cold in relation to that. And I think that they – they are
22 persuaded that there may well be quite a lot of cost savings that they could
23 make by getting the legal aid into the system earlier, but they need to be told
24 where to look to find the cost savings and that's, I think, probably where you
25 might be able to help us.

26 MR WORKMAN: Right, yes.

27 CHAIR: So anyway, what are your feelings about how legal aid works or doesn't
28 work and what might happen?

29 MR WORKMAN: It's been a source of considerable concern when I was in post and
30 I'm – I think it still is continuing to be a problem. The basic problem is not
31 the first hearing, because the duty solicitor's available for everybody that
32 comes in, so there's no legal aid problem about being represented at the first
33 hearing. Sometimes, I think it would be fair to say that we had concerns about
34 the quality of the duty solicitors, because sometimes they acknowledged they

1 had no experience in extradition at all and that presents a bit of a difficulty.
2 But assuming the duty solicitors are well-versed in extradition, the first
3 hearing is usually managed quite well and if there is a consent to extradition or
4 if there are no issues to be raised at that point and everybody is content with an
5 order, then the matter can proceed immediately and that's not a difficulty.

6 The problem comes on the second hearing, because at that point – the
7 interests of justice criteria were always met, so that's not a problem, but the
8 means are then in difficulties. And the majority of defendants – and I think it
9 is literally the majority of defendants – are in either casual work or between
10 employment. If they are drawing benefits, then there is no difficulty and they
11 can get the means form completed and through and all right, but as soon as
12 there's any suggestion that they have received money from employment in any
13 form, the difficulties arise. And for the majority of them of course, there are
14 very few records. A lot of them are picked up in a white van in the morning,
15 taken to the fields or wherever they're working and picked up again in the
16 evening and given £20, so... But at that point, everything then has to be sent
17 from the Court itself over to Liverpool or to the legal aid – Legal Services
18 Commission and that's where the problems really arise. They then require a
19 lot of information, most of which I'm sure is fully justified when you're
20 dealing with somebody here in this country who was in employment. But they
21 then either send the request for all the information to the solicitors who were
22 acting on the first hearing – the duty solicitors – or – that's their usual route.
23 Very seldom do they send the request to the prison where the man is in
24 custody. If he is in custody and he does hear what's required, he's got to be
25 able to translate it and get somebody on the outside to provide the information
26 and it does present some serious difficulties.

27 It's the custody ones which are particularly concerning, because it's
28 possible to adjourn a bail case without too much of an impediment of liberty,
29 but when you have somebody in custody and you can't get this information,
30 there have been instances where we've had three or four remands where they
31 haven't been represented; they can't get representation; the duty solicitor can't
32 act on the second hearing; we can't proceed without them being represented
33 where they want to be; and we're in a sort of stalemate situation waiting for
34 the Legal Services Commission to try to resolve the issue.

1 CHAIR: And I suppose the individual in the prison can't get the information, which
2 is, if he has it at all, stuck in a drawer at home.

3 MR WORKMAN: Yes, that's right. And very often, the only person who he can
4 contact will be his wife and very often she doesn't even know where he is. So
5 it does present some really serious problems.

6 CHAIR: But do the papers go to Liverpool – which seems to be the place that deals
7 with the financial side of it – or do they go to the Legal Services Commission
8 in London?

9 MR WORKMAN: I think it goes to Liverpool. I'm pretty certain that's where it goes.

10 CHAIR: Because one of the things that the folks from the MoJ were talking about was
11 the possibility of getting – at the LSC one or two people being trained up so
12 that they knew specifically how to deal with extradition cases and that might
13 speed things along.

14 MR WORKMAN: I had quite a lot of dealings with them while I was in post and
15 trying to shortcut this in some way. I think the difficulty is not so much their
16 desire to move things along or their expertise; it is the actual regulations which
17 require them to have this proof. And whilst they're in place, they're not going
18 to get this information because they're people – language problems, in
19 custody, no ties, no information.

20 CHAIR: So presumably, then, there are three categories of situation, as it were. There
21 are those who eventually get legal aid; those who are refused legal aid but
22 never get the thing through the system properly; and those who are refused
23 legal aid on financial grounds having given the information.

24 MR WORKMAN: Yes.

25 CHAIR: Are there any of those?

26 MR WORKMAN: Yes, there are some. And I don't feel they present – once that
27 work has been done, they don't present a great problem, because they can
28 either afford to be represented and can pay themselves, or choose to go
29 without representation. And I don't feel any restraint in saying, 'Well you've
30 now got to proceed. What are you going to do? Do you want to pay for the
31 cost or do you want to get on with it?' But I do have – or did have – very real
32 concerns about pressurising defendants into proceeding to try to keep within
33 time limits and try to move things on when they wanted to be represented,

1 were entitled to be represented and through really no fault of their own they
2 were not.

3 CHAIR: What's the solution? An automatic -

4 MR WORKMAN: I would think so. It's not as if it's large numbers of cases, because
5 extradition, compared nationally, is really very small. And the cost savings
6 elsewhere are quite considerable, because those sort of cases where it's not
7 coming through quickly enough were getting two weak remands; the man is
8 probably in custody for a month longer than he needs to be in this country and
9 is being produced either by video link or in person several times at quite
10 considerable cost and the saving would be really quite considerable to the
11 criminal justice system as a whole; not to the legal aid fund, of course.

12 CHAIR: Has anybody ever done the calculations?

13 MR WORKMAN: No, I don't think they have.

14 CHAIR: I'm just wondering who the best - where the best route for that would be.
15 The trouble is the Government's going to need some figures, aren't they, on
16 this?

17 MR WORKMAN: Yes. I got to the point where the Legal Services Commission
18 acknowledged that there were likely to be savings, but they couldn't get round
19 the regulations, I think. That was their problem.

20 CHAIR: If it needs a change in the regulations, they're going to have to produce some
21 evidence of the savings it would cost, in order to get the regulations changed, I
22 suspect.

23 MR WORKMAN: Yes. I don't quite know how you would set about that, but I'm
24 sure it could be done.

25 MR PERRY: One possibility is the position in relation to Northern Ireland - the way
26 the 2003 Act is structured, it seems as though legal aid in extradition
27 proceedings in the three jurisdictions - England and Wales; Scotland; and
28 Northern Ireland - pretty much mirrors the criminal legal aid scheme. But in
29 relation to Northern Ireland, it provides that the judge may grant free legal
30 assistance and it may be granted if it appears to the judge that the person's
31 means are insufficient to enable him to obtain legal aid and it is desirable in
32 the interests of justice - so there's an interests of justice thing.

33 MR WORKMAN: Yes.

1 MR PERRY: So I suppose if a provision like that were made applicable to England
2 and Wales – suppose that were acceptable – it would be up to the judge to
3 make the enquiries and I imagine in most cases it would be pretty clear,
4 wouldn't it? You're going to...

5 MR WORKMAN: Yes. It is. I mean there are some that are difficult, but if you take
6 the Polish plumber, he probably is earning quite good money. The Lithuanian
7 in the potato field – I think you could fairly quickly come to a conclusion
8 about that. But it's...

9 MR PERRY: The trouble, I suppose, if you give free legal aid to the Polish plumber,
10 you're never actually going to get the money back, are you, even if you do a
11 subsequent calculation?

12 MR WORKMAN: No. It's... But I – what I did try to suggest to them was that they
13 should permit the second hearing to be covered by the duty solicitor. So the
14 duty solicitor deals with the first hearing and then deals with the subsequent
15 hearing and with a bit of luck a lot of the things will have fallen into place by
16 then that he can get on with it. But if he can't, at least then he would have
17 some route in order to obtain the information that the Legal Services
18 Commission required for his means. That seemed to find favour with the
19 officials I was talking to but didn't get any further.

20 CHAIR: The duty solicitor wouldn't be in a position financially, would he, to make
21 enquiries of the issuing state about matters that might resolve a case?

22 MR WORKMAN: No, he wouldn't really, because it would be – he would, I suspect,
23 not have either the time or the money to get into the prison to see anybody, so
24 he wouldn't be able to see anyone before the second hearing. So it's picking
25 up the information on the second hearing. But if there is a real issue, then the
26 adjournments are inevitable. It's where there isn't really an issue; it's just the
27 fact that the defendant's not represented that is the problem. I think there is a
28 strong argument for saying all extradition – perhaps with limitations on the
29 extent of the fee, all extradition should have legal aid to enable the matter to
30 process quickly and efficiently. And I think there's a strong argument to say
31 that if you had a limitation on the fee, you could say that that will be saved by
32 the costs that would otherwise have been incurred in additional court hearings,
33 prison and so on.

