

**HOME OFFICE – JUDICIAL COOPERATION UNIT**

**EVIDENCE SESSION**

Monday 11 April 2011

**PANEL:**

Sir Scott Baker (Chair)  
David Perry QC  
Anand Doobay

**IN ATTENDANCE:**

Howard Riddle (Senior District Judge)  
Daphne Wickham (Deputy)  
Nicholas Evans (District Judge)

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(At 10.20)

1  
2 CHAIR: Good morning. I think the best place to sit is probably the front row. We  
3 have been trying to make it as user friendly as we can. We turned the  
4 microphones round. There are some microphones here. Anyway, I am Scott  
5 Baker. This is Anand Doobay who you probably know anyway, and David  
6 Perry QC, and we have been given this job of recommending what changes  
7 there ought to be to the extradition legislation. There are around five  
8 questions and we are extremely grateful to you for coming and also for the  
9 very helpful paper that you sent us, and we would like to have a chat about it  
10 and see what can be done. I think as far as the EAW is concerned, we agree  
11 that all is not well with the EAW and its operation. There seems to us to be a  
12 limited number of things that can be done by legislation that would not offend  
13 the framework decision and rather more that could be done but would have to  
14 be done really behind the scenes by mutual cooperation and so forth. As far as  
15 your submissions are concerned, you have touched on legal aid and we have  
16 already picked this up from a number of quarters that this is a serious problem.  
17 We have had words with the MOJ because the sooner the wheels are put in  
18 motion to do anything the better; and in one sense it is slightly outside our  
19 remit and so we can only get critically involved in the nuts and bolts, but we  
20 can say what we think is wrong and what fundamental things might be done to  
21 put it right. But bearing in mind the financial position at the moment I think  
22 the coalition and indeed the MOJ investigation is only really going to be  
23 interested if they can be persuaded that the system as it is being operated at the  
24 moment is actually costing more money that it would cost if they got a proper  
25 arrangement for legal aid being granted virtually automatically.

26 So that is really where we are on that, but I think it would be helpful if the  
27 MOJ people who are looking at it – who are going to set about their  
28 investigation as soon as they can, which I think probably is likely to be early  
29 June – if you were to as it were get at them and tell them where the savings  
30 can be made, if legal aid was more readily available. Anyway, that is the  
31 broad analysis of where we are on this, and can we start with legal aid and  
32 what you would have to say about that?

33 JUDGE RIDDLE: If I start on that, I am Howard Riddle. I am the comparatively  
34 new chief magistrate and successor to Tim Workman so I am the least

1 experienced of the three who appear in front of you this morning by a very  
2 long way.

3 CHAIR: No doubt you will be learning fast.

4 JUDGE RIDDLE: I do have some background in legal aid. I was on the legal aid  
5 area committee in London for many years as a solicitor.

6 CHAIR: So was I, as a barrister member and that was a long time ago. It worked in  
7 those days.

8 JUDGE RIDDLE: And it worked with me, and it does mean that one has some  
9 understanding of how it works. The cost position I think is very easy to deal  
10 with. If we can't make progress and we can't certainly in the early stages  
11 without a lawyer – there are huge costs in terms of wasted time. There is  
12 almost always the cost of an interpreter, block-booked for a morning. The  
13 Ministry of Justice already know our costs because they have a separate  
14 research project which has costed our time at £175 per hour. That is just for  
15 the judge and all the ancillary costs of representation, and of course there is  
16 the cost of producing prisoners, if there are prisoners, either in person or by  
17 way of video link. Now what we have found, and I am sure you heard this  
18 from other people, is that the problem, if it arises, arises with people who  
19 either themselves or their partners have casual work and they cannot produce  
20 the pay slips to prove their income, so they will very often remain in custody  
21 for the three month period that it takes in order to get legal aid. We tend to  
22 feel very often that they saw a duty solicitor first time round, no issues were  
23 identified, and we could probably have made progress with that case at the  
24 second or the third hearing. They are unrepresented and of course that brings  
25 us to the second aspect of it, which is that it just looks unfair. I understand  
26 that MOJ will be interested in costs, and the argument on costs is compelling,  
27 but there is also an important aspect on fairness.

28 CHAIR: Do you think it is going to be possible to quantify the costs?

29 JUDGE RIDDLE: Well, on an average basis, yes. I think we can tell you what an  
30 average hearing will cost, with a Polish interpreter there being paid for four  
31 hours' work, us for half an hour trying to make progress, and transport costs.

32 CHAIR: I should have said at the beginning, that we have – everything that is being  
33 said is going to be on tape, and it is our intention when the report comes out is  
34 that all the evidence will be referred to, by annexe at any rate, and will be

1 available for public consumption for those who are interested, but the good  
2 news is that you will get an opportunity for correcting the transcript and taking  
3 anything off that you wish, or adding anything, before it goes public. So  
4 please feel free to speak openly. Anything else on legal aid?

5 JUDGE EVANS: Something perhaps; I think the word is 'disgrace', with our  
6 situation, and people should be represented and everyone would want to be  
7 represented, and I think that a foreign national who does not speak the  
8 language who is arrested and brought to court deserves a lawyer and should  
9 have a lawyer immediately. They do get one through the duty solicitors  
10 scheme but if things can't be resolved on the day and it goes over, they don't  
11 have a lawyer for quite some time or at all. And I think that is something that  
12 is – you would not expect that of the English judicial system.

13 CHAIR: We know that in Northern Ireland, and you have referred to this, that there is  
14 a provision that the judge can grant legal aid. We think that position here is  
15 different because here and in Northern Ireland, what happens in extradition is  
16 mirrored on what happens in other criminal legal aid. We are not convinced  
17 that it is sensible to have the same arrangement.

18 JUDGE WICKHAM: On numbers alone that just would not work. Having got to  
19 know quite well the Recorder of Belfast, compared to this, looking at the  
20 amount of cases he has to deal with and the amount we do, I can well see that  
21 he has an argument in every case that everyone has legal aid, and so it goes on.  
22 You cannot do without.

23 CHAIR: But the merit test is met in most extradition cases isn't it.

24 JUDGE WICKHAM: It is always automatically.

25 CHAIR: It is always met.

26 JUDGE WICKHAM: Automatically the interest of justice is met, so it is just a  
27 question of means.

28 CHAIR: One of the things that the MOJ was invited to look at by us was the  
29 possibility of getting people to the LSC who have got real knowledge of  
30 extradition. In other words having a small group of one or two or three of  
31 them, dealing with all the cases so that they actually know what they are  
32 coping with rather than people having no knowledge of extradition and  
33 making decisions which may not be particularly good ones.

34 JUDGE WICKHAM: I think it is just a question of budgets. They have got their

1 budget to protect. They have got their instructions to minimise their budget  
2 and they are not really interested in the wider aspect.

3 MR DOOBAY[?]: There is a less obvious merit to that specialist team there and that  
4 is something that Nick has also alluded to in the report. And that is that we are  
5 often finding expert reports being approved by the LSC in circumstances that  
6 we just don't think – we cannot see why, and now as soon as a defendant  
7 appears in front of us and says, we have funding from the LSC to look into the  
8 conditions of prisons in Poland, it is very difficult for us to say that is simply  
9 wasting our time. We know the conditions in prisons in Poland. That  
10 argument is not going to go anywhere. You turn that into a very expensive  
11 report.

12 CHAIR: One of the suggestions has been that it might be a good idea if there were  
13 extradition courts elsewhere in the country, not all over the place, but ACPO  
14 have said it is very expensive to bring prisoners all the way to Westminster or  
15 Marylebone, and why can't we have somewhere in Liverpool or Newcastle, or  
16 Manchester, and we know this is a bit of an old chestnut, but it would be quite  
17 helpful, I think, to have your views on the record.

18 JUDGE WICKHAM: Can I come back on that? I think we can divide the cases up.  
19 There are an increasing number of cases coming before us of serving prisoners  
20 in this country who are now being identified as being on the end of extradition  
21 requests. So Section 8(a) and Section 8(b) have to be considered and  
22 accordingly with Category 2 request. There is little point in having a serving  
23 prisoner from Canterbury Prison brought by the prison service to Westminster  
24 Magistrates Court. The Kent police are then required to come to our court,  
25 arrest him and charge him on the extradition warrant and for him to appear in  
26 front of one of us, to be told his release date is not until 2012, 2013. That  
27 achieves nothing because it is just a standard six months that is being applied.  
28 So that could be done and ought to be done with proper technology which is a  
29 video link. You would video link him from his prison to us. He will have the  
30 duty solicitor who is a proper extradition lawyer. He would have an  
31 interpreter. The usual stuff. 15 minutes on his own. He would then link with  
32 one of us which would then say, nothing is going to happen, Mr So and So, we  
33 will meet again on the video in the next 28 days or six months. You can save  
34 a lot of money. Many of the defendants also are often arrested for other

1 offences or get involved in other offences or are known. If they are the  
2 magistrates' courts summary matters, normally they would provide papers – if  
3 they have a very good idea of what is going to happen, say driving matters, we  
4 can get those criminal matters brought into our court, we deal with them, then  
5 we move on to the extradition.

6 That does not work if they are on bail to the Crown Court and are  
7 awaiting trial with three others on a conspiracy and you have got about a  
8 year's wait, and then you have got your Section 8(a) coming in every 28 days.  
9 The first appearance of course is brought to our court. The others are all done  
10 by video link. Again if it is known that you are arresting someone who is  
11 waiting for trial in Lincoln Crown Court in October, again that too can be  
12 done by video link, I would have thought, the first hearing. So that is one way  
13 of saving the cost. It is not difficult for the arresting police to identify this at a  
14 very early stage.

15 CHAIR: What would you say about video link for the substantive extradition  
16 hearing? Is that a bridge too far?

17 JUDGE RIDDLE: We do to a certain extent. I have changed my mind on this. When  
18 I first started doing extradition work, I must say it did seem odd that people  
19 were being brought from Hartlepool to London at considerable expense and I  
20 can see the ACPO point. And there was an element of fairness about it,  
21 disrupting someone from a life a long way away and then being held on  
22 remand in the south of England usually, family access and so on, but I have  
23 completely changed my mind on it. And the reason I have changed my mind  
24 is that I don't think that you can make any real progress without specialists in  
25 a variety of areas. The judges, we met the – coincidentally, we met the  
26 Edinburgh Sheriffs on Friday. They say that, for them, the minimum number  
27 – they have five and they say they sometimes struggle with only five in  
28 Edinburgh and it is not always possible to provide a judge at short notice to  
29 deal with cases, and I think that that must be the case with any particular court.  
30 But it is not really the judges that are the problem. The problem is that we  
31 have specialist advocates and we have interpreters. Anyone coming to the  
32 City of Westminster, we can provide an interpreter for them almost  
33 immediately. We probably have a Polish interpreter in the Court straight  
34 away. Probably have a Romanian, possibly have a Russian and can get others

1 from a wide –

2 CHAIR: They won't necessary have that facility in Newcastle.

3 JUDGE RIDDLE: They might really struggle.

4 JUDGE WICKHAM: They struggle for days for some of these – a Hungarian,  
5 certainly I know that Hungarian interpreters– they are either in the home  
6 counties or in London.

7 JUDGE RIDDLE: There is great advantage in a specialist lawyer. The CPS, the  
8 lawyers for the government, we find that very often able, because they are  
9 specialists, to say, within five minutes, we are not going to pursue this one. It  
10 is defective – we are going to withdraw it. That is not going to be something  
11 that non specialists are going to be able to deal with, so you need to build up  
12 specialist teams in each of these centres, and finally defence lawyers. All the  
13 duty solicitors at City of Westminster are trained in extradition work.

14 CHAIR: By you?

15 JUDGE RIDDLE: Well, we participate in it. Dr Franey, who you saw last week,  
16 organised a conference quite recently and I certainly attended and we spoke  
17 and they get trained by experience and are very quickly able to look through a  
18 warrant, and say there is nothing in this to detain the Court, or alternatively  
19 there is. Whether video links can deal with that by having the interpreters and  
20 the specialist lawyers in our court and video link through to us I don't think is  
21 something we really can tell. I suspect it would go wrong, but I might –

22 JUDGE WICKHAM: It ought not to go wrong, really, when you think about it. The –

23 JUDGE RIDDLE: It sometimes does.

24 JUDGE WICKHAM: It is a way forward and we are opening a brand new court, so  
25 hopefully we will be a bit more ready when it moves on. For instance you can  
26 have a duty solicitor who said, 'I don't know much about extradition,' and you  
27 can immediately dispense with his or her services for the purposes of the  
28 extradition court, and then you take another duty solicitor in the building who  
29 does know extradition. You would not get that if you were to – you would get  
30 some people who said they would, but you would not get that in my view out  
31 of the one place and that is the key – there are no issues – or he wants to raise  
32 "Article 8, madam", I tell you he is not going to succeed but he wants his day  
33 in court and you fix the hearing.