21 CHAIR: Did you find that once legal aid has been granted, that there is then much
22 communication between the lawyer and the requesting state? For example, if
23 it's a case that ought to have been dealt with by way of a fine and not an EAW
24 at all.

25 MR WORKMAN: There's, I think, not a lot. Some firms will approach the judicial
26 authorities in one way or another. It's always a little uncertain as to whose
27 responsibility it is and the defence lawyers I think generally make the request
28 to the CPS and the CPS either pass it on or don't, depending upon their view
29 of the request. I think the original scheme was designed to be judiciary-to-
30 judiciary, but in fact we've never really attempted that; it has always been
31 through the CPS anything that I have wanted or my colleagues have wanted
32 has been conveyed.

33 CHAIR: It's not a lot of use to be judiciary-to-judiciary unless you speak Italian,
34 Russian and everything else.

1 MR WORKMAN: It is a bit of a problem and really it's – I don't think it's feasible.
2 So the CPS are the conduit for us and I think most defence lawyers would
3 make that their approach; saying, 'Please can you find out whether this would
4 be accepted or not?'

5 MR DOOBAY: Can I just go back in terms of the duty solicitors and their
6 experience? Given that the cases are all concentrated in one court, it would
7 seem quite important that the duty solicitors who are on duty at that court have
8 a basic knowledge of extradition. Would it be sensible then to have some sort
9 of precondition that you have some basic training in extradition?

10 MR WORKMAN: Well yes, I've asked if they could do that. In fact – I was going to
11 say 'we', but the Court has actually provided some training for duty solicitors
12 in extradition. The Legal Services Commission said that they were going to
13 do it again, but nothing seems to have happened about that. But the Court
14 itself – this training particularly has led a number of – a couple our sessions
15 for duty solicitors and that has been very helpful. I wanted to try to have a list
16 of duty solicitors that were qualified to do extradition and ticketed to do it, but
17 the Legal Services Commission said they wouldn't be able to get that past the
18 Law Society. So that one sort of...

19 MR DOOBAY: But there doesn't appear to be any difficulty with insisting that if you
20 want to be a duty solicitor there, you have to have done, for example, a
21 training course of some description?

22 MR WORKMAN: Well we've never been able to insist that they have done the
23 training, only that it was there on offer and we hoped they would take it up.
24 And they did.

25 MR DOOBAY: Putting it the other way round, do you think it would be a good thing
26 if we were able to insist they'd done the training?

27 MR WORKMAN: I think it would. Because we have – I don't know how many it is
28 now, but we have about five duty solicitors on each day, we would need two
29 or three of them to be able to undertake that work; the others wouldn't
30 necessarily need to know how to do it.

31 MR DOOBAY: The reason I'm pressing this point is because when we had Lizzie,
32 she was explaining that actually, one of the ways of making the system more
33 efficient is if you have somebody who is an expert there advising you, it is
34 easier to explain the process, the bars, advice on realistic challenges that can

1 be made, to consider alternatives to suggest to the requesting authority;
2 whereas if you have somebody who is a novice and who's simply reading the
3 legislation, it may not speed the process along.

4 MR WORKMAN: No. You can see it quite clearly. Those who are worried about
5 taking it on will ask for an adjournment because they want to look into things;
6 those who are experienced will say, 'Well I know this isn't a point. I'm
7 pressing on'. So it does help to have expertise.

8 MR DOOBAY: Just moving on to cost savings, in terms of the areas of cost savings,
9 in terms of working out what the costs are, presumably if one of the knock-on
10 costs is detention, I mean we could find out the cost of detaining somebody for
11 a night in a prison and then extrapolate in terms of the length of detention.
12 And if one of the costs is hearings, we could work out the costs of having a
13 hearing.

14 MR WORKMAN: Yes.

15 MR DOOBAY: Is there anything else apart from detention and hearings? And the
16 prosecution, presumably.

17 MR WORKMAN: The prosecution and – yes, the prosecution and court appearance.
18 I assume the appearance would include all the jailers and all those sort of
19 costs.

20 MR DOOBAY: And an interpreter, presumably?

21 MR WORKMAN: And an interpreter. A lot of money. That is phenomenal; it's, you
22 know, millions, so any saving there is worthwhile in itself, really. I think that
23 would be all, except, I suppose, for those on bail who could get their – some of
24 them come quite long distances. But I'm sure with those factors alone, you
25 would soon reap the benefits.

26 MR DOOBAY: Yes.

27 CHAIR: How much use is made of video link?

28 MR WORKMAN: Not as much as I would have expected, really. We do the remands
29 on video links; we do some extradition hearings on video links. It's difficult
30 to do a fully contested one on video link. But what I had talked to a number of
31 people about was the possibility of using video links for the first hearing,
32 because at one point there was a desire to see that people were not travelling
33 long distances in custody to be produced in court and I think there are real
34 difficulties about using regional centres. But it seemed to me it would be quite

1 easy to deal with it by video link direct into Westminster from either a police
2 station or a court.

3 CHAIR: You say real difficulties about using regional centres. ACPO were quite
4 strong on this. I know it's a bit of an old chestnut and it's come up before, but
5 they were saying, 'Well it's very expensive to bring defendants from
6 Newcastle, Liverpool, Manchester, Birmingham and why can't we have one or
7 two courts that deal with extradition in those places?' What would you see as
8 the objections?

9 MR WORKMAN: I think the primary objection is a distilling of expertise. There are
10 a number of factors which I think are important. One is that the majority of
11 extradition defendants come from the South East – London and the South East
12 – so they'd be coming in anyway. Of the remaining, they are spread
13 throughout the country and I'm not sure where you would select the centres.
14 But if you selected one in Leeds, one in Bristol or something, the Bristol one
15 would probably pick up half a dozen cases a year. If Leeds were given the
16 whole of the North of England, they would have considerably more. But in
17 order to make the centre work, you need a 24 hour rota and a rota is fairly
18 demanding in itself, but if you're just the one chap and you can't go on
19 holiday, it's a bit hard.

20 So you've got to have three or four judges able to undertake the work in
21 any one centre and you've got to be able to provide them with sufficient work
22 to keep their expertise going. You've got to be able to provide the local
23 solicitors with sufficient work to develop expertise locally; the same for the
24 Crown Prosecution Service. And that I think at the moment is actually very
25 difficult to do with the numbers that we have. It may be that if Schengen takes
26 off and there are thousands more arrested, it might well need to be looked at
27 again, but I'm very conscious that it's an area of – I'm very conscious,
28 because not having done it for six months I'm very conscious that my
29 expertise is falling away. But you do need to keep it up to date all the time
30 and as you will have seen from the number of law reports that are coming out,
31 the law is changing daily. And it's very difficult to do if you haven't got
32 colleagues around you to say, 'Well I've got this. What do we do?' And
33 those sort of problems I think can only be dealt with if you do have a centre. I
34 think we are very fortunate with our CPS. The CPS on the extradition side –

1 I'll say nothing about anything else, but on the extradition side – are first class.
2 And they've developed that expertise I think because they are single minded
3 about it. So I am not one of those who would favour regional centres.

4 CHAIR: Right. Well you've made a pretty compelling case on it. David?

5 MR PERRY: No, I haven't got anything to ask in relation to that.

6 MR DOOBAY: Can I just ask about the communication channel? I know that, as you
7 say, in practice the CPS acts as the conduit to the requesting state and
8 obviously some of what's happening is outside of the strict framework of the
9 European Arrest Warrant because an attempt to compromise or to work out an
10 alternative resolution is really not executing a European Arrest Warrant.

11 MR WORKMAN: No.

12 MR DOOBAY: We've certainly been discussing with others ways where you might
13 be able to try and divert some of these cases from being executed in the first
14 place – find a mechanism for it. But once they get into the Court system, I
15 wonder whether the CPS is the best conduit to the requesting state, because I
16 know that in practice they act in the solicitor-client relationship, but I wonder
17 whether they don't see their role as more pursuing the European Arrest
18 Warrant on the instructions of their client rather than trying to find a way to
19 achieve the ultimate aims.

20 MR WORKMAN: Yes. I have some misgivings about the solicitor and client
21 relationship that exists. I'm not sure that it is actually right, really because
22 principles which the CPS would otherwise adopt in terms of success rates and
23 their obligations to the Court and so on are not quite the same when they're
24 acting in the solicitor and client relationship. There was a case under the '89
25 act which said that is the relationship, but I think myself that there is an
26 argument for saying that has changed and in fact I did try and advance it in
27 one of my decisions, but it didn't – I didn't get overturned, but it wasn't dealt
28 with. Because there are occasions – and this is where I have to be a bit
29 cautious about the tape recorder. But if one takes the Russian cases, there are
30 cases there where a large amount of defence work is done at enormous cost
31 eventually to the taxpayer to establish that it's politically motivated. And the
32 Russian Federation don't run with the ball at all; they ignore it. The CPS send
33 them the information and ask for their views – ask for them to comment – and
34 nothing happens. And we've had two or three cases where, at the end of the

1 day, all the CPS can do is to test the evidence produced by the defence; they
2 haven't got any evidence they can call in rebuttal because the Russians aren't
3 cooperating. And when it became apparent that this was happening, I think it
4 was suggested somewhat timorously that the – we should set a timetable for
5 them to respond and if they did not respond within that timetable, the matter
6 would then proceed as an uncontested hearing, the defence only then having to
7 provide an outline of their defence and not have to call witnesses from
8 Moscow and whatever. It's worked in a couple of cases, but it's quite difficult
9 when after the timescale has been set, the Russians then at the last minute
10 produce some small piece of evidence and therefore feel they want to proceed.
11 Now the Crown Prosecution Service is then in some difficulty, because they're
12 acting at that point in the solicitor and client relationship and saying, 'Well
13 I've got to do what the client tells me'. Whereas I think now that the Crown
14 Prosecution Service is separate from the prosecution generally and is able, I
15 think, to look at matters more dispassionately in accordance with guidelines
16 set down for them in this country, that it would be open to them to say, 'Right,
17 well as independent lawyers, this is what we're recommending. We don't
18 wish to pursue this any further; we're taking no further part. The matter can
19 proceed uncontested'. At the moment, they're not really in a position to do
20 that.

21 And there is another aspect to it, of course and that is that the requesting
22 state doesn't have to have the CPS as their lawyers. So they could instruct
23 somebody else – could instruct well-known firms of solicitors to deal with it,
24 who will then still be in the solicitor and client relationship. So it doesn't
25 solve it completely, but I don't think, for example the Polish authorities, would
26 choose to go outside to a private firm of solicitors as opposed to the CPS and I
27 think the CPS could then probably take a view on matters that are relatively
28 trivial and not proceed. But it's a very delicate area, because of course as soon
29 as one country says, 'Well we're not actually going to enforce your warrants'
30 then other countries –

31 CHAIR: The whole thing will break down.

32 MR WORKMAN: Yes.

33 CHAIR: If the issuing state decided to instruct somebody other than the CPS, who
34 would pay?

1 MR WORKMAN: They'd have to pay for that, I think.

2 CHAIR: Whereas the CPS doesn't at our expense.

3 MR WORKMAN: Yes.

4 MR DOOBAY: In terms of the – I mean so leaving aside the CPS thing, would it be
5 helpful to have some part of a body which was actually trying to do this – to
6 resolve, to work out whether there was an alternative mechanism to say, for
7 example, to the Polish authorities, 'If we serve a summons for you or if we
8 enforce a fine for you or if we do something else for you, would that in fact
9 achieve your aim?' Do you think that would be practically useful to have that
10 – somebody who was looking at it from that perspective rather than the CPS,
11 who are primarily looking at it from the perspective of acting for the state to
12 execute the warrant, the SOCA who are certifying, the police who are
13 arresting?

14 MR WORKMAN: I'd always hesitate to have yet more bodies involved in this is we
15 can help it, but I agree with you that I think if there were some mechanism –
16 and I'm not sure it is necessary to have it independent of the CPS. I see your
17 point, but –

18 MR DOOBAY: When I say independent, I mean outside of the bit which actually
19 takes the cases to court. I'd not – because in fact the Director was here and we
20 put this to him and he said he could see why at the SOCA stage, before
21 warrants are certified, they might be able to approach the CPS for advice about
22 alternative methods to achieve the aim of the warrant rather than certifying and
23 then communicate that with the requesting authority. And I think my thought
24 is more that if there was this separate part of the CPS which existed, then
25 they're not really involved in the case and the Court or the defence lawyers or
26 the prosecuting part could go to them and say, 'Could you consider with the
27 Polish authorities whether something else might work?'

28 MR WORKMAN: Yes. I'm sure that something of that sort is needed. I'm not quite
29 sure how it would work out. And of course part of the problem is that I don't
30 think we can really ignore the fact that most of these problems are actually
31 caused by one country. If we could solve their problems – and I know a lot of
32 effort has gone into trying to do so – a lot of the difficulties would go away, I
33 think. But the danger is that a defendant is arrested for drink driving and up
34 pops this warrant, which at that point is uncertified and is then certified

1 overnight and I don't think there would then be time to – for the CPS or
2 anybody else to make any contact with the judiciary in Poland to try to resolve
3 it. I think the certificate would still have to be issued, but there is still time
4 before the extradition order is made for that to be compromised. So I think it
5 could be done, but probably not at the point of certification.

6 MR DOOBAY: Well I think we were thinking more for those cases where they
7 actively decide to look for people, for example, where they then certify to do
8 more than simply just circulate the warrant.

9 MR WORKMAN: Yes. I've really no idea how many of those cases there are, but
10 one has the impression that more of these just pop up when you're least
11 expecting them.

12 MR PERRY: Under your section under the operation of the warrant and the
13 challenges to the warrant, you say that as the warrant is supposed to be
14 directed from one judicial authority to another, SOCA's intervention is
15 sometimes criticised. We've heard really the criticism of the other end of it,
16 because of it being issued by somebody other than the 'judicial authority', but
17 I don't think, speaking from my recollection, we've heard any criticism of
18 SOCA.

19 MR WORKMAN: Yes. Not at this end. The concern comes from the other state –
20 the issuing state, who have expressed the view in a number of places that,
21 'I've issued the warrant. Your central authority ought to be certifying it
22 because it's my signature; I'm issuing it. Why are they sending it back to me
23 because I haven't [inaudible]?'

24 CHAIR: Well because Mr Workman [crosstalk]. If he doesn't, my court will.

25 MR WORKMAN: Yes. So it seems entirely reasonable and that is one of the
26 international objections that has been raised.

27 MR PERRY: I mean it does – speaking entirely from my personal experience, it
28 seems that SOCA have actually done quite a good job –

29 MR WORKMAN: I think excellent, yes.

30 MR PERRY: In getting the warrants in a better form than they were. And SOCA,
31 when they gave evidence to us a couple of days ago, were pretty firm on the
32 fact that they really did focus simply on the validity of the warrant and they
33 didn't and weren't prepared to go further and start talking to the authorities
34 about other routes of getting what they wanted.

1 MR WORKMAN: Yes. I can see – I think it’s that same concern that they wouldn’t
2 go any further, but the member states are saying, ‘This is not a matter for the
3 certifying authority’. But I’m not sure whether a separate body would have
4 any more success, really. There’s no reason why we shouldn’t ask SOCA to
5 do it.

6 CHAIR: Yes.

7 MR DOOBAY: But I think SOCA were saying they’d probably go to the CPS in
8 those circumstances, so we asked the CPS, who said, ‘Well actually, if we
9 were approached, we could advise on other methods which they could then
10 communicate back.

11 MR PERRY: On this question of whether there’s a way of taking an alternative route
12 to satisfying the requesting territory, one of the things that has been mentioned
13 is the possibility of a sort of deferred return and whether something could be
14 done in the period of deferment. Because take – suppose a requesting territory
15 is using EAWs to get people back then to disgorge from them financial
16 penalties which they might agree to pay here, or there is some other alternative
17 mechanism that could be used to satisfy what the requesting territory really
18 wants. If there were to be a deferment, who would be best placed to deal with
19 the – would that really be the defence lawyers who would have to contact
20 layers in the requesting territory?