34 JUDGE RIDDLE: To give you an idea of numbers I think we have got well over 70

1 duty solicitors attached to the City of Westminster, so you will have two  
2 specialist extradition lawyers on any given day who can cope with a variable  
3 workload.

4 CHAIR: And they will organise it so that there are always two there, will they?

5 JUDGE RIDDLE: Yes.

6 CHAIR: Anand, anything on the discussion so far?

7 MR DOOBAY: One of the things which we have heard earlier is the suggestion that  
8 that should be slightly more formal in the sense that if you are going to be a  
9 duty solicitor at Marylebone in future, that you should have to have some  
10 basic extradition training so that it is not just the two that – everyone has a  
11 basic level. Obviously they all have the expertise, because a lot of it came  
12 from doing the cases, but at least given that the central court which deals that  
13 it, that everyone who is a duty solicitor there should have some basic training.  
14 I am assuming that that is not something that would be problematic or a bad  
15 thing.

16 JUDGE RIDDLE: It is a good thing.

17 CHAIR: Just two things, just wanted to know what the practical effect is of the legal  
18 aid position. If someone cannot provide the evidence as to their means, there  
19 is the delay that then follows but is it the case that in those cases legal aid is  
20 almost invariably granted or is it that cases just go on with people remaining  
21 unrepresented?

22 JUDGE EVANS: I think what happens is that they provide some documents. And  
23 then it emerges from the partner, so that it goes to Liverpool and a week or  
24 two later they say, we want to have – we want to know your partner's income,  
25 because we do not believe you can survive on what you are telling us. And  
26 then the partner has to produce her documents or his documents and it seems  
27 to go backwards and forward to Liverpool time after time, and solicitors do  
28 not often come back to court because they are not being paid to come back to  
29 court. And the system then is very, very difficult because some solicitors you  
30 think may be making an assessment that this person is not going to get legal  
31 aid because they are earning too much money. So they do not even put in a  
32 legal aid application. He is remanded in custody and a week later he comes  
33 back and he does not know. Through the interpreter he says well, I spoke to  
34 the solicitor. Did you sign some form? Well I don't know. I may have done.



1 We do not even know if there is an application pending. And so I am sure  
2 these things could be resolved. The other thing on this point is that some  
3 solicitors will take a firm view. They are in business. They are not prepared  
4 to see our client and take instructions. They are not prepared to do anything  
5 until we have got the legal aid sorted out and we are applying for legal aid. So  
6 there is a delay of sometimes weeks. Eventually they get legal aid and they  
7 come and say 'no issues'. Now they have won a fee but they have done  
8 nothing to help this chap at all. What he wants is good advice, right from the  
9 word go, as to whether he has got a case or not, and if he has not got a case, to  
10 submit and get on a plan. There should be many, many more cases, resolved  
11 on the first day, or within the first week, and that is what we have got to try  
12 and do.

13 JUDGE WICKHAM: I think there is a problem also that they do not get it (Legal  
14 Aid). If you are washing cars in the lay-by outside Waitrose or something for  
15 cash in hand, you are not going to be able to prove anything, are you, to the  
16 Legal Services Commission at all. I know they try again if they have been in  
17 custody three or four weeks and would have got no income at all and therefore  
18 resubmit the form, but as Nick says about that, I mean, in that situation, many  
19 eventually give up on the second or third, and say I have no choice, and it is at  
20 that stage, on occasions, you have to ask the are requesting judicial authority  
21 which, obviously, our young members of the Bar are very, very able to act as  
22 an amicus and say, 'Well I am going to deal with this, Unrepresented, but I  
23 must ask you, Mr So and So, as we go through it, are there any points which  
24 leap out at you?' I don't think at the end of the day that sounds very fair. And  
25 of course then you end up with the appeal, and then the Court wants to know  
26 why you have done it that way, but there is not a lot of choice. That is the  
27 problem that worries us, whereas if you had something at the beginning which  
28 was built in. Wealthy people will arrive with their team, regardless. There are  
29 one or two scams going, running around the system – and I do not want to say  
30 anything more about that, but we have had a couple over the last couple of  
31 weeks, where the community are handing out money to people who are not  
32 qualified - to give advice or to promise them back on bail and a very large sum  
33 of money to get them out on appeal.

34 JUDGE EVANS: You should have an automatic right to legal aid without means

1 testing. How you cope with the Brownages[?] of this world?

2 CHAIR: He would not want a legal aid lawyer.

3 JUDGE RIDDLE: We are on the subject of fixed fees. The great majority of cases  
4 can be dealt with within the 21 days that are required to deal with them and  
5 that can be a fairly modest fixed fee, it seems to me. And what would happen  
6 beyond that is a matter of detail you probably do not want to go into but there  
7 could be a certificate for counsel, for example and then it would go on to a  
8 different basis, or alternatively, at the end of the 21 days there would be a  
9 lawyer in place who could help the client provide proper information for  
10 which they have a fixed fee. I am thinking £250-£300 and I am thinking of  
11 swings and roundabouts here. If you appear in court on day one you get £250-  
12 £300 on day one and you are satisfied that your client has not got an argument,  
13 you get £250-£300. But if on the other hand it goes to a full hearing, you still  
14 get £250-£300. I do not see a problem with that on the swings and  
15 roundabouts basis, if we are dealing with specialists.

16 CHAIR: Then just on the experts report that you say that you sometimes receive and  
17 you are surprised that the Legal Services Commission has agreed to the  
18 commission of these reports, and what the possible solution there, to have  
19 greater judicial control over the type of material that can be obtained?

20 JUDGE RIDDLE: I don't think so. I think that brings us too close to the process. I  
21 think we have to leave it with the LSC having the expertise that was suggested  
22 earlier on to turn it down with perhaps tighter criteria. You would not want  
23 prison conditions in Poland to be explored without some proof that the human  
24 rights agencies saying there was a problem, so you need someone at the LSC  
25 to look at it. I think if we do it, the only basis on which we can really do it is  
26 by saying we are prepared to adjourn this case beyond the 21 days for this  
27 argument and that is something that counsels and solicitors can do and can put  
28 in their letter to the LSC as a sort of nod and a wink, if you like, but I would  
29 be worried if we took the decision, that we get too close to the process.

30 CHAIR: One of the things that we have heard a lot about is proportionality, which of  
31 course is the buzzword. It does not seem to us that proportionality can be as it  
32 were assessed by you at this end. There is not much you can do about saying  
33 that the request from Poland is disproportionate and therefore you will chuck it  
34 out. The proportionality issue has really got to be tackled from the other end.

1 And this is something that I think a lot of work has gone on behind the scenes  
2 and hopefully a lot more will go on, but an area that has been interesting us a  
3 little bit is when SOCA check the warrant to see if it is a valid warrant and  
4 they are I think pretty keen to restrict themselves just to doing that, but what  
5 we are interested in is whether there is any avenue for, for example, judge to  
6 judge, between England and Poland, or prosecutor to prosecutor from England  
7 to Poland or anywhere else, saying look, this is really daft, isn't it? I mean,  
8 nothing much is going to happen to this person that you want, and isn't there  
9 another way of dealing with it that would be much better from everybody's  
10 point of view. Can that sort of communication take place? Is there any  
11 communication between judges in Poland, for example?

12 JUDGE EVANS: The point is that, typically, other than a man who is wanted for  
13 murder, which is obviously serious, but typical story is that the police stop a  
14 car and do a name check and Pietro comes up on the computer as being  
15 wanted for stealing a chicken or something in Romania. And therefore he has  
16 to be – well, not has to be – he is arrested on the European arrest warrant, and  
17 once he has been arrested he has to be brought to court as soon as practical,  
18 and then the whole process of the timing starts, so we are rather stuck in that,  
19 but obviously if there is – what you are saying is absolutely right. If there is a  
20 way of communicating and putting a stop on it for a bit, it is quite difficult,  
21 because once he is arrested you have got to decide about bail and putting up  
22 money and keeping him in custody, so if it could be done prior to arrest, yes,  
23 but then it ever would be because you never know, there are probably 20,000  
24 EAWs in the ether and it is only when they stop the car and do a name check  
25 that they focus on the one case.

26 CHAIR: Is there anything you can do when you see what you think is a daft case?

27 JUDGE WICKHAM: We can apply the Ways and Means Act, which comes in really  
28 quite handy, and I have met Polish judges. Lord Justice Thomas took Howard  
29 and myself to meet with the Minister of the Interior who came over from  
30 Poland quite recently and a number of other colleagues and I was fortunate  
31 enough to sit at lunch next to one of the diplomats from the consulate who got  
32 the hang of the problems we face. We do not want to get this whole thing  
33 skewed by the Polish problem as such and we have got to be very careful. I  
34 think the situation is that it is not for us to tell judges of another jurisdiction,

1 the Category 1 judges, that we really do not have much confidence when they  
2 are sentencing and why are they giving eight months to somebody in custody  
3 with a very small quantity of cannabis? Whereas in this country you may not  
4 prosecute or give a very small fine. I don't think it is for us to do that. I don't  
5 think we would welcome reciprocity. But I think there are two lots of things  
6 and I did discuss this with Judge Dariusz Sielicki. We are fortunate that one  
7 or two of the judges who go on these international conferences do speak  
8 excellent English and have worked in the American system, as in his case. In  
9 some case, I think there is the misuse of the warrant merely as an enforcement.  
10 In other words, you have been convicted in Poland, you have not paid your  
11 25,000 zloty compensation, you have come to this country and we have not  
12 got the 25,000, so they issue an extradition warrant for the person in order to  
13 get their money back and then we start this long process, can we get them to  
14 try and sort it out.

15 JUDGE EVANS: There is an agreement for enforcing fines now, but it only just  
16 came into effect.

17 JUDGE WICKHAM: That is correct. I know certainly from the legal advice that  
18 could be quite useful, for the genuine Pole who genuinely wants now to pay  
19 when pushed to it, his 25,000 zloty and he is prepared to do it. That is one  
20 thing. To be used as an enforcement agency is something of a misuse. What  
21 you do then is that you can open a hearing and then you just adjourn it for  
22 some time, and then to listen, if there are no issues, let us say eight weeks  
23 down the line, 10 weeks down the line. It probably offends against the  
24 principle of it, but it nevertheless I think is a useful tool. That is the ways and  
25 means. And that will be used as an enforcement agency. The other way of  
26 course is, if there was an accusation warrant out in Poland, and this was  
27 Dariusz Sielicki – I am going to have to call him Dariusz because I cannot  
28 pronounce his last name – Dariusz's bright idea and I think it is quite sensible  
29 but it would require of course a lot more cooperation with the local police  
30 force. Again if you had tracked down Tomas to the potato fields in the  
31 Eastern counties and you know he is there with his family and there is an  
32 accusation going back six or seven years, but he knows about it, then actually  
33 you tell him. You serve on him process from home, – say that your trial will  
34 take place at Zielona Gora Court on 1 July 2011 and Mr Tomas you can be

1           there or not there, and if you are not there you will be tried in your absence  
2           according to Polish law and then there would be an extradition. You give  
3           them a chance to go back.

4 CHAIR: Do the Poles actually do that?

5 JUDGE WICKHAM: That is what Dariusz is suggesting, and what he is saying is,  
6           why can't you do it in England?

7 CHAIR: We can't because of the rules about the warrant.

8 JUDGE WICKHAM: The idea is a pre warrant. In other words you just basically  
9           serve the Court hearings on somebody. That would involve, of course, a local  
10          police force giving service and proof of service and then sending it back, so  
11          that is what you do with the outstanding accusation that way, where you were  
12          sure you had found that person. Give them a chance to go back, have their  
13          trial, if not, that will follow. It is a risky strategy. But it is one that may well  
14          work.

15 CHAIR: We had Lord Justice Thomas talking to us last week, and he has obviously  
16          done quite a lot of work with the Poles and elsewhere and I think he feels quite  
17          strongly that judicial cooperation is really the way ahead on this. Not on a  
18          specific basis but on a more general basis, and we cannot tell the Poles what to  
19          do, but their judges have probably got more influence on their prosecutors  
20          than we would have.

21 JUDGE WICKHAM: Yes, and the majority of these warrants are issued by the judges  
22          and they are now being asked, I gather, generally to exercise discretion and I  
23          think that is

24 CHAIR: There is some suggestion that the number of Polish cases has been falling.  
25          Is that your experience?

26 JUDGE EVANS: Anecdotally, yes. I don't think we have got statistics on it. 1500  
27          arrests in the last 12 months. That is, 1500 new cases appeared in front of us.  
28          About 750 of those Polish, so proportionally down, but numerically up.

29 JUDGE WICKHAM: They fell in December, and we thought that was the December-  
30          January and I think they are pretty well up again now. A lot more coming to  
31          the fore because unfortunately some of the Poles in this country who have  
32          perhaps now got out of work or got less money than we had before, and now  
33          committing crime in this country and their names are popping up.

34 JUDGE EVANS: They are also old warrants. The warrants have been issued in

1           2005, 6, 7, 8, 9, so they are just waiting up there for the body to be found.

2 JUDGE EVANS: But none of these warrants are fine only. They are all sentence to  
3 imprisonment conditionally suspended on payment of compensation or  
4 whatever.

5 CHAIR: Yes.

6 JUDGE EVANS: So enforcement of fines is not – there is a prison behind it which  
7 makes it difficult. I mean, in an ideal world what we would like is somebody  
8 arrested and when SOCA give the warrant for someone to have looked at this  
9 warrant and said this is one that is susceptible to a deal, and then for the police  
10 man on SOCA so to speak saying, well, we are not going to arrest you on this  
11 European Arrest Warrant, but here it is, here is a copy of it, you know what  
12 the trouble is, you must sort this out, and you can do this with a person who  
13 was married, had children at school and is settled here. You say, you have got  
14 two months or three months to sort this out or we are going to come back and  
15 find you and we are going to arrest you on a warrant and take you to London.  
16 That would work for the minor cases.

17 CHAIR: Difficult for SOCA to get involved.

18 JUDGE EVANS: Who is going to do it? Because once you have arrested them, we  
19 have got it, and then we are in the timescale, so I am not sure.

20 JUDGE RIDDLE: One possibility that I have thought about, and it really is just a  
21 question of thinking about it – I have not thought it through, certainly not a  
22 recommendation in any way, on the question of talking to judges, I have tried  
23 it, I was quite glad in the end that it was unsuccessful. I could not get the  
24 Bulgarian judge to reply to me, which was probably as well, and the reason  
25 it's probably as well is, if it goes wrong, everything we do is probably going to  
26 be appealed. What is the evidential format for that? So what we tend to do is  
27 ask the prosecutor to communicate directly with Bulgaria and get the response.  
28 We ask the question. It comes back in written form, so when it goes on appeal  
29 there is a proper record of it rather than my conversation in my broken  
30 Bulgarian with the judge. But as far as the question of dealing with these  
31 proportionately, I think it is a very interesting question and I do not think it is  
32 going to go away. I think it is rather flavour of the month and it is going to  
33 develop. One possibility and it is just a remote one is that we could say to our  
34 counterparts in Europe, this is an accusation, or alternatively this is a

1 suspended sentence and it might be compromised. Can we help you by having  
2 a court hearing at which the defendant appears in our jurisdiction via our video  
3 link in your court, and you decide whether you are going to implement this  
4 suspended sentence. You decide, if the defendant chooses to go this route,  
5 which they may not, whether he is guilty or not, and then the question of  
6 proportionality becomes rather clearer. As Nick says in his paper, theft of a  
7 bar of chocolate here carries seven years, so it is clearly within the current  
8 criteria. But if the defendant says, I am quite happy to participate in my trial  
9 over a video link, either be acquitted, end of problem, or convicted and get a  
10 fine of £2,000 –

11 CHAIR: But do you see the English court being involved in that? And the English  
12 judges?

13 JUDGE RIDDLE: I don't know. As you know we do at the moment of course  
14 oversee various aspects of giving evidence in foreign countries and I imagine  
15 you could develop it, but I would see it fundamentally as a Polish trial  
16 conducted for the Poles. Whether we have a role overseeing it, or whether we  
17 simply lend them the facilitators is not something I have thought through.

18 CHAIR: That is probably quite a long way down the line, isn't it, from the point of  
19 view of all the ramifications that would have to be explored and worked out.

20 JUDGE EVANS: And there would be a cost to the Ministry of Justice, which they  
21 would not want.

22 JUDGE WICKHAM: The other aspect that is also raised with our colleagues is that  
23 the inability of some of the former – the Eastern European countries to grant  
24 people bail once they have got their own nationals back in their countries. It  
25 seems that although they can apply for bail they will wait three or four  
26 months. The biggest fear of most defendants giving evidence is that they are  
27 going to go back, then go into custody and nothing will happen.

28 JUDGE EVANS: One way around that would be a provision that they could be held  
29 over here on bail until the trial was ready to take place.

30 JUDGE WICKHAM: That would certainly reduce some of the contest, under Article  
31 8, which are go-nowhere arguments, but they do worry and some of them they,  
32 like – if they could have assurance as to where – but I described at this  
33 conference which I was fortunate enough to be invited to, and John Thomas  
34 asked me to go along, there is very much, you go and you come back into

1 custody, so I think that is where you get the resistance.

2 CHAIR: Anand?

3 MR DOOBAY: Just picking up a few things, I mean, one is that we get a  
4 supervisory role. We are hoping that to implement it in the UK will help  
5 with that because it does allow the foreign court to have a bail order which is  
6 enforceable here, so we are hopeful that maybe that will stop the big long  
7 detentions where people are resident in the UK but likely to – but just on the  
8 communication to you, which is – the way I see it at the moment, there is  
9 nobody really within that process whose function it is to try and divert these  
10 cases from European arrest warrants. They are warrants that have been  
11 issued. SOCA's role as they see it is to simply check their liberty and certify  
12 them. The CPS is acting on behalf of the requesting state and therefore their  
13 role is to simply ensure the execution. The court's role is simply to ensure that  
14 it is a valid warrant and then to take the process through, and so at the moment  
15 there may be instances where a defence lawyer is there to try and do what their  
16 client's instructions are, in the process, and there may be all sorts of cases  
17 where any one of those actors does in fact try and work out whether this is a  
18 sensible way to be proceeding and really is not what the requesting authority  
19 wants something different than a physical surrender. But there isn't really  
20 within the process anyone whose role it is not do that. Everyone is trying to  
21 work through it and defence lawyers may try and reach a resolution with the  
22 prosecutor in Poland and a court and they try and make a suggestion to the  
23 CPS, and so I suppose that what we have been floating with some of the other  
24 people who have been giving evidence is, should there be somebody who is  
25 looking at the warrant, not to tell Poles what to do, but to say, did you realise  
26 that actually, if your concern is that you have lost this person, we could serve a  
27 summons to you, or that we do have an ability to hear evidence by video link,  
28 or we do have this process, to enforce your fine, and would that be of help to  
29 you? And it might be that it would be very difficult to do it pre execution of  
30 the warrant, because there are very few cases where SOCA certifies and  
31 someone actually goes out to look for these people. Normally the warrant is  
32 there and it is just triggered when you request it, but even after the – so SOCA  
33 were not resistant to, for example, pre-certification, going to the CPS and  
34 saying to the CPS, 'Could you have a conversation and see whether there is



1 some other form of assistance we would give which isn't the European Arrest  
2 Warrant which would satisfy the present state,' but even after execution there  
3 should be, for example, a part of the CPS, whose function is to try and resolve  
4 these things. And I wonder whether you think that would be – because it does  
5 appear that the judiciary do not necessarily want that role. And it is not one  
6 that is really envisaged in the framework position. And I wonder whether you  
7 think that maybe that is a way to try and have some flexibility put in where  
8 there is a communication channel which is not the prosecutor acting on behalf  
9 of the requesting state, whose job it is to simply push the warrant through, but  
10 for example, part of the CPS, whose job it is to see whether they can give  
11 some other form of resistance which helps the requesting state and withdraw  
12 the European Arrest Warrant.

13 JUDGE EVANS: In theory yes, but in practice it is difficult. The judge in the  
14 European country has sentenced the man to nine months imprisonment  
15 conditionally suspended for five years on payment of compensation to the  
16 victim, and the duty to not commit a new offence, and to report to the  
17 probation officer. That person has not paid the money, they have not reported  
18 to probation, they come here and they have got a job, and they have been  
19 earning money and they have not paid any money towards the compensation,  
20 so if I was the Polish judge or the Romanian judge, I would say he has had his  
21 chance and he has lost it. Now he can come back and serve the time. So it is  
22 quite difficult to know who is going to do this. Now what is currently  
23 happening is that they are instructing lawyers in the foreign country and they  
24 are trying to compromise it, and they are having to pay the money and if they  
25 pay all the money sometimes the judge will agree and withdraw the warrant.  
26 But it is quite – I accept what you are saying. I just don't know how, in  
27 practical terms, when the defendant has brought it upon himself. He has  
28 chosen to commit the offence, he has been convicted and he has fled.

29 MR DOOBAY: I totally understand. Have heard it all but actually this is not  
30 sufficient.

31 JUDGE EVANS : Your idea is going to delay it further. What the judge says, I have  
32 the means to get this man back here and if he wants to escape prison he has  
33 got to pay the money. If it is an accusation case, that is different. I think – the  
34 lunch that Daphne and I went to that she mentioned earlier, the Polish

1 ministers there were very keen to emphasise to us that from their point of view  
2 this is a very effective system. It works very well. I like it.

3 JUDGE WICKHAM: Very high success rate. 97%, 98%?

4 JUDGE EVANS: Actually, there are a lot of Polish people who have gone back, who  
5 have not been arrested on European Arrest Warrants who have gone to the  
6 Court to say, look, I know I have got this outstanding matter, can I clear it up,  
7 and pay the dosh? I have no idea whether it is true or not. It would not  
8 surprise me to know – I am sure word has gone round and so they are probably  
9 getting – I have no idea, but it would not surprise me if that was the case. That  
10 people have been going back and sorting it out.

11 MR DOOBAY: My understanding is the same as Nick's, that any process such as  
12 that is going to make the goal of dealing with extradition swiftly disappear.  
13 All defence lawyers will be saying, let us have a go. Can you phone up the  
14 judge, he might just take a benign view? So it will bog us down very badly  
15 and will not help our problems. Whether it is more humanitarian and more  
16 proportionate is a different question.

17 CHAIR: Why do we get so many more cases from Poland than anywhere else?

18 JUDGE WICKHAM: They may be the largest workforce in this country.

19 JUDGE EVANS: 600,000 came in the first two years.

20 JUDGE WICKHAM: Anecdotally we are told that, after all we have the court staff  
21 who speak Polish, and any number of people who speak with them say – “we  
22 never thought it would reach us in England”.

23 CHAIR: Did the Germans get as many Polish cases?

24 JUDGE WICKHAM: I don't think as many. They were passing through.

25 MR DOOBAY: There is also the feeling that the Polish judiciary do issue warrants  
26 where we would not.

27 JUDGE EVANS: And I sense, and I have no evidence for this, that we have an  
28 extradition hearing, which explores issues that would not be explored in  
29 other countries. I should think if – and this is purely off the top of my head,  
30 either German or Spanish or Swedish extradition court is dealing with it, I  
31 sense it might be a much quicker process.

32 CHAIR: We certainly know that the Poles do not operate an interests of justice test  
33 before issuing a warrant, which would be very different from the way we  
34 operate here. But that is I think what has been called the legality issue, the

1 crimes has been committed – it must be pursued. Anand?

2 MR DOOBAY: Just following that through, so you would not be in favour of having  
3 an ability to defer the process for a period. So let us say the process has  
4 started, to see whether it really is possible to have some other resolutions,  
5 simply just follow through the European Arrest Warrant?

6 JUDGE EVANS: I would – I have said that. I would like it if you could, and I would  
7 only want to do it in the cases where there was somebody who was well  
8 settled here, such a person I would like to say, you have got three months to  
9 sort this out. And you must come back in three months time and if the warrant  
10 has been withdrawn, fine, and if it has not, that is it. That would be great, but  
11 I think it is for him to sort it out. I do not want to get involved in sorting it  
12 out. He can go back, give him back his passport, say go back to the Court,  
13 you talk to the judge, you sort it out. If you do not want to do that, then the  
14 consequences will be that the process will start. And I suppose you have to  
15 inventivise people who say, if in three months time you have not sorted it out  
16 and you come back and it is still there, no bail. You cannot say that, but you  
17 want to have something to make them realise that they have got to have some  
18 incentive.

19 CHAIR: On the warrants that are used as a mechanism of enforcement, what sort of  
20 length of sentences are being sought in relation to these warrants?