21 MR WORKMAN: Yes, I think that’s what would have to happen at the moment
22 anyway. It does happen occasionally that requests are made to the issuing
23 authority and occasionally they are withdrawn. So it does happen, but perhaps
24 not as much as we would think. I mean I’m conscious that the Polish
25 authorities have a different constitutional approach to this which one can’t, I
26 think, criticise; it’s just different.

27 MR PERRY: One of the points that Professor Spencer makes is that part of the
28 problem may have been created by the unwillingness of the United Kingdom
29 authorities to be responsive to requests to locate individuals so that
30 summonses could be served. When they were met with the problem that
31 actually there was no one who was willing to serve the summonses, they found
32 that the EAW was a rather convenient coercive mechanism that people did sit
33 up and take notice of. So it may be that we have contributed to the problem.

1 MR WORKMAN: I hadn't heard that but I think that would be understandable. Yes.
2 But I think if you can devise a system that would enable us to do that, that
3 would solve a lot of problems.

4 CHAIR: Anything else on the EAW?

5 MR PERRY: Not on that.

6 CHAIR: Secretary of State's discretion. The thrust of the legislation has been away
7 from discretion; there's very little left on Part 1 and I take it that you wouldn't
8 like to see any brought back in in Part 1.

9 MR WORKMAN: No, I don't think I would.

10 CHAIR: As far as Part 2 is concerned, we don't really see at the moment how one
11 could get away from the Secretary of State's position with regard to death
12 penalty and speciality, but we are concerned about how some cases seem to
13 get back to him or her when everything else is finished and there's only a
14 human rights issue and it almost ping-ponging backwards and forwards with
15 evidence and a really serious delay. One of the things that we've been floating
16 and thinking about it whether there is an avenue for the Court being able in
17 exceptional circumstances to consider whether there's been some dramatic
18 change in the situation after the case has been heard that warrants a rethink,
19 and if we do that, what the machinery would be. The suggestion that we've
20 had is that it would be better that it went to the High Court than back to the
21 District Judge, basically for two reasons: one because if it goes back to the
22 District Judge it would just perpetrate the ping-ponging up and down the
23 system, whereas it would be more final if it went to the High Court; and the
24 second is the question as to whether it would be really appropriate to take that
25 kind of discretion away from the Secretary of State and to a District Judge
26 rather than a judge higher up the system. We would value your views on this.

27 MR WORKMAN: I think the first point is a very valid one, in that I think we would
28 just – I mean by this time it will have gone through us, gone through a
29 contested hearing, gone to the High Court, possibly gone further, then gone to
30 the Secretary of State, and if it's then going to come back to us – if it's then
31 going to go back to the High Court and further – that's I think an unnecessary
32 expense and length of time. I don't want to push work onto the High Court,
33 which I know has really got more than its fair share of this at the moment, but
34 there must be very few of these.

1 CHAIR: Anand was suggesting that if it went back to the High Court, it would be
2 advantageous to give the High Court all the powers that it would have had
3 when it originally heard the case, including the power to remit it if necessary
4 to a District Judge in exceptional circumstances.

5 MR WORKMAN: Yes. I can't really envisage the circumstances where it would be
6 remitted as not being capable of being dealt with -

7 MR DOOBAY: I suppose - let me give you an example. Let's say that there was a
8 change in the position after the decision had been in the High Court, but
9 actually the change was relevant to evidence which had been heard by the
10 District Judge at the first hearing. So in order to assess the change, the High
11 Court might say, 'Actually, we want to court which heard this evidence [last
12 time?] to assess new evidence in a way as to unbalance' - I mean I'm thinking
13 really exceptionally. So if there were some significant evidential reason why -
14 because in most appeals the High Court doesn't remit back down; it just makes
15 the decision, but I just thought it might be useful for it to have the same
16 powers in case there was an evidential reason why it needed to go back down
17 to the Magistrates Court.

18 MR WORKMAN: Yes. I'm all in favour of the widest possible powers and the Court
19 deciding -

20 MR PERRY: And if it were to be remitted, the scheme of the Act is where a case is
21 remitted, the decision of the District Judge stands as the decision of the High
22 Court, so you wouldn't get back into the appeal route problem. So even
23 though you're remitting it, you're not then saying you start - you haven't
24 trodden on the snake and gone back down to the bottom of the ladder.

25 MR WORKMAN: Yes, that is true. That's quite right.

26 CHAIR: One argument against this that was put to us was you ought to leave this
27 ultimate residual discretion with the Secretary of State because only he or she
28 is fully aware of all the diplomatic implications and may have highly
29 confidential security information which oughtn't to go into the public domain,
30 etc. etc. I don't know if you've any angle on that that you think might be
31 helpful or whether you think that this is really not territory that the Secretary
32 ever realistically gets into at all.

33 MR WORKMAN: I suppose the answer is that I don't really know whether he does or
34 not, because I don't think we would ever know. But I can't help thinking that

1 there are occasions when there are wider aspects of case that we're unaware
2 of.

3 MR PERRY: I mean I can't actually think of any cases – I'm sure there are some –
4 where somebody's been discharged by the Secretary of State at a very late
5 stage without the public having a pretty good idea what the reasons are.

6 MR WORKMAN: Yes, that's true. But would the public know all the reasons?

7 MR PERRY: Fair point.

8 MR WORKMAN: It's very difficult, isn't it? I don't like the idea of decisions being
9 made for reasons that are not open and apparent and transparent, but at the
10 same time I think we want to acknowledge that things are really very difficult
11 in the world and there may be aspects of the thing which actually...

12 MR PERRY: I suppose there may be another way of looking at it. I mean one way of
13 looking at it is in the vast majority of cases where we're dealing with
14 supervening events, it's usually either an obvious change in the political
15 complexion of the requesting territory – so there's some constitutional
16 upheaval – or it's a change in the personal circumstances of the extraditee –
17 he's discovered he's only got three months to live. Now if the Secretary of
18 State were ever to be in a position where there was secret intelligence
19 information that meant that it was wrong, unfair or oppressive to extradite, I
20 wonder whether there wouldn't be a positive obligation to do something to
21 prevent the extradition in any event, because as a public authority – suppose it
22 involved a breach of human rights or something, as a public authority you
23 would be bound to act and there must be some mechanism, if there's a residual
24 jurisdiction in the Court, to bring it to the attention of the Court. So I wonder
25 whether rather than requiring a separate discretion, by vesting it in the Court,
26 you judicialise the process and it would sweep up anything that's out there that
27 needs to be dealt with anyway.

28 CHAIR: Just thinking – a possible example here. I mean I don't know what the
29 extradition arrangements are with Libya – as a country you can or can't – but
30 let's suppose that there'd been an extradition under Part 2 that had gone up
31 and down the system and the chap was going to be extradited to Libya and this
32 was a decision that was made a few weeks before the bust up, then it's saying,
33 'Well it'd be quite wrong to extradite me now'. Would that be something that
34 the Court could deal with as well as the Secretary of State or would the

1 Secretary of State's wider information be such that it really ought to be his
2 decision?

3 MR WORKMAN: I suppose ideally it ought to come back to the Court with the
4 Secretary of State providing the information.

5 CHAIR: Yes.

6 MR WORKMAN: And if it were to go to the High Court, the Secretary of State could
7 indicate any matters that were sensitive that could be dealt with confidentially.
8 I wouldn't have thought there would be a problem with that. We, as you
9 appreciate – the Magistrates Court – have some difficulty in dealing with
10 confidentiality, therefore I don't think it would be appropriate for that sort of
11 application to come back to us, but it – I would have thought that it was
12 perfectly reasonable to expect the Secretary of State to explain why and no
13 doubt in most cases it would be quite convincing.

14 MR PERRY: Rather like in deportation, when the Secretary of State gives
15 commentary guidance or – I mean the Court can depart from it. I mean it
16 seems to me that it's much better for courts to be evaluating it, particularly in
17 the type of political decision that we have very often in extradition. I just
18 wonder whether there's more public acceptability as well of court decisions in
19 these high profile cases, because whatever the Secretary of State decides in
20 some of these cases, someone is going to cry foul. And of course the
21 requesting state could seek judicial review, which is going to open up the
22 process again. Whereas if it's at the Court, particularly the High Court, that's
23 going to be final.