21 JUDGE EVANS: Two or three years.

22 JUDGE WICKHAM: It might be two or three years.

23 JUDGE EVANS: Sometimes it is months. Little more than four, but most of it two,  
24 three, five.

25 CHAIR: So if they could serve their sentences in this jurisdiction.

26 JUDGE EVANS: They would love it.

27 JUDGE WICKHAM: They often do, on remand.

28 JUDGE EVANS: Part of the trouble is that there is absolutely no incentive.

29 MR DOOBAY: Whether there is an argument for formalising it rather than just  
30 having it as a practical reality.

31 CHAIR: It is foremost under the framework decision. Again, and I don't know if the  
32 Ministry of Justice will be very keen on this, and why should we pay for it?

33 MR DOOBAY: But if it avoids the cost of extradition hearings and if we are  
34 effectively paying for it already, there is an optional bar in the framework

1 decision which we would naturally – which would enable the requested  
2 territory to execute the sentence.

3 JUDGE EVANS: Sorry I am not following that.

4 MR DOOBAY: Suppose there is a request and suppose it is just – suppose you are  
5 going to be arguing about whether someone should go back to serve a six  
6 month sentence which would enforce non payment of a fine or compensation,  
7 that would lead to the imposition of a six month sentence, and whether there is  
8 some argument for saying that rather than go through all the process of  
9 extradition and then sending them back and then the person making a request  
10 to be transferred back to the UK anyway, whether you just say well, they can  
11 serve a sentence here and that is a way of dealing with the extradition  
12 proceedings.

13 JUDGE EVANS: Many of them will say, snap, thank you very much, we love it. We  
14 like the food in Wandsworth, and we like don't like it in Latvian, Riga prison.  
15 I can't see that our government would be keen on the idea.

16 MR DOOBAY: It would certainly save us work in the extradition courts.

17 JUDGE WICKHAM: And unfortunately for a lot of people in prison. We did try in  
18 the beginning, we did try sort of saying, oh well, conviction case no right to  
19 bail – until we got wise to the fact that that was exactly where they wanted to  
20 be, and they will do all sorts of things like not coming out of their cells,  
21 reporting sick, can't – and so on and so forth. But saying, no, you can have  
22 bail, and we sort of sort it out. I think – the idea that they would actually serve  
23 it in this country, I think, could have a lot of people in custody. I would have  
24 thought it was a political hot potato. If you have got 20 months suspended, 18  
25 months conditionally suspended, and you have been away from the country  
26 about five or six years, and it is a question of enforcement cases, isn't it better  
27 to let them try and sort out the enforcement, get a hearing date, let them have  
28 their passports back, security money to remain here, they get the passport  
29 back, the day before they go, they tell me the route where they are going to get  
30 stopped, they never get beyond Dover before they get stopped, they have a  
31 little letter, and they go home, sort it out and come back, bring their passport.

32 MR DOOBAY: If our Polish counterparts were obliged to make a financial  
33 contribution it would become more attractive. I think these proceedings are  
34 very expensive. And it may well only [inaudible] so much.

1 CHAIR: It may be that the European supervision order is more attractive for them to  
2 have a mechanism for people to go back to be on bail. They can go out and  
3 sort out their affairs, but they are able to travel between the jurisdictions. Just  
4 a couple of other things, by way of information, we heard from Professor John  
5 Spencer that in his discussions with colleagues in Poland, they have tried to go  
6 down the route of service of process, and they have met with a lack of  
7 cooperation from the authorities here and in particular police forces, and it was  
8 then that they latched onto the idea of the EAW, because I think it was – I  
9 think originally they were trying to serve summonses and tell people they  
10 could be tried in their absence, but perhaps not surprisingly, police forces here  
11 put that sort of work at the bottom of their pile and they don't want to serve  
12 warrant process and so the Poles thought that the EAW was quite an efficient  
13 system for enforcing their sentences. That is just by way of information but I  
14 just wanted to ask Daphne what she meant when she said she did not want to  
15 get the review skewed by the Polish problem. Is it implicit in that that you  
16 think the system, the Polish problem apart, actually works under Part 1 quite  
17 well?

18 JUDGE WICKHAM: Yes. Subject to all other concerns about legal aid and so on. I  
19 suppose what I am saying is, that even if you take the Poles out, there will  
20 eventually be another country, Romania for instance, coming up fast on the  
21 outside, Lithuania, any number, where you have an enormous number of that  
22 particular nation coming to this country, eventually it throws up that amount.

23 JUDGE EVANS: We get no feedback. Many people obviously have gone back.  
24 Whether they have been remanded in custody for many months before their  
25 trial if they are accused, I have no idea. There is no feedback and people say,  
26 don't send them back because they will be murdered in prison. I have never  
27 heard of anyone who may have been murdered in prison or has – there is no  
28 feedback.

29 MR DOOBAY: Would it be helpful to have, if we are supposed to be in this single  
30 European legal space, would it be helpful to have feedback? I mean, suppose  
31 for example you had had submissions in relation to prison conditions. You  
32 have said, well, it does not meet the threshold for Article 3, someone is sent  
33 back and then you have a report six months later to say well, actually, they  
34 have been put into a new prison where the facilities were great, or

1           alternatively, they have been put into some derelict prison where the facilities  
2           were pretty poor. Would that give you –

3 JUDGE EVANS: It would only help in so far as it might make lawyers, who wish to  
4           press the argument down the line, to know that the statistics are aware that of  
5           the 47 people who have been returned in the last four years who complained  
6           that they were going to be murdered in prison, all survived. I have never  
7           known anyone who has not been returned who claims that he has made  
8           enemies of the mafia who are going to kill him when he gets back to prison  
9           and indeed pragmatically, once a court decided, ‘No you can’t go back  
10          because you might be murdered in prison’, it will become the new wonderful  
11          argument that will be employed in every case. It has not actually happened.  
12          This has stopped them arguing it, because they know that they can argue the  
13          point and lose it, and go for appeal and wait four months, five months, six  
14          months, eight months before the appeal come on, and lose it there and half  
15          their sentence is served here, and that is what they are doing. And we are  
16          fools if we do not understand what they are doing.

17 CHAIR: You raise the point about appeal. It does seem strange that there is an  
18          unfettered right of appeal, whereas nowadays the shift is much more to leave  
19          to appeal, and we have been thinking quite seriously about the possibility of  
20          introducing a leave bar in the same way as application for leave to apply for  
21          judicial review, go with a single judge on paper. If it is refused, right to  
22          review, but then no appeals without leave.

23 CHAIR: If you have a right to review with a single judge, aren’t they – they are  
24          bound to want to exercise that right.

25 JUDGE EVANS: Is there any way of saying if you cannot get – if you apply to the  
26          single judge who says no, and that is it.

27 CHAIR: If you are trying to apply to a single judge you can do it on paper and get  
28          through quite a lot of cases that way.

29 JUDGE EVANS: Lots of them won’t accept it.

30 CHAIR: The alternative is to, I suppose, hand over every case through for an oral  
31          hearing straight away. But it has worked pretty well from appeals to the Court  
32          of appeal from the high court, and I think it has certainly reduced the amount  
33          of judicial review claims.

34 JUDGE WICKHAM: We welcome anything – for the purpose of the record, hooray!

1 CHAIR: And what about time limits? The length of time for appealing seems to be  
2 very short.

3 JUDGE EVANS: It does, and grossly unfair. For the man, for example, who is not  
4 represented in our court, because he cannot get his legal aid sorted out, and he  
5 raises no issues, or he raises some issue which is hopeless, and he is sent, and  
6 we order his extradition on a Thursday, and he does not speak the language, if  
7 there are people on the wing who are in the know, and there often are, all well  
8 and good but otherwise he is completely lost.

9 CHAIR: What is the answer? Is it extend the time limit to make it longer, or give an  
10 interests of justice exception to extend the time limit in a particular case or is it  
11 both? I think the CPS have concerns that the only certainty from the point of  
12 view of the requesting state would even have facilities for getting their  
13 customers home.

14 JUDGE EVANS: It seems to me, making the appellant serve two forms, one on the  
15 Court and one on the CPS, is grossly unfair. Why can't they just have one  
16 form on the Court and then the Court staff copy it and serve it on the CPS? I  
17 mean, why make him do both, and you have these people who do one but not  
18 the other, and they are told, 'Well, you have not done it properly, tough,' and  
19 that seems to me –

20 JUDGE WICKHAM: We have, as a piece of good practice, we ensure that each  
21 person who says he wants to appeal them and then is given a set of forms and  
22 if they have got the interpreter there, that is fine but it is, as Nick says, quite  
23 difficult, if you stagger back to the wing, or you have left court and gone back.

24 JUDGE EVANS: They cannot get an interpreter in prison.

25 JUDGE WICKHAM: No, that is not – which is why I say it comes back to the  
26 regional centres argument. At least we have a whole series of good practice  
27 that we can pursue.

28 JUDGE RIDDLE: It also comes back to the legal aid point. If there is automatic  
29 legal aid and a limited amount and that it covers the lawyer having a duty to  
30 advise on appeal and put in the appeal forms within the seven days, that will  
31 probably solve the problem.

32 CHAIR: So you would not need, or would you, an interests of justice extension  
33 exception, then?

34 JUDGE EVANS: If you have got a proper lawyer who knows what he is doing, there

1 should be ample time. It could be quite a tick box kind of appeal, and then  
2 you could always develop your argument a bit later. You don't need the full  
3 blown skeleton of the appeal.

4 JUDGE WICKHAM: You attach to the order – your reasons for your judgment to it.  
5 They do written judgments and they immediately hand down copies with it.  
6 So they have got that.

7 CHAIR: On the single judge point, if the single judge, if there is a leave argument,  
8 says 'This case is absolutely hopeless, you have got no grounds whatsoever,'  
9 that is going to be a pretty good indication to the applicant and his lawyers as  
10 to what the full court might say on a renewed application. I think that might  
11 probably be the thinking behind it.

12 JUDGE EVANS: That I understand, and of course in a domestic situation, the full  
13 Court if he insists on going ahead, can say, 'Well, the format of what is done  
14 in custody will not count towards your sentence,' and that is a way of  
15 controlling it. Here, you have to understand that there are many who are doing  
16 what they can to stay in our prison for as long as possible because every  
17 month here is more attractive than the month in the Latvian prison. They  
18 know they are going to go. The solicitor has told them, no chance in our  
19 court. We may appeal. The single judge would say, you have no chance. It is  
20 not going to put him off. He is going to carry on. What has he got to lose?  
21 There is no incentive.

22 CHAIR: You want some kind of sanction?

23 JUDGE EVANS: Other than incentive, which might require sanction.

24 MR DOOBAY: The sanction Nick has talked about in his paper, which I have, for  
25 what it is worth, completely agreed with, is costs. At the moment, the Crown  
26 Prosecution Service, in my experience, has never or almost never applied for  
27 costs.

28 CHAIR: I tell you what, why no order is never made, and I think your answer is what  
29 I replied for. To encourage them.

30 JUDGE RIDDLE: No, we have been encouraging them, and I had one application but  
31 unfortunately it was not supported by any figures at all. It was just an  
32 application on the day, and although I would have happily made it, there is  
33 always difficulty with the first one, when someone says why me? You have  
34 been doing this for years. Is there something I have done wrong? So I think it



1 needs to be followed through. Most of these people, it has been emphasised,  
2 actually do want to live here, and if they serve their sentence, they will come  
3 back, so they have an incentive to pay. The other thing that Nick mentions  
4 which, again, is our experience, is how readily people are able to raise, in most  
5 cases, not all, very large sums of money if that will secure their bail. We are  
6 typically bailing people on securities of £5,000, £10,000. They are –

7 JUDGE EVANS: You should get your paws on that for costs.

8 CHAIR: Anand?

9 MR DOOBAY: Just a couple of points on that. Just a question about bail, because  
10 the expectation when you provide security to get it back, so it may be much  
11 easier for you to raise money which you say to people, I will be able to return  
12 this to you in the process, as opposed to, I have a costs order, which I have to  
13 meet, and actually I will never get that money back, so I would just raise a –

14 CHAIR: I think you are right. It is a technical and a rather interesting point.

15 MR DOOBAY: If you go to family and friends and say, could you let me have this  
16 money to get me out of prison. I won't abscond and therefore you will get it  
17 back at the end. I am sure you will get a better uptake than with a costs order  
18 for –

19 JUDGE RIDDLE: We have not done it so far.

20 CHAIR: I think it is optimistic.

21 JUDGE EVANS: The answer would be that there would be no costs order if it is a no  
22 issues case. It is only in those cases where you are raising an argument which  
23 you have been advised is not sensible but you insist on pushing it forward.  
24 Well –

25 MR DOOBAY: I must say that I am not against the principle of making costs orders,  
26 because as you said, I think that for many people they do intend to return here,  
27 and therefore an unsatisfied costs order will still be an issue for them. But I  
28 think that in principle, and I have had clients who have had costs orders  
29 imposed against them and because they intended to return here, they satisfied  
30 them. So I think that the power is there and the fact that the clients are not  
31 choosing to make the application, perhaps it is a slightly different issue, but I  
32 have certainly had concerns about meeting security because I do think there  
33 was a very different process that you go through to –

34 JUDGE EVANS: Your clients are stinking rich. They can afford it.

1 MR DOOBAY: The other thing – I just wanted to pick up on something I think you  
2 mentioned in the submissions about written judgments. It is a practical issue  
3 because it has also been mentioned by the admin court about written  
4 judgments and I think there is perhaps a practical issue here, that the admin  
5 court obviously wants to have written judgments because so many cases are  
6 being appealed and therefore they need to see what was said. There is a  
7 resource issue, I imagine that you will all have, with preparing written  
8 judgments and I just wonder whether there is – what the solution is for that.