24 MR DOOBAY: And I think there's always – certainly I think there's always a fear
25 that if the fact is taken into account by the Secretary of State and not just those
26 which according to the Act should be taken into account, and therefore I think
27 that's possibly the reason why we've had all the changes in the 2003 Act to
28 leave this one residual discretion with the Secretary of State, even if they
29 chose to exercise it would be to risk politicising again what's supposed to be a
30 non-political process.

31 MR WORKMAN: Yes. No, I think that's a good solution.

32 CHAIR: Anand, any more on this question?

33 MR DOOBAY: The one thing I wanted to just explore a little more in terms of the
34 time for the Secretary of State to consider the evidence – I know that

1 obviously you weren't part of the process, but I'd be interested to just know
2 whether you have any thoughts as to given the limited nature of what the
3 Secretary of State's supposed to consider under the Act itself – specialty and
4 death penalty, which very rarely arises – I just wonder why you think it is that
5 that process takes so long.

6 MR WORKMAN: I'm afraid I don't know the answer to that. I do know I've had
7 some applications by the Secretary of State to extend the time and they have
8 been for very bland reasons. Kevin[?] probably knows this sitting over there.

9 PARTICIPANT: It's an independent review; I couldn't possibly say.

10 MR WORKMAN: But although they're bland reasons, they are of course usually
11 supported by the defence, who – they welcome further time because they still
12 think there's a chance. So it's a little difficult at that point to say, 'Come on,
13 no. We're not going to give you the time'. I did have one case where there
14 were at least two, maybe three applications and I did then say that I think if
15 there's to be a further application they'll have to come along and argue. There
16 wasn't.

17 MR DOOBAY: Did you – I know this is probably supposition, but is that because the
18 Secretary of State may be considering human rights issues? I'm just not
19 entirely sure what more they could be considering.

20 MR WORKMAN: Well I'm bound to say I think they must have been considering
21 more than those that are actually in the Act, but I'm afraid by this point it's left
22 me and I'm happy to leave the responsibility to others.

23 CHAIR: On the forum bars, we heard some pretty passionate submissions from
24 Shami Chakrabarti this morning, which don't entirely accord with your
25 answers.

26 MR WORKMAN: No. She's very persuasive, though.

27 CHAIR: The – what it has thrown up is that – or consideration of this has thrown up is
28 that there is quite a well-trodden path now between the CPS in the European
29 cases through Eurojust in consulting with other states where there's an
30 extradition issue as to which country and also, for example, with the United
31 States. And they have said the criteria that they go through in the course of
32 these discussions like: which is the country where there is the greatest
33 likelihood of a prosecution? Where are the witnesses? Where are the victims?
34 Where was the offence primarily committed? Where does the defendant live?

1 Although we're a bit sceptical as to how much weight's actually given to that.
2 And these are all considerations which on the face of it seem to be much better
3 dealt with prosecutor to prosecutor than with a court. But on the other hand,
4 it's a little bit of a behind doors process, without much openness as to what the
5 criteria really are or what's really going on or whether it isn't settled over a
6 glass of port and, 'You can have this one and I'll have that one'.

7 MR WORKMAN: Yes.

8 CHAIR: So I don't know how you see this.

9 MR WORKMAN: I know that Eurojust have intervened in a number of – well [have
10 been seen to?] intercede with the drugs cases – the cross border drugs – and
11 that's clearly very helpful. I was not aware that they had played a part in
12 terms of extradition, but I'm sure they -

13 CHAIR: Speaking for myself, I don't really have a clear picture of how Eurojust
14 works and what actually happens. I don't know if my colleagues have got a
15 better – they've probably got a better idea than I have, but I don't really have a
16 picture as to what they do and how it sits up together.

17 MR WORKMAN: All I can tell you is we paid a visit there. I took all the District
18 Judges on a weekend conference two or three years ago to The Hague and the
19 chap in charge – the British representative at Eurojust said, you know, 'Do
20 come and see' so I said, 'Could I bring some friends?' and we ended up with
21 80 of us. And essentially, as far as I could see, there is a very large room with
22 representatives from all the states; there is a convenor, who puts the facts of a
23 particular case, which in the instances I was aware of were drug running
24 through Europe where they'd been stopped at various points and which
25 country was going to take responsibility for what. And the countries involved
26 then made decisions as to where they felt it was best prosecuted. But as you
27 say, it was all behind closed doors; it's an administrative function of the
28 European Community, I think. And the factors which you've outlined were all
29 the factors which I think would be taken into account. But I don't know of
30 anybody else that's doing it, so I suppose in a sense where this arises, they'll
31 be the ones who are doing it. But I do have very strong misgivings about the
32 Court being involved in this process. And it sounds excellent. I like the idea
33 of being able to deal with an offence domestically without having to use
34 extradition. But, having said that, I think, for the Court to make a decision as

1 to whether the matter should be prosecuted in England and Wales rather than
2 sent to a requesting country is a task which is beyond the judiciary, and would
3 have considerable risks for the independence of the judiciary. Because we
4 would have to consider all the aspects which you've just outlined in terms of
5 witnesses and so on, but also aspects of evidence – what would be admissible
6 in the United States isn't necessarily admissible here. And we would have to
7 come to a conclusion as to whether or not the case was capable of being
8 prosecuted here, which is rather more than 'is there a prima facie case?' – and
9 of course we wouldn't know whether there was a prima facie case because of
10 course most cases these days have the evidence.

11 CHAIR: Yes.

12 MR WORKMAN: So we would be left in a position which would be almost
13 impossible to assess. I mean, even if we were to assess it, we are really, at that
14 point, taking on the role of prosecutor. And I think that would be very unwise
15 really. And I think there is scope for saying to the prosecutor – to the Director
16 of Public Prosecutions – 'In your capacity as Prosecutor for England and
17 Wales, are you going to prosecute this case?' And if he says yes, there's no
18 problem because they can get on with it and then the statute would bar any
19 further extradition. But if he says no, it's quite difficult for the Court to
20 challenge that and say 'you're going to.' I don't think we can do that.

21 CHAIR: Well we wouldn't do it domestically, would we?

22 MR WORKMAN: No. And it would be domestic, wouldn't it really? Because if we
23 were to say 'you are going to prosecute', then you are prosecuting
24 domestically.

25 CHAIR: Is there a case for the Director giving more reasons in the cross-border case
26 when he decides that he's not going to prosecute it and it is best prosecuted in
27 America?

28 MR WORKMAN: Certainly that would prevent us from rubber-stamping any –

29 [Cross talk]

30 CHAIR: – it's now with the American courts.

31 MR WORKMAN: I think he could do. And we know the complications with
32 American evidence. And I think it would be a rather delicate matter to be
33 dealt with in that way. And if, for example, we reach the point of saying,
34 'Well it's going back to America because we can't prove it here but we can

1 prove it in America,' I think in certain cases it would make the headlines. But
2 I'm sure Shami would say, 'Well, if you can't prosecute him here – and we
3 have an interest in prosecuting him here – if you can't do it, then we shouldn't
4 do it and we shouldn't extradite him.'

5 But that doesn't really deal with the international perspective of cognitive
6 determinations really, does it?

7 CHAIR: The forum bars that have been drafted – have you any views about those in
8 particular?

9 MR WORKMAN: The section?

10 CHAIR: Yes.

11 MR WORKMAN: Section 82?

12 CHAIR: Yes.

13 MR WORKMAN: Well only that I don't like it. My objections are on principle
14 rather than the drafting. To be honest I haven't studied the drafting
15 sufficiently to see whether there are any particular problems with it because
16 my own feeling is that the principle is so difficult to overcome.

17 CHAIR: I mean, I certainly – from looking at it – get the impression that there will be
18 a lot of litigation coming out of it.

19 MR WORKMAN: And it would be litigation which would be very extensive in terms
20 of time, wouldn't it? Because we'd need to assess what the evidence was in
21 the requesting state.

22 CHAIR: What does 'substantially' mean, or how substantial? It would have to be...

23 MR WORKMAN: Well, yes. I think there are all those sorts of issues in terms of
24 drafting it. But I think my principal objection is the bringing of the judges into
25 the arena, which I think is difficult. It's difficult for us to do anyway, but I
26 think it has other implications in terms of independence.

27 MR PERRY: Can I just follow up on two points? Am I right in understanding that
28 you don't see a difficulty with referring it to the CPS for a decision on whether
29 they want to prosecute?

30 MR WORKMAN: No. I don't see that as a problem. That's a matter for them.

31 MR PERRY: Looking at it the other way round, do you think it's something the
32 Court should do? Should it have the ability to do that?

33 MR WORKMAN: I think I'd be inclined to treat it as an application from the
34 defence, saying, 'We want to ask the CPS whether they will deal with it. Will

1 you give us time?' And I would have thought that most judges would say,
2 'Yes, have the time to consider it.'

3 It did happen, to a certain extent, with Abu Hamza. But there the
4 domestic proceedings overtook the extradition, but didn't cover the issues that
5 were being covered. So at the end of the domestic proceedings, extradition
6 started again – is going through. But I don't see any reason why at any point
7 the Director shouldn't say, 'I now have evidence and we wish to prosecute
8 here.' There's nothing to stop them.

9 MR PERRY: No, I think it's more that there's no – There's nothing within the Act
10 which – I appreciate that obviously as a judge you can say, 'I'm adjourning it
11 because I think it's just to do that to allow the defence to go to the Director
12 and to make an application.' But there's nothing specific which allows for
13 that to happen.

14 MR WORKMAN: Yes. I suppose it would be as well to have it spelt out if that was
15 the appropriate method of dealing with it; to say, you know, that an
16 application can be made to enable to do this, if it was felt that that was the
17 right way to deal with the problem.

18 CHAIR: You talked about the possibility of providing a certificate to the effect that
19 the evidence was being considered; there'll be no prosecution within the
20 United Kingdom.

21 MR WORKMAN: Yes.

22 CHAIR: Is that not perhaps a bit dangerous from the point of view –

23 MR WORKMAN: Yes, I think I'd like to retract that.

24 CHAIR: – that circumstances can change, reasonable expectation and so forth.

25 MR WORKMAN: Yes. I think what I was looking for was a means of actually being
26 able to say to the Director, 'Can you confirm that you are not prosecuting?'

27 CHAIR: Right.

28 MR WORKMAN: I think one needs some sort of mechanism to deal with that
29 because otherwise it just goes into limbo and we're still waiting for the CPS to
30 answer a letter. So I would like to see some mechanism of actually being able
31 to –

32 MR PERRY: Get a decision?

33 MR WORKMAN: Yes. Confirm that it's being done.

34 MR PERRY: Right.

1 CHAIR: I suppose though, on the practicalities of this, that – my own experience is
2 that the defence aren't slow in writing to the CPS to say, 'Please prosecute us
3 here rather than commencing extradition to proceed.' And I suppose if the
4 Court were to set a deadline for the CPS – not the extradition CPS but the
5 domestic CPS – to provide that information, I imagine that the CPS would
6 ordinarily comply with such a direction. I don't know what you think about
7 that. I mean we could legislate for every single possibility, but it's how
8 practical – well, first of all, is there a real problem, and what is the practical
9 solution?

10 MR WORKMAN: Yes.

11 CHAIR: And the CPS generally have a view as to whether they're in a position to
12 prosecute. In most cases, they haven't even got a file, so it's pretty obvious
13 what the decision is going to be.

14 MR WORKMAN: I suppose the – Liberty would say, well they ought to ask for the
15 evidence that the requesting state has got so that they can consider whether or
16 not they can prosecute here. And if they were to do that – well I suspect
17 there'd be quite a big delay getting that evidence. And in some cases it
18 wouldn't come. What do you do then? I suppose they say, 'Well we haven't
19 the evidence, therefore we're not going to prosecute.'

20 MR PERRY: I mean Keir was saying to us that what was critical was whether there
21 were two investigations running. Because if there's no investigation running
22 here, then there's nothing to compete with the request for extradition over
23 there. And therefore that would go ahead if the criteria were met. But I
24 suppose that could give rise to injustice in the kind of case where, if they had
25 started the investigation a couple of weeks or so before, it might well have
26 turned out that there was quite compelling evidence here that there wasn't over
27 there.

28 MR WORKMAN: I think – I'm assuming that most of these cases are the sort of –
29 either the computer hacking or the fraud type cases, where there is an element
30 in both countries. Is it the fact that the investigation hasn't started or is it the
31 fact that there is no evidence here at all? If there is evidence here but there is
32 no investigation, I'm not sure that Liberty would say, 'That's sufficient to
33 enable you to proceed with extradition.'

34 CHAIR: No, I don't think Liberty would, but I think the Director probably would.

1 MR WORKMAN: Yes, yes.

2 MR PERRY: That's one of the things about the structure of the forum sections.
3 Because they don't say, 'The Court should be directing the prosecution in the
4 United Kingdom.' They just say that it's a bar if first of all a significant part
5 of the conduct alleged to constitute the extradition offence is conduct in the
6 United Kingdom, and the Court is of the view that because of that, in all the
7 other circumstances, it would not be in the interests of justice for the person to
8 be tried for the offence in the requesting territory. It's not saying, 'You should
9 be prosecuted here.' It's - 'Because there is conduct here, you shouldn't be
10 tried there.' And the Court is directed to take into account whether the
11 relevant prosecuting authorities have decided not to take proceedings. But
12 that's only a matter to take into account.

13 MR WORKMAN: Yes. And I'm not sure what weight you would put to that. If the
14 weight was based upon the investigation started in Ruritania before it started
15 here, I don't know that you'd attach any weight to that. So I'm still very
16 firmly of the view that this is a dangerous area to venture into.

17 CHAIR: It may be that, in Part 1, the problem may resolve itself because within the
18 terms of the Lisbon Treaty there is going to be a mechanism for resolution of
19 conflicts in relation to jurisdiction.

20 MR WORKMAN: Is that on EUROJUST?

21 CHAIR: I think it is going to be. There's a mechanism within the treaty. I think
22 EUROJUST is actually going to be in a position to have the final say. So that
23 will solve -

24 MR DOOBAY: Whereas at the moment, it's only a talking shop. It still won't be
25 binding. The hope that's expected is that most member states will -

26 CHAIR: Abide by the -

27 MR DOOBAY: - EUROJUST.

28 MR WORKMAN: Right, yes.

29 CHAIR: So it may be that the problem is a Part 2 problem.

30 MR WORKMAN: Yes.

31 CHAIR: And I think you correctly identified - the reason why it's become a problem
32 is the transnational nature of crime and the increasing extraterritoriality that
33 states assert - or jurisdictional basis that states assert over extraterritorial
34 offences.

1 MR DOOBAY: Can I just raise a slightly sort of allied but different point, which I
2 suspect is part of the public debate about this? Which is that one of the factors
3 which I think everyone accepts should be taken into account is the nationality
4 or residence of the suspect. But if it doesn't – I don't think – the public
5 certainly aren't convinced that much weight if any is accorded to that. And
6 I'm certainly not convinced that in the discussions between prosecutors, they
7 place that very high up in terms of the balancing exercise. And so whilst in a
8 financial case, it may be possible to prosecute here or in another country, if the
9 defendant is here, I'm not sure that that counterbalances the convenience of
10 prosecuting somewhere else. Or I'm not sure that if it costs more to prosecute
11 it here, we would think well, because this is an English national we should pay
12 the extra money rather than...

13 MR WORKMAN: Yes.

14 MR DOOBAY: I wonder whether you think that that's an issue which should be
15 taken into account within the decision as to in which country to prosecute. So
16 how much weight you think should be accorded to that.

17 MR WORKMAN: Well just speaking as a member of the public really, I think it
18 should actually have some weight attached to it. Because you're taking
19 someone out of their home, their home country, and putting them through a
20 different type of justice. Hopefully it's good enough. But there are countries,
21 at the moment, aren't there? The Netherlands won't extradite their own.

22 MR PERRY: They have to now.

23 MR WORKMAN: Do they?

24 MR PERRY: Under the framework decision they had to change their –

25 MR WORKMAN: Oh right. Under the old Act they didn't. Yes.

26 MR DOOBAY: I mean, there are still countries which refuse to extradite their own
27 nationals outside the EU.

28 MR WORKMAN: Yes.

29 MR DOOBAY: Germany, France.

30 MR WORKMAN: Yes.

31 CHAIR: And there are still Part 2 countries that refuse to – the Russian Federation is
32 a good example of where they refuse to extradite their own nationals.