9 JUDGE EVANS: We do prepare written judgments unless there are no issues.

10 JUDGE WICKHAM: Yes, in all contested cases something is reduced into writing.

11 MR DOOBAY: Does that take an extremely long amount – is there a problem with  
12 that?

13 JUDGE EVANS: Yes. Obviously there are some cases where – we have no  
14 secretarial staff so mostly we do it ourselves. And it takes time and in the  
15 more difficult cases you have to be fairly thorough because if you are not  
16 thorough someone is going to say he never seems to have dealt with this or  
17 that.

18 MR DOOBAY: Having said that, I think it is a trouble that simply has to be taken, is  
19 worthwhile and it is not a bad discipline for us.

20 JUDGE EVANS: But it might be helpful practically perhaps to have secretarial  
21 support to help type your decisions or something like that.

22 CHAIR: Would you be in a position to deliver an extemporary judgment if you  
23 wanted to? Would there be tape facilities?

24 JUDGE EVANS: There are none. We are not accorded a record and tape.

25 JUDGE WICKHAM: Yes, Nick of course is the most experienced extradition judge  
26 in the whole country, you can see, for the last 18 years. He can do a very good  
27 extempore judgment.

28 CHAIR: It must be extremely tedious to have to write something out that you could  
29 have delivered extemporarily.

30 JUDGE WICKHAM: But the bench legal advisor, you always have a specially  
31 trained bench legal advisor who will be taking a note or something. It will be  
32 enough for the appeal court. It is always taken down and then we have a look,  
33 sign it, see if the parties –

34 CHAIR: So it is a bit of half and half.

1 JUDGE WICKHAM: It is a bit of half and half. It is good enough. It may not be  
2 verbatim but it is pretty close to being verbatim.

3 JUDGE EVANS: In the very simple single issue cases that we deal with, frankly  
4 pretty well every day, frankly no problem dealing with extemporary if there  
5 was a proper record of them.

6 JUDGE WICKHAM: Typically it is not a single issue for us. For us it is five or six  
7 issues. When there is a lawyer involved, you cannot believe they think there is  
8 much in all these points but throw the whole lot in, and then look at the  
9 judgment and then pick holes in it, and then when they get to you or the appeal  
10 court, they may have concentrated on just two points or one point, because  
11 you have failed to deal with it adequately, so it is a bit of a game.

12 JUDGE RIDDLE: It does improve with experience, there is no doubt. I was just  
13 talking to one of our new extradition judges on Friday and she said, how long  
14 do you take to write a judgment? And I said I take four or five times as long  
15 as that. It does get to the point Daphne has just made, that having the  
16 expertise in a small number of hands...

17 JUDGE WICKHAM: You get a first point. At the first hearing they will say I want  
18 to make the point you have not produced in time. You can deal with that  
19 immediately. Not quite. Not as subtle as 'I'm against you' but it is pretty  
20 close, and then you move on and then you get to – we want to take a point on  
21 Section 2, and again you may just deal with that extempore, and then there  
22 may be no further issues. It is only when you get the scattergun approach  
23 where anything that moves is challenged, then you have to have a hearing and  
24 give the judgment.

25 CHAIR: Anything else?

26 MR DOOBAY: Just one thing, on the time limit for appeal, if legal aid does not solve  
27 the problem, so we assume that legal aid is not available, is it better to extend  
28 the current time period and have no interest of justice test, so you have  
29 certainty, or is it better to keep the time period as it is, and have an interests of  
30 justice test so that you have some flexibility? So if you were the  
31 parliamentary draughtsman or the policy maker, do you think it would be  
32 better to extend the current time period from seven days, but keep certainty by  
33 having no interests of justice test, or do you think it is better to keep the time  
34 period as it is, so that some sense of urgency is kept in the proceedings, but

1 have flexibility through an interests of justice.

2 JUDGE RIDDLE The problem with having an interests of justice test if you have an  
3 unrepresented defendant is seven days, 10 days, 14 days, in a sense, so what, it  
4 is all going to be in the same position.

5 JUDGE EVANS: I think the latter of the two, in the interests of justice. It deal with  
6 another point being made about this business about you must discharge  
7 various points. I don't know why Parliament thought that was a sensible thing  
8 to do but we are getting it all the time.

9 CHAIR: Like being across a chessboard, isn't it.

10 JUDGE EVANS: And if you have an interests of justice for the appeal point, so you  
11 shared with the other points as well. The strict things, the Court must do that,  
12 it is such –

13 CHAIR: Anything else that you would like to say to us about the EAW that we ought  
14 to be thinking about that we have not touched on today?

15 JUDGE RIDDLE: The overall point that Nick makes is one that we are feeling very  
16 strongly, and it touches on a question that, David, I think asked Daphne, in  
17 terms of skewing for Poland, the system overwhelmingly is not unfair. We  
18 don't have a sense, any of us, that we are extraditing people unfairly where our  
19 basic instincts would be to do otherwise except in very rare exceptions that  
20 you cannot resolve, and for that reason we would be I think very uneasy about  
21 changing the existing law in a way that opens up again the seven year  
22 battlefields that we have had with the old –

23 CHAIR: Just remind me of one thing I wanted to ask, and that was, we heard that  
24 there is a problem when someone is discharged here, for example, but the alert  
25 remains on throughout the rest of Europe, and some people are being picked  
26 up, two, three, more than that, times, because the country won't remove the  
27 alert from the system, but one answer may be that even if you remove the alert  
28 they could issue a new warrant but that at least would require them to  
29 concentrate on why they were doing it as opposed to simply doing nothing and  
30 leaving the alert in place.

31 JUDGE EVANS: They won't know. I mean, it might depend on the reason why  
32 there was a discharge. If there was a discharge because he was not removed in  
33 the 10 day period, prior to being arraigned on the twelfth day, and on the  
34 eleventh he was discharged, why should he be removed? We choose to pass

1 an act which has that idiotic provision. Why, if he has committed a murder,  
2 should Romania not have him back? So if he chooses to leave us and go on  
3 holiday in Spain, well, then he will get picked up.

4 CHAIR: But supposing he gets discharged on human rights grounds, for example?

5 MR DOOBAY: Well, we might have been wrong about that.

6 JUDGE EVANS: It depends on the evidence. If the evidence is as presented to the  
7 Court –

8 CHAIR: Anything on that?

9 JUDE EVANS I think that the concern is not for those cases where the country looks  
10 at it and says, we don't agree. If a country looks at the outcome and says  
11 actually you have reached our view on our prison system, we don't agree with  
12 that and we are going to maintain the request, removing the alert is not going  
13 to help you one way or another. And the same for those more technical cases  
14 where you have reached a time limit. Again, the country is not going to agree  
15 that that is a valid reason to stop looking for that person. It is more for those  
16 cases where the country might agree but actually nobody has an interest in  
17 really looking at whether the alert stays in place. The default position is, it  
18 remains there regardless of what happens in a case in the UK, so it would only  
19 help in those cases where the country if it really looked at the case might say  
20 we do not want to pursue a European Arrest Warrant for this. It is just inertia  
21 that stops them. It would not help at all in a case where the country says, we  
22 don't agree with you for whatever reason and we want to continue with the  
23 request, so it is only probably relatively rare cases, but certainly we have heard  
24 submissions that countries don't often have an incentive to re-look at cases  
25 they do not care about, and actually, the cases they don't care about are the  
26 ones where they probably would withdraw the alert if they did.

27 CHAIR: And the answer to it is, and then the chap says, 'And my freedom of  
28 movement that I am entitled to throughout Europe is being stopped.'

29 JUDGE RIDDLE: That was going to be my answer isn't it. Is this a matter for the  
30 European court?

31 MR DOOBAY: I suppose it could be, but then we do not have the ability here to –  
32 the question is really whether we do something here or not. There is an ability  
33 under the Geneva Convention to have a provision to do this, and it would only  
34 work in those cases where the requesting state actually did not really want to

1 do it. It would not work.

2 JUDGE EVANS: But, in such a case, the judgment of the Admin Court would be  
3 sent to the Polish court, and said 'In the light of this, would you care to  
4 remove the alert.' And they would or would not. And you could have a  
5 system 'Please respond within 60 days' or something. I don't think I am –

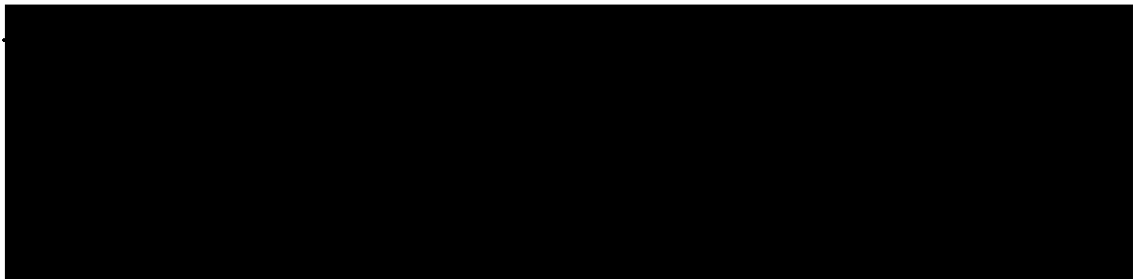
6 CHAIR: Not enthusiastic.

7 JUDGE EVANS: Well –

8 MR DOOBAY: Do you have examples of the sort of case where – I cannot think of  
9 it.

10 JUDGE EVANS: I can think of one.

11 JUDGE WICKHAM: 

12 

17 JUDGE WICKHAM: I suspect we are really only concerned in relation to our British  
18 nationals.

19 CHAIR: On an entirely different topic, the Secretary of State's discretion. There has  
20 been a big shift away from the Secretary of State's discretion over the years  
21 and there is virtually no discretion in Part 1 cases but it is limited to terrorism  
22 and conflicting claims. I think there has only ever been one, or something like  
23 that. As far as Part 2 is concerned, we wonder if the Secretary of State should  
24 have all the discretion that he appears to have, or she has, at the end of the  
25 system, because cases going back here for the extradition order to be made,  
26 and you then get ping-ponged backwards before the Courts, judicial review  
27 and issues of human rights and so forth. And the way that our thinking has  
28 been going, and we would like your help about this, is whether it would not be  
29 better, for example with the human rights issue that crops up after the  
30 conclusion of the hearing, for there to be a provision that that has to be looked  
31 at again by the Court, rather than by the Secretary of State. This would be a  
32 power that would only be exercised if there had been some unforeseen  
33 supervening event that had taken place after the proceedings. And I think our  
34 present thinking is that rather than go back to the district judge, it would be

1 better to have this power in the High Court so that you would not then get an  
2 appeal from a district judge to the High Court. We have had some quite  
3 interesting debate on this. We don't think that the Secretary of State's power  
4 can be completely removed, because the death penalty and the speciality  
5 issues would I think still have to remain with the Secretary of State, but we are  
6 concerned about, for example, what has happened in the [REDACTED] and  
7 that the situation can become endless, if one does not do something. What are  
8 your thoughts about discretion in those circumstances?

9 JUDGE EVANS: For myself I do not really understand whatever happened, because  
10 once I passed this on, that is it, so I do not know. I get the impression that the  
11 associate gets lever arch files of representations being made and there is a to-  
12 ing and fro-ing with the Secretary of State agreeing to delay the matter or,  
13 asking for permission of the applicant to delay it while they consider all these  
14 representations. And then when that is finished there is about to be a letter  
15 going out, another lever arch file comes in, and so on, and so it does seem to  
16 go on for quite a bit, and then there seems to be always a judicial review,  
17 whatever decision is made, but precisely what they are talking about and what  
18 they are, I have no knowledge.

19 CHAIR: Daphne, any thoughts on this?

20 JUDGE WICKHAM: No, I just would not want it all to become a political football.

21 JUDGE EVANS: No. There is a feeling that it is more of a political football than it  
22 ought to be, even at this stage. And this is at it were would be an extension of  
23 the process of moving things away from the secretary of state towards the  
24 High Court. We are just a little anxious about what ramifications there might  
25 be that have not been foreseen.

26 MR DOOBAY: I agree with your preliminary provisional views on this, that whilst  
27 the previous Home Secretary – there was a real feeling that his electoral  
28 chances were influenced by the decision that he had to make in a particular  
29 case and that might have caused him to act in a particular way. It cannot be  
30 seen, it seems to me, as a political decision. So tightly prescribed rules as to  
31 what the role of the Secretary of State is need to be given. As for the other  
32 point, I think we would agree with you. It would go back to the High Court,  
33 perhaps potentially I suppose, that the final decision would have been taken by  
34 the Supreme Court there, but certainly not to us, I would think.

1 JUDGE EVANS: We were thinking that there might be the same, the High Court  
2 would have the same powers as it has anyway, so they would include for  
3 example a power of remittal, which is unusual but which has happened.

4 CHAIR: Forum: this is quite a knotty area because the forum bars are there waiting to  
5 be implemented. We very much value your thoughts on what implementation  
6 of the bars would actually do to the system, because we are very, very  
7 concerned about that.

8 JUDGE EVANS: We have touched on that. The involvement of another party can  
9 very much complicate the whole process. The foreign state has put in its  
10 request, and then the defence was saying, 'Well, he could be prosecuted here,'  
11 and so you bring in the DPP, or some other branch of the CPS, and one, it  
12 would slow up the whole process very considerably, and I think considerably  
13 complicate it, and it is a sort of bar that will be quite frequently employed.

14 CHAIR: Is it going too far to say that it would be an invitation for satellite litigation?

15 JUDGE EVANS: Yes. It would not be too far to say that. It is exactly what it would  
16 be. But it is also that the – it may be that the English prosecutor has been  
17 giving some thought as to whether to prosecute, and sometimes maybe not  
18 given any thought to it, so there are all kinds of varying shades.

19 CHAIR: The forum is certainly an issue, isn't it?

20 JUDGE EVANS: Yes.

21 CHAIR: And I just wonder if, talking about forum bars is putting it a bit high. What  
22 one is really perhaps tackling is forum consideration, because it is something  
23 that is pretty important, and I think what we have rather picked up is the  
24 feeling, perhaps not openly expressed by Joe Public, that if someone is a  
25 British citizen and/or is permanently resident here, they jolly well ought to be  
26 tried here rather than in the United States. It is easy to have that sort of  
27 emotive feeling, but the more we have been into it, the more issues there are  
28 that have to be considered. And we know that as far as the European case, you  
29 are adjusting the criteria for dealing with it there, as far as, for example,  
30 America is concerned, we have heard that in difficult cases the prosecutors  
31 meet and look at issues such as where the victim is, where the defendant is,  
32 where the witnesses are, where most of the criminality occurred, etc, etc, etc,  
33 but we are a bit concerned that there does not seem to be a lot of transparency  
34 about what goes on in this area, and I think that obviously with the forum bars



1 that have been inactive but not brought into force, there is quite a feeling that  
2 something needs to be done here.

3 JUDGE EVANS: There is a pragmatic thing from a prosecutor's point of view, that it  
4 might often be the case that it is more sensible to try the case, not in England  
5 but in a European country where phone tapping evidence is admissible.

6 CHAIR: Precisely.

7 JUDGE EVANS: And if you are the prosecutor and if you think someone has  
8 committed a crime, and you think they should be prosecuted, and if convicted,  
9 sentenced.

10 CHAIR: The message we got from the CPS, I think, was that probably at the top of  
11 the pile of things they consider is where are we most likely to get a conviction.

12 JUDGE EVANS: Which from a prosecutor's point of view is not an inappropriate  
13 way of dealing with it.

14 CHAIR: Should the prosecutor be taking the decision on the forum? I mean this is a  
15 territory that is difficult or is one way out that the DPP ought to be able to  
16 produce some much more open guidelines in the way he has done with  
17 assisted suicide, so everybody knows where they are, or has some idea where  
18 they are.

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23 CHAIR: If the forum bar is not going to come into effect, I think there are going to  
24 have to be some pretty convincing reasons as to why not and what ought to be  
25 done if anything to beef up the present situation.

26 JUDGE EVANS: Yes.

27 CHAIR: Anything you could help us on on that would be appreciated.

28 MR PERRY: Well, I have no expertise on this, save that it has occasionally been  
29 raised in cases I have already dealt with, and is it not the position that if the  
30 United Kingdom prosecutor wants to bring a prosecution in these  
31 circumstances, then he or she can. I am not sure it is entirely fair to say it is  
32 just the likelihood of conviction. It is another way of putting 'where the  
33 evidence is'. The case I had was an Argentine case, a drug smuggling case,  
34 and all the evidence was there. It could have been prosecuted here but it

1 would have made no sense.

2 CHAIR: Anand?

3 MR DOOBAY: Two things. I think that is probably right. And perhaps there is a  
4 lack of communication here, because there are obviously a number of factors  
5 that any prosecutor takes into account when making this type of decision, and  
6 certainly – and there will be finely balanced cases where, for example, you  
7 could prosecute here or in Argentina, but it would be more expensive to  
8 prosecute here, and therefore should you do that? And I think perhaps the  
9 public think that more weight is given to the factor of, are you an English  
10 national resident, when you are balancing up the number of different things  
11 which the prosecutor takes account of. Having a policy or some more detailed  
12 notes might at least make it clearer that these are the factors and these are the  
13 ways in which they interrelate, and the weight that we will give to them. But  
14 one of the things that I want to touch on, you say that you think that the forum  
15 bar would be quite frequently employed. And I just wanted to test that  
16 because I am not sure. For example, the Polish cases the forum bar –

17 JUDGE EVANS: No, no, those cases where there is a forum issue, then obviously  
18 they will jump on that, because most defendants would much rather be tried  
19 here at a risk of getting three years than going to America and risk getting 60  
20 years. I am exaggerating, but the defendant would like to choose the venue for  
21 his trial which, if things go badly for him, will give him the best result. And  
22 they will perceived, certainly as far as America is concerned, that they are  
23 better off here than there.

24 MR DOOBAY: Is it just America? Obviously we know the numbers of US requests,  
25 and not all of them are for things that might raise the forum bar, but is it just  
26 America you have got a rise in, or are there countries where –

27 JUDGE EVANS: Well any country that deals with things, where the ultimate  
28 sentence is going to be heavier, then the defendant will understandably say no,  
29 I must be tried here, and want to employ the forum bar if it is possible. I am  
30 guessing.

31 JUDGE WICKHAM: There is a problem with popular ones, because they have had  
32 all the publicity surrounding them, haven't they. They are the people who can  
33 create the publicity. As Scott says, you will get days and days of spinning into  
34 some form of satellite litigation. I am not quite sure what you are expecting

1 the extradition judge to do then, without perhaps being seen to get into the  
2 arena. We should be telling that particular authority that they should be  
3 getting the English prosecutor to sort it out. I think we need to be very careful  
4 that we do not misapply our role, and then if we look at say a Argentinean one,  
5 which is drugs conspiracy/importation, which could have acts in this country;  
6 again what are you going to do about those cases of human trafficking? Now,  
7 those are frequent. Again, yes, but –

8 JUDGE EVANS: The ultimate destination may well be here, but they are moving  
9 through five, six, seven countries.

10 JUDGE WICKHAM: We are often finding it at the moment, for instance, when there  
11 was a whole group of defendants that I think France had taken on, , 11 Iraqis  
12 who were not resident but – two or three who lived in England; Belgium took  
13 on another one, so I think you could get yourself in a bit of a mess, is the only  
14 way I can describe it. As an argument it is going to be raised all the time.

15 JUDGE EVANS: Because you say Euro justice takes charge of that and nominates  
16 the country by agreement who is going to deal with it, which is sensible.

17 CHAIR: Looking at the forum bar, you have just raised something that I think is  
18 material. You have got to look at whether a significant part of the conduct  
19 occurred in the United Kingdom, and then you have got to look at whether, in  
20 view of that, and all the other circumstances, it would not be in the interests of  
21 justice for the person to be tried here. So in a sense you will be going down a  
22 very similar road to the one that the Crown Prosecution Service has already  
23 been down when talking to their opposite numbers in the foreign state. The  
24 High Court will judicially review decisions of the CPS to prosecute or not to  
25 prosecute, but only in very, very rare circumstances. In a sense you would be  
26 asked, as a district judge, to do almost this by the back door. I am thinking  
27 aloud as we are getting through this.

28 JUDGE EVANS: I think the idea of having a protocol is a good idea and in those  
29 cases if could be referred if the CPS were not already seized of the matter, it  
30 could be referred to them and they just produced a certificate, saying we have  
31 considered the protocol and this case is better dealt with in America. Full  
32 stop. And then I am trying to get out of us having to do it, and someone wants  
33 the judicial review that, then let them do that.

34 JUDGE WICKHAM: Then we are going to get involved in disclosure. Are the

1 defendants entitled to have disclosed what is said between the prosecutors;—  
2 you could say that it would only take half a day to argue, but that is probably  
3 half a day too long.

4 JUDGE EVANS: If someone says I have applied the protocol, then well what have  
5 you done, and explain it all, and so on, and there may well have been some  
6 quite discreet conversations going backwards and forwards, so —

7 CHAIR: There is a feeling in some circles that it is all perhaps done over a gin and a  
8 chat. I think that is probably unfair, but —

9 JUDGE RIDDLE: The question of what is in the interests of justice is that it is so  
10 open ended. It is in the interests of justice that they receive a more lenient  
11 sentence here than a heavier sentence in the United States. That is what  
12 obviously motivates the public in thinking that the penalty is unfair. But how  
13 are we going to decide that. How are we going to decide a whole process of  
14 trial? How are we going to decide about the admissibility of evidence here, as  
15 opposed to there and whether that is fair or not, but the effectively we are  
16 conducting a trial into the trial of the foreign jurisdiction process. We are not  
17 equipped to do that. The Crown Prosecution Service may or may not be. Can  
18 I ask whether you have had any concrete examples of cases where people  
19 disagree with Nick's analysis which is — effectively, would add to the length  
20 of the proceeding here but not change the result?

21 CHAIR: I am just trying to think what Liberty and JUSTICE and Fair Trials  
22 International have said about that. I think that the impression I got from them  
23 is that forum bar won't add significantly to the amount of work without  
24 actually having descended into any particulars but in so far as it does, it is a  
25 price that has to be paid. Would that be a fair assessment do you think?

26 JUDGE RIDDLE: I think as well, what they said was, that they accepted that in the  
27 initial stages there would be an increase in litigation but that eventually the  
28 Court would develop principles that could be applied in every case and once  
29 the principles were established and there was some certainty and clarity, that  
30 the number of cases would then diminish.

31 CHAIR: And which of our decisions would have been different?

32 MR DOOBAY: Liberty did address that and they said that they did think — they did  
33 not point to any other cases which had already occurred. They said there were  
34 cases that they are currently dealing with that they could not tell us about. It

1 would have an impact.

2 JUDGE EVANS: Presumably if it was incorporated as part of the law under  
3 extradition, formally, would it perhaps have some impact on domestic cases?  
4 Would some domestic defendants say to the Crown Court judge, 'You should  
5 not be trying this. I should be extradited.' It is rare that the other country  
6 would be one where the punishment is less, but even just as a fly in the  
7 ointment, once you start having a system which says the Court has to make a  
8 determination about the right, presumably it would apply –

9 CHAIR: The section is only targeting the actual extradition, so it is not looking at the  
10 other side of the coin, and there ought to be a fairly limited number of cases,  
11 because the present picture that we have is, if the defendant has already been  
12 charged here, well, that is curtains to any extradition for the time being  
13 anyway. And if the CPS had not started investigating, then they will resist the  
14 application for extradition from the foreign state, so there is nothing to discuss,  
15 as it were, unless you are between those two situations.

16 JUDGE EVANS: The shorter cases will be like the [REDACTED] with the private  
17 client, with oodles of money, gone to the powerful solicitor, and they will  
18 make a meal of it and it will be some meal, I sense. It will go on for –

19 JUDGE RIDDLE: The ought and the will are quite different, I think. It ought to,  
20 perhaps, lead to limited litigation. All our experiences, the most ingenious  
21 arguments, you might think you ought to have comparatively few Article 6  
22 and Article 8 arguments being run as far as European Union countries are  
23 concerned. They are every day. They are argued all the time. And it has  
24 taken this time, by which I mean seven years or more, to really lock them so  
25 that we can say with some confidence, because you cannot run this, it is not  
26 going anywhere, it is going to fail and they know that was right. Introduce  
27 this.