33 MR PERRY: A lot of this is probably perception, isn't it? If somebody is wanted in
34 the United States, in America, for murder, I think most of the members of the

1 public would think, well, it doesn't matter too much that he is a resident and a
2 national of the UK and has been living in the south of England for the last
3 20 years. If, on the other hand, he's wanted for price-fixing as a director of
4 XYZ Limited, I think the public then gets up in arms about it. I'm not quite
5 sure why this is so, except that it's a perception of the gravity of the offence.

6 MR WORKMAN: Yes.

7 MR PERRY: What will you do about it, I don't know.

8 MR DOOBAY: I think also there may be a perception that part of the reason we
9 don't prosecute is because we don't want to, not because we can't. So that the
10 UK could prosecute it – it might cost more, it might be more difficult, and
11 whether the balance is right in terms of the effect on a defendant of being
12 extradited as against the – not the likelihood of conviction, but actually the
13 convenience of prosecution.

14 MR WORKMAN: Yes. Yes. I agree with you. I think there is a concern there.

15 CHAIR: There are also issues – for example, we certainly got the impression that the
16 likelihood of conviction was quite a relevant factor as to whether somebody
17 could be prosecuted here or there as far as the CPS was concerned. And when
18 you take that one stage further down the line, it may be that you have intercept
19 evidence that's admissible there that isn't admissible here; that tips the scales.
20 I'm not sure that I would be terribly happy about that.

21 MR WORKMAN: No. I don't know how you get round these problems really. I
22 don't think there is really a solution to it. But it's – as you say, it's perception,
23 in various levels. And one of the aspects I think is the penalty, and I would
24 think that public opinion would be appeased a little if a British citizen who is
25 extradited could serve his sentence over here.

26 CHAIR: I think that's a very good point.

27 MR WORKMAN: But those are the sort of... I don't think we're ever going to find
28 an easy solution to this.

29 MR PERRY: There is some reciprocal arrangement with the state, isn't there?

30 MR DOOBAY: Yes. They're parties to the European Convention on the
31 Repatriation of Prisoners, even though it's a European convention.

32 MR WORKMAN: It doesn't seem to work very well.

33 MR DOOBAY: I think there's a lot of – there's delay. Because there's sometimes an
34 argument about – there's sometimes an argument as to what the effect of the

1 sentence will be in the enforcing states. So if you're returned from the United
2 States to the United Kingdom, effectively you become subject to the United
3 Kingdom's release provision. You can't aggregate, but you can be subjected
4 to your... And the enforcing state's position I think is final. So I think that's
5 right, in relation to...

6 MR PERRY: And you obviously consent to the Department of Prisons and the
7 Department of Justice and that's not always forthcoming, or forthcoming very
8 quickly.

9 CHAIR: How many cases a year – and maybe this is something that Stuart[?] might
10 be able to find out for us – how many repatriation cases there are. Anyway,
11 we've rather digressed. But it's all very interesting stuff. Anand?

12 MR DOOBAY: I just wanted – in terms of what we could do. One of the things we
13 were talking about, with the DPP, was – with the director – is if you could
14 have some guidance which explains what would be taken into account in this
15 discussion with another state, as to who would prosecute, and to give more
16 indication of the weight which might be given to nationality or residence, so
17 that at least there was some transparency, not necessarily of the discussions
18 themselves, but the process which was being gone through. If the decision
19 was 'no weight was given to nationality' or 'it's much less than the chance of
20 an effective conviction' at least everyone would understand what the process
21 was.

22 MR WORKMAN: Yes. I think that would be very helpful. I mean, I think Keir did
23 wonders with his first couple of days in trying to resolve the suicide problem
24 by producing a guidance which seems to be – which the public seem to have
25 accepted. I think if they knew that these matters were being considered, there
26 would be less concern than there is now. I have to say, at the moment, it's
27 only concern about one or two people, isn't it? But, nevertheless...

28 CHAIR: The US-UK Extradition Treaty and the issue of imbalance. You've made
29 some points about that. Anything you'd like to add to it?

30 MR WORKMAN: To be honest, I feel what's happened here is that the initial
31 arrangements with the United States, under the Treaty, were obviously wrong.

32 CHAIR: Yes.

- 1 MR WORKMAN: But they seem to me to have been adequately corrected now. I
2 don't think there is really a problem, but it is still perceived as a problem.
3 Maybe I'm missing the point somewhere, but –
- 4 CHAIR: I think some of the problem is that again the public perception is that there
5 are aspects of the United States criminal justice system that our public are
6 pretty unhappy about.
- 7 MR WORKMAN: Yes.
- 8 CHAIR: Plea bargaining, and so forth.
- 9 MR WORKMAN: Yes.
- 10 CHAIR: But then no two systems are the same.
- 11 MR WORKMAN: No. I think – I don't think that's really the fault of the Treaty or –
- 12 CHAIR: Well that's our view –
- 13 MR WORKMAN: But –
- 14 CHAIR: Yes. We can't really get into that because otherwise we'd be here until this
15 time next year and beyond
- 16 MR WORKMAN: Yes.
- 17 CHAIR: Anything else on the Treaty, David?
- 18 MR PERRY: No, thank you.
- 19 CHAIR: And then the final point is the prima facie evidence rule as to which – Shami
20 is pretty enthusiastic about putting [a copy about, as I would see it?].
- 21 MR WORKMAN: Yes.
- 22 CHAIR: But we've moved on quite a long way from there, haven't we? We've got
23 to look at what the position really is, rather than what label you put on it.
- 24 MR WORKMAN: Yes. I would be very surprised if politicians felt that they could
25 turn the clock back. I don't think that diplomacy would allow it.
- 26 CHAIR: Did you get a lot of – and have you a lot of experience of Part 2 cases where
27 the prima facie rule still applies and cases that aren't [Schedule 2?]?
- 28 MR WORKMAN: There are very few of them now, very few of them. We do get
29 them, and I've had a few in the past. Frankly, they don't present an enormous
30 problem usually. It's when they're wrapped up with political implications, in
31 that sort of a case, that complications can... But the ordinary prima facie case
32 we're quite used to dealing with careless driving, so it's not as if it's –

1 CHAIR: So where there are specific arrangements with the countries with whom
2 there's no treaty here, is the prima facie evidence rule automatically applied or
3 does it depend on the arrangements that they make at the time?

4 MR WORKMAN: I think all the ones that are not covered are actually ad hoc
5 arrangements at the time. But I think – this is why we need Lizzie – I think
6 the majority of them do involve prima facie cases. But the ad hoc ones are
7 always complicated.

8 CHAIR: And do you get many ad hoc ones.

9 MR WORKMAN: No, no.

10 CHAIR: This would happen when there's a murder of a British citizen in some
11 country with whom there's no treaty?

12 MR WORKMAN: No, it doesn't necessarily involve the British at all. It is serious
13 offences in a particular country –

14 MR PERRY: Rwanda.

15 MR WORKMAN: I think Rwanda was the big one recently. So that was just, you
16 know, a very long, complex case in which one of my colleagues had to wrestle
17 with it for a month.

18 CHAIR: Well speaking for myself, I think you've pretty well exhausted all my
19 questions. But we'd be very happy to deal with anything else that you think
20 we ought to think about.

21 MR WORKMAN: Could I just make a plea on behalf of my colleagues? And that is
22 in terms of practical resources. Because I was pleased to learn this week that
23 the late sittings have come down from seven o'clock to six-thirty. But it is too
24 long, really. I'm hoping that the new Court of Marylebone, where there will
25 be an extra courtroom, will enable that to be resolved. But if the work does
26 suddenly expand with arrival of a new computer, or something of that sort –
27 which is still in the offing, I think – the Court Service is going to have to
28 respond very quickly. I hope they're able to do so. But that, I think, is
29 something which is essentially beyond our control. As indeed, when this Act
30 came in, we really didn't have any idea that it was going to be quite so
31 extensive or that one particular country was going to be responsible for half
32 the work.

33 MR PERRY: But on the other hand, quite interesting.

1 MR WORKMAN: Oh fascinating, yes. Oh yes. I mean, from our point of view, it's
2 been a fascinating exercise.

3 MR PERRY: I mean how much time does the Extradition judges actually spend
4 doing Extradition?

5 MR WORKMAN: Well we have – In September we were having two courts every
6 day, sitting on Extradition. So there were then seven judges; there are now
7 nine – or is it eight? Eight judges, I think. So that gives you an idea roughly
8 of how often it comes around. But there's a lot of it. Quite a lot of it passes
9 without any problems. And then you suddenly see Mr Perry QC appear and
10 you realise [cross-talk].