28 JUDGE EVANS: And we are off again.

29 MR DOOBAY: Can I ask just one other question there, which I think you have  
30 slightly touched upon, leaving aside the forum bar, so let us assume that there  
31 is an ability for obviously prosecutors to take a decision about whether to  
32 investigate and/or prosecute, would you see any issue with having the power  
33 to refer cases? So if there is a case which has not yet been looked at by the  
34 CPS, to have the power to refer a case for them to take a decision on, and the

1 power to defer an extradition process for a short period of time, to allow it to  
2 reach to their decision on whether or not to prosecute, because obviously if  
3 they do that, it stops the process that they do not then, they just continue along  
4 -

5 CHAIR: We are just talking about Category 2, now, aren't we?

6 MR DOOBAY: Yes.

7 JUDGE RIDDLE: Well there is not necessarily going to be a big delay, if it is raised  
8 right at the very beginning, because it is usual that 45 day plus period in any  
9 event.

10 JUDGE EVANS: Do you mean, before the request has arrived. Until the request  
11 actually comes in, it won't be -

12 MR DOOBAY: Won't it? I mean until the proceedings are over. We have that early  
13 part of the proceedings.

14 JUDGE EVANS: Well, no, I think that sounds fine, but it does in fact create - it goes  
15 off and they say we have considered the matter carefully and we think it is  
16 best prosecuted wherever. There is an immediate attack, isn't it, for an appeal.  
17 And you know, with the wealthy clients, that will come.

18 MR DOOBAY: It will, but I am not sure that - that ability of judicial review should  
19 exist at the moment. And potentially if you have clearer guidance and more  
20 easily explicable waiting system, the grounds for JR may in fact diminish,  
21 because it is just a question of having followed your own process.

22 JUDGE EVANS: I think the idea of having a protocol so, as you say, at the moment  
23 it is all smokes and mirrors. I mean, if you have it an open protocol, and how  
24 these things should be determined.

25 JUDGE RIDDLE: In one sense, having the open protocol is having another route to  
26 achieving the same thing that the Courts would achieve while working it out  
27 over the years as to what the section means.

28 JUDGE WICKHAM: And then you are just generally that particular point, a bit like  
29 if you stop a Crown Court trial to take that point up, and then we come back  
30 again.

31 MR DOOBAY: And then you would have to get through your commission  
32 application on the jail, so of course, if they try to - but if it is a hopeless jail,  
33 then you are not going to get permission. If the CPS can say, look, actually,  
34 we have totally complied with the guidance which we ourselves have put

1 forward, we can show you a reasoned decision which we have reached. It is  
2 only in extreme cases that you are going to be likely to get permissions to JR,  
3 and there is nothing you can do about it.

4 JUDGE EVANS: The act of course was intended to remove JR as a possible way of  
5 slowing up the process.

6 MR DOOBAY: You are not judicially reviewing the extradition case at all.

7 JUDGE RIDDLE: You are slowing up the process.

8 MR PERRY: Unless the extradition process could take place and internally  
9 empower.

10 MR DOOBAY: The JR does not actually affect the extradition process.

11 JUDGE RIDDLE: We just carry on. And of course if we decide not to extradite it  
12 will become –

13 JUDGE WICKHAM: I see, but we are stopped by the JR, we can carry on–

14 MR DOOBAY: Even the outcome of the JR does not stop you. A judicial review is  
15 about the process they follow in deciding whether or not to prosecute.

16 JUDGE EVANS: It is not just a process, is it? It is the decision. Was the decision  
17 unreasonable or not? And it still could be a live issue which could affect the  
18 extradition. Anyway, something has got to be done about it. I accept. But it  
19 is Parliament in its wisdom that incorporated this provision which was never  
20 brought into force, and it is exercising the minds, I think mostly of the wealthy  
21 defendants who bring some big commercial alleged defence. They are the  
22 ones who are most keen to avoid going to America, where they perceive  
23 penalties to be higher.

24 CHAIR: Your experience about the US/UK extradition arrangements is to imbalance.  
25 Anything you would like to add on that?

26 JUDGE RIDDLE: We just hope everybody agrees with us.

27 CHAIR: Prima facie evidence is the other question that we have been asked to  
28 consider and we have had quite a lot of evidence that going back to prima  
29 facie evidence really would be putting the clock back, and the FCO is in quite  
30 a good position to decide whether to put countries into schedule two. We have  
31 a lingering concern that once a country gets onto schedule two, there doesn't  
32 seem to be much of a procedure for getting it off again if there is a regime  
33 change and it is no longer very satisfactory. Any thoughts there?

34 MR PERRY: Anywhere in particular that you would like me to identify?

1 CHAIR: Well, Zimbabwe is one of the places that has been mentioned. I am not sure  
2 other than anecdotally.

3 JUDGE EVANS: Which I decline to extradite.

4 CHAIR: From where?

5 JUDGE EVANS: To Zimbabwe. I don't think there has been any sense. Basically if  
6 we do not deport someone to a country it is unlikely we are going to be keen  
7 to extradite someone to that country. There is no – it does seem, I think – it is  
8 rather political, but I mean the number of countries under the EAW, under  
9 Category 1, is extremely diverse and one wonders whether there is a  
10 justification for the mutual trust and respect of each of these countries as to  
11 how they conduct themselves, but there is just – moving into *Daily Mail*  
12 speak, one does not really know quite what happens, but I am sure the quality  
13 of the prisons, for example, from Latvia to Wandsworth, is probably very  
14 different.

15 CHAIR: One of the thoughts that has been going through our minds is whether  
16 Europe should not be encouraged to have the equivalent of a prison  
17 commissioner who looks at prisons on a European basis. To get round some  
18 of the issues that said that prisons in country X or Y where conditions are very  
19 unsatisfactory.

20 JUDGE EVANS: But that exists now. Is there not a European-wide –

21 CHAIR: There is something that we heard.

22 MR DOOBAY: Well, there is the CPT who do their inspection but this is more,  
23 rather than looking for torture or inhuman or degrading treatment, I think it is  
24 more to do with general conditions, writing reports that would be authoritative  
25 reports, that judges could look at in other jurisdictions, so that they would  
26 have a pretty fair idea of what the standards were, without the legal services  
27 commission having to commission these rather expensive experts.

28 JUDGE EVANS: Isn't there a European provision which says cell should be three  
29 metres by three metres. There is a minimum sort of cell and then the density  
30 and all kinds of – and all those who have signed up to this are required to  
31 provide prisons that meet that, and if they have not met that yet, they are given  
32 some money and they are told they told they have got five years to do it and  
33 sometimes they do it and sometimes they don't but there are standards.

34 MR PERRY: There are two separate issues, aren't there. Improving prison



1 conditions which is very important and I suspect that that whole European  
2 arrest warrant has in fact really helped with other countries and I think we see  
3 it all the time in the reports that do come through to us that conditions in  
4 Lithuania and Latvia have generally improved very significantly over the last  
5 few years, but the other question is that it is not really an Extradition Act  
6 matter, because the bar is so high for inhumane, Section 2, Section 3  
7 conditions, improving the standards. We are already well aware I think in all  
8 European countries.

9 CHAIR: On an entirely different, it just interested me to get a mind's eye picture,  
10 what percentage of the extradition cases that you get are part ones against part  
11 two?

12 JUDGE EVANS: About 85% Part 1, and 15, I guess.

13 CHAIR: And that is pretty standard, is it?

14 MR PERRY: I would put it even higher than that. I would put it at about 90%.

15 JUDGE EVANS: Almost all, and we are getting quite often six to eight a day, new  
16 ones coming in. I mean, it is –

17 JUDGE WICKHAM: Nearly all Cat 1.

18 JUDGE EVANS: Quite a problem.

19 JUDGE RIDDLE: And they are quite different in that Category 2 cases you can  
20 almost always expect to have a fully argued, fully contested, two or three day  
21 hearing, almost always.

22 CHAIR: Anything else?

23 MR DOOBAY: Two small things. I think that you were right in terms of the prison  
24 conditions, but there are two different issues. One is that this sense of mutual  
25 trust, that there is a common space, and the standards are the same, and I  
26 suppose that one of the things we are looking at is, we hear a lot of evidence  
27 that is not true and I think actually the commission themselves recognise that  
28 is not true, that there was an understanding for the framework decision that  
29 actually we have exactly comparable systems of justice in prisons and all the  
30 rest of it, and possibly in the US; that is not true. So –

31 JUDGE RIDDLE: Can I challenge that? I do not think that is an assumption that we  
32 make at all. All we are saying is, of course we accept the people – prison  
33 conditions here are better, otherwise we would not be having much of this  
34 argument that we have had, that people prefer to be here. We know that

1 prison conditions here are better. It is astonishing to those of us that come  
2 from a criminal background that people want to spend time in United  
3 Kingdom prisons when we have seen them, but that seems to be the case. All  
4 we are saying really is that the standards in Europe do not fall below human  
5 rights standards.

6 MR DOOBAY: No, sorry, I mean the framework position makes that assumption. I  
7 am not saying of course – I think everyone who works as part of the system  
8 would probably accept that that is not true, but the supposed theoretical  
9 underpinning of this is that everyone should assume that and actually that is  
10 not true. So one of the issues is just raising standards across Europe, which  
11 would be a way to solve many of the concerns which people raise as part of  
12 the process, as if there was – and of course I am not talking about to raise  
13 them to the same levels as we have, but to raise them to the minimum  
14 standards, which each charge should mean applying – and so I think that  
15 prison, to my mind, the prison inspection system is more about that. Because  
16 everyone has the theoretical responsibility to do this anyway. Each EU  
17 member state should have prison conditions which meet Article 3 standards,  
18 so it is more about how do you make that practical reality?

19 MR PERRY: On designation, I just wanted to come back to that, because I think, as  
20 you say, it is a much trickier point. The UK will not deport to certain  
21 countries. I have no experience of any country ever being de-designated under  
22 the extradition act. It is obviously a very potentially very political thing to do,  
23 to say, yesterday we thought you were a reliable extradition partner – today we  
24 no long hold that to be true, and some representations have suggested that that  
25 is a problem and it seems from what you are saying that actually you deal with  
26 that problem by using the bars which already exist in the act to cater for those  
27 situations where countries continue to be designated but in fact there are  
28 problems with the requests which are made from those countries. Is that a  
29 fair...?

30 JUDGE RIDDLE: The only difference is the requirement to provide a case to answer,  
31 which, in those countries that do not do that, we tend then to look at whether  
32 they are trustworthy human rights partners, as it were.

33 MR DOOBAY: Because I think that part of the concerns is the underlying principle,  
34 which is that there appears to be an assumption, and it is often said in

1 judgments, so I am not entirely – where it comes from, and it is said in your  
2 submissions that if a country has been designated there must be – one of  
3 course has to assume a higher level of mutual trust exists between extradition  
4 partners. And I am just going to potentially say that that is not necessarily  
5 true, that that may have been true at a point in time, but given that I am not  
6 aware that a country has been de-designated.

7 JUDGE EVANS: I agree. But the approach, I mean, Libya is a Category 2 territory,  
8 and I doubt anybody would want to extradite someone to Libya at the moment,  
9 but I mean in theory we have to assume that our government has confidence in  
10 the Libyan government, and feels that they are people to whom people can be  
11 extradited.

12 MR PERRY: It is a starting point that can be displaced but evidence and no doubt  
13 will be.

14 JUDGE WICKHAM: You can do it immediately under Human Rights, and one thing  
15 that is arising more and more is of course whether, if they go back into  
16 custody, especially with medical conditions, a lot of people may well have  
17 AIDS, drug problems, heart problems, all that sort of thing, so that gets – that  
18 comes in another way. We can tailor it to the individual.

19 CHAIR: So the short answer is that the prima facie evidence rule does not present  
20 any problem in practice.

21 JUDGE EVANS: Or the lack of it. I agree. I think. Yes.

22 CHAIR: I just wanted to see to what extent the provision of prima facie evidence  
23 would provide a practical safeguard, because the point that has been made to  
24 us is that the requirement to provide prima facie evidence would provide a  
25 practical safeguard. And so when we have explored this we have been looking  
26 to see what rationale there is for providing prima facie evidence. Is it because  
27 it shows there is a genuine case for extradition supported by some evidence, or  
28 is it to test the substance of the allegations made against the defendant. Now, I  
29 just wanted to ask, if it is the former, to show that it is a genuine case for  
30 extradition, is prima facie evidence actually the safeguard that tells you  
31 whether it is a genuine case for extradition, or if it is not a genuine case, are  
32 you going to discover that whether or not you have prima facie evidence?