11 But they do vary enormously, from a 10-minute hearing to four weeks.

12 MR DOOBAY: Can I just make a couple of points on the prima facie for a minute?
13 Leaving aside Part 1, the Part 2 cases, I see from the written submissions that
14 you do think that the [provision of prima facie evidence is a safeguard?]. And
15 so leaving aside Part 1. So Part 2 cases where there are countries which are
16 designated not to have prima facie evidence, would you be in favour of –
17 ignoring the political realities – in principle, would you believe that there was
18 something to be gained by reintroducing the prima facie evidence?

19 MR WORKMAN: I think there would be safeguards gained by doing so. The trouble
20 is: countries – divisional systems change and so it's quite difficult sometimes
21 to say that a country that is – which quite happily says, 'You don't need to
22 provide prima facie evidence; we'll accept what you say', some years later
23 may not be quite so suitable.

24 MR DOOBAY: Zimbabwe?

25 MR WORKMAN: Yes. A good example. And so those are the sort of – If one had a
26 simple rule that would require prima facie evidence, it would be, I think, a
27 safeguard. But it's not a final solution, but it's a help, I think.

28 MR DOOBAY: And in terms of the safeguarding it would provide, is that in terms of
29 the bona fides of the request, or is it in terms of showing that there is sufficient
30 evidence to – is it the threshold of evidence?

31 MR WORKMAN: I would hope it would be the threshold, but it does obviously, at
32 the same time, deal with the bona fides of the request. I think most countries
33 of course are entirely bona fide in their applications. Every now and then one
34 crops up that isn't. And they are difficult to spot. Well some of them are

1 difficult to spot; some of them are easy! But it would be easier if one could
2 see clearly what the evidence was.

3 MR DOOBAY: I think it's one of your cases that's been used in submissions to us to
4 support why there should be prima facie for the US, which is Raissi. I wonder
5 whether I could just check if I've understood the pattern correctly.

6 MR WORKMAN: And I'll try and remember!

7 MR DOOBAY: Am I right in thinking that there was a provision arrest?

8 MR WORKMAN: Yes.

9 MR DOOBAY: Various assertions were made about the request would contain when
10 it was sent through. And then subsequently a request was sent through with
11 evidence, which was for very minor offences compared to the assertions which
12 had been earlier made. And there was then a discharge on the basis that the
13 more minor offences weren't found to have an equivalent – there wasn't found
14 to be double criminality for those more minor offences?

15 MR WORKMAN: That was almost right, yes. The original arrest was for the minor
16 offences. The provisional arrest was on the basis of a failure to comply with
17 an aviation requirement; he hadn't disclosed something, an injury to his knee
18 or something. And on that basis, that was what was what he was arrested for.
19 And, in fairness, it was an overnight matter. A few months after 9/11
20 everybody was very, very jumpy. This was the first arrest after that incident.
21 I think the FBI and the CPS had to make the decision overnight as to what to
22 base their provisional arrest on. That was the only evidence they had at that
23 time. The FBI claimed they had all sorts of other evidence, which caused a
24 doubt. But the original arrest was made on that basis. The charge came on the
25 basis of the Aviation (Offences) Act. And the remand was in custody was
26 made on the basis that this is a holding charge, and that we've got this very
27 much more serious – and we know that he has trained the pilots who flew the
28 airlines into the Twin Towers. And I'm sorry to say now that, you know, as a
29 result of that, I remanded him in custody for about three or four months. And
30 each time there was a bail application, the FBI produced some further
31 evidence to associate him. And when the subsequent next bail application
32 came in, the defence had proved that that was wrong, and then the FBI came
33 up with something else. And eventually I had to say, 'Right, well if you're
34 going to proceed, you proceed next time otherwise I'm going to grant him bail

1 and we're going to proceed on that grant.' That effectively was what
2 happened.

3 The CPS came in for some criticism over that, and the Metropolitan
4 Police did. From where I was sitting, I'm not sure that they were the real
5 villains of the piece. But undoubtedly he was an innocent man, incarcerated in
6 Belmont for four months, charged with one of the most heinous offences of
7 the century. Awful.

8 MR DOOBAY: Do you think that if that request had happened now – when there's
9 no requirement for prima facie – do you think it would have been dealt with
10 differently? I mean, the suggestion is that because there's no prima facie
11 evidence now, that they could have simply obtained his extradition on the
12 more serious charges? I suppose I'm wondering, given that they normally
13 provide an affidavit for prosecutor and indictment and warrant, whether in fact
14 they would have been able to do that. Do you think it would have made a real
15 difference to...?

16 MR WORKMAN: I think it might have been very difficult to avoid extradition at that
17 point. But I hope – if they come back – that it will be still possible to deal
18 with that under the existing legislation without any injustice. Well I hope. I
19 don't think it's going to arise, but...

20 MR DOOBAY: It sounds to me that they wouldn't have been able to get an
21 indictment in relation to the more serious offence because there wasn't
22 anything to substantiate it. And without an indictment...

23 MR WORKMAN: I think they might have been able to because what they were
24 doing was they were saying, 'Here is the log of the simulator...' – I haven't
25 looked at recently, but – 'Here is the log of the simulator, showing him
26 together with one of the pilots, training him with the simulator. And he was
27 teaching him how to fly it. And here is the document.'

28 Now, on the face of it, that evidence – and on that basis I remanded him in
29 custody. The next time it comes back, the defence had been out to America.
30 They had seen the log. They had obtained a copy of it. And it was the wrong
31 log with the wrong person. But it was enough to put before a grand jury, I
32 would have thought, to say, 'Look, this is what we've got.' And it was only
33 when it was tested it was found to be faulty.

34 I think, in those times, probably a grand jury would have issued a warrant.

1 MR DOOBAY: Did they know it was the wrong log and the wrong person?

2 MR WORKMAN: Are we still recording?

3 I became very concerned about it. I was really very worried about what
4 was happening. And it – you know, I still feel responsible for locking a chap
5 up when he shouldn't have been. But it was – very difficult times and I think,
6 you know, the FBI were under real pressure. But I don't think that extended
7 to the CPS and the Metropolitan Police [inaudible]. I'm not sure whether that
8 helps you very much, I'm afraid.

9 MR DOOBAY: Can I just ask one quick final question? I suppose that lots of the
10 submissions we hear are predicated on the basis that this is about international
11 cooperation, the inefficient system of justice bringing defendants to book. But
12 there's some sense, over the years, that these safeguards have become
13 superfluous because we trust our international partners and there isn't really a
14 need for them in the way there was hundreds of years ago. But my question is
15 really: you've mentioned this one case – we've talked about the Russian
16 requests already. I mean, are there other occasions when you've thought that
17 actually the process itself was being misused or not being used properly?

18 MR WORKMAN: Um...

19 MR DOOBAY: I don't mean necessarily to tell us about the cases, but just –

20 MR WORKMAN: No, I'm just trying to think where –

21 MR DOOBAY: Yes.

22 MR WORKMAN: I can't immediately think of anything where there was quite the
23 political influence that there was in the Russian cases. But there have been
24 instances where American prosecutors seem to me to be a little overzealous.
25 And we wouldn't have dealt with it in the way that they have. So there are
26 instances of that. But I think the human rights provision in the Act is
27 sufficient to cover most of those eventualities, provided the facts are put
28 before The Court.

29 There was a little concern when it was suggested that we should
30 automatically assume that the human rights are provided for in all the member
31 states, because in individual cases they aren't necessarily always available. So
32 I'm relieved that The Court still has to consider those human rights issues.

33 But I do think it being there, and it being raised, we can deal with it. I
34 don't think it requires anything further, from that point of view.

1317
~~1316~~

1 MR DOOBAY: Nothing else.

2 CHAIR: Well thank you very, very much indeed, gentleman. Sorry to have dragged
3 you both –

4 MR WORKMAN: As yesterday's man, I'm not very sure that I've been quite the –

5 CHAIR: No, no. It's very helpful because you are a wealth of experience that we
6 need to tap into.

7 MR WORKMAN: It was an interesting time. But of course that was six months ago
8 now; it's all changed since then.

9
10

(End of Session)