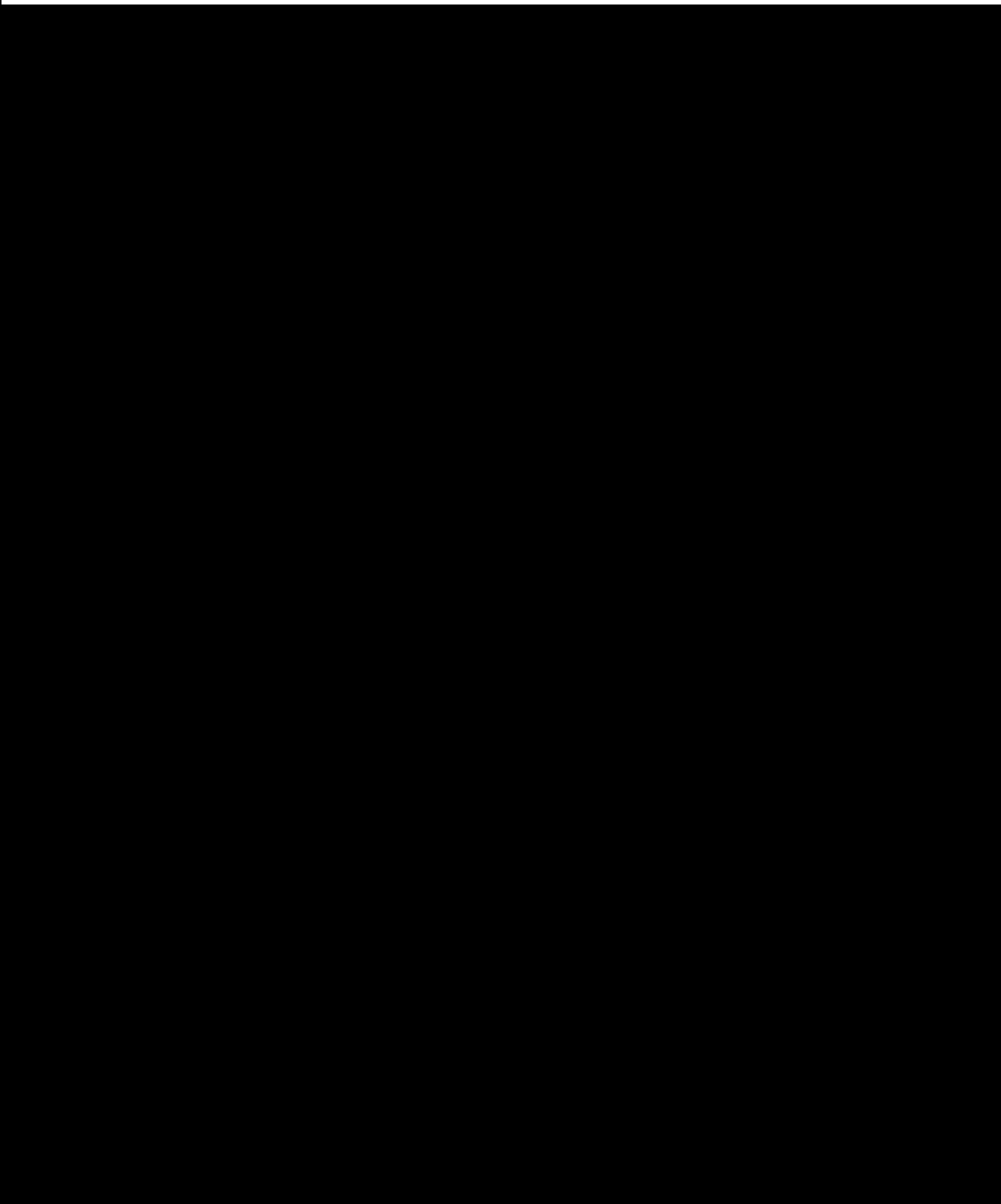
33 JUDGE RIDDLE: You are always going to start on the assumption that it is a  
34 genuine request and it is not for some improper motive and –

1 JUDGE WICKHAM: Abuse of process?

2 MR PERRY: Extraneous considerations which do come up, especially in Russian  
3 cases.

4 CHAIR: But if the point is taken that it is not a genuine request, and it is supported  
5 by some credible information is prima facie evidence going go assist on that  
6 point at all? I just wondered.

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32 CHAIR: So do you think within the Extradition Act at the moment, there are  
33 sufficient safeguards to meet arguments that it is not a genuine case for  
34 extradition, I suppose is what the key question is. I mean, are there safeguards

1 that can address that argument?

2 MR PERRY: Well, first of all there is the conduct test, and then there is the Article  
3 Six test, to see whether you are satisfied that the requesting state is going to  
4 provide a fair trial.

5 CHAIR: And then the other issue that is linked to it, because if you are looking as to  
6 whether it is a practical protection, what would the resource implications be if  
7 you had to have a prima facie case in all cases?

8 JUDGE EVANS: Part 1 as well?

9 CHAIR: Part 1 as well. The representations that we have received is that there  
10 should be a prima facie case across the board.

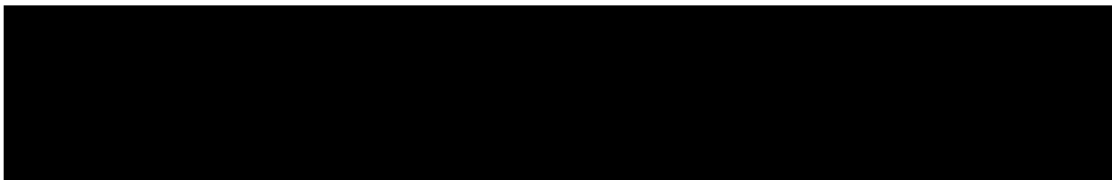
11 JUDGE EVANS: As has been said, that is not going to happen is it. You would have  
12 to undo the framework decision. You would have to opt out and I cannot see  
13 that happening. And nor do I think it is justified. In the seven years that it has  
14 been running, the lack of a prima facie case is not... As far as I can see, there  
15 has been no injustice. No one has actually – if someone can provide an  
16 example of an injustice caused by the seven years operation of it, I mean there  
17 has not been with this requirement and there has not been in fact prior to that,  
18 under the European Convention, there is no prima facie case, so the last 20  
19 years, the lack of prima facie case I would think has caused no injustice that  
20 could be – unless you can provide an example, of some injustice, why change  
21 it?

22 CHAIR: The final thing in relation to United States cases in particular is – and I  
23 cannot myself think of any United States case I have ever come across where  
24 there wasn't an indictment, and I just wondered whether my experience is  
25 accurate. I wonder whether in fact – we will find out because we are going to  
26 the United States, but I do not think you can make a United States request  
27 without there being a grand jury.

28 JUDGE EVANS: That is my feeling too. I think – I cannot – I have not seen one,  
29 and they are very full indictments, aren't they? They are narrative indictments  
30 that explain very fully what is being said, so even though there is no prima  
31 facie case, it is almost as good as that in terms of explaining what it is all  
32 about.



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CHAIR: Any more?

MR DOOBAY: Just one small point on the question of prima facie. I mean, certainly, I have dealt with quite a few Russian cases, and there is no requirement to provide evidence for the Russian – but in fact my experience is that if you can provide sufficient evidence to show there is potentially some form of input from – you can look at the conduct, not in terms of guilt or innocence, but as evidential strand that is showing how the conduct supports your argument, that actually written in – you can show that it is totally impossible in a pleaded case, for there ever to have been a defence committee that will obviously support your argument but this is not a proper criminal prosecution, so I do not know whether you – whether that will provide you with protection, even in those countries where – because the Court can still draw an inference against a requesting stage, if it fails to reassure you that there is something proper which underlies its criminal allegations.

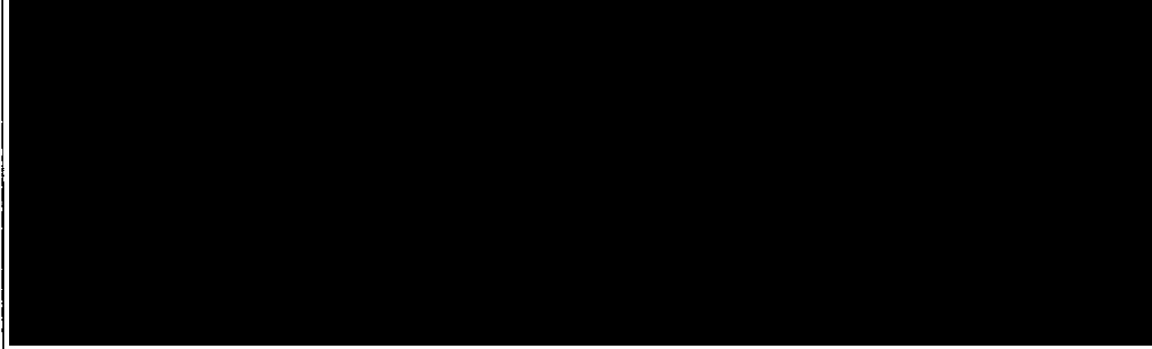
JUDGE WICKHAM: Well, you have got all the particulars, haven't you. That is one thing that they have got. They do have to be precise. There is enough jurisprudence built up over the years, as we have said, on this. Von Pahlen. If the warrant is desperately "under-pleaded", so that you really do not know, you therefore discharge. You still do not have many arguments on it.

JUDGE RIDDLE: If you are going to maliciously seek someone's extradition, it is not really difficult to fabricate a case.

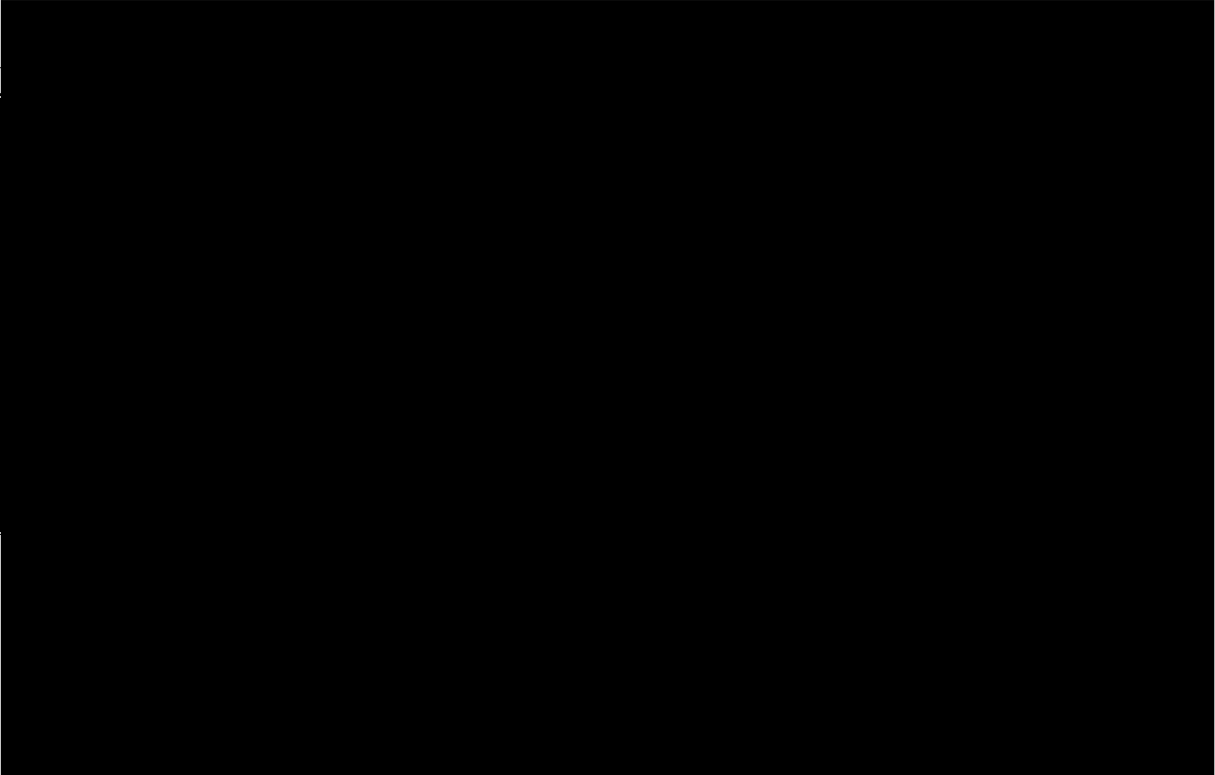
CHAIR: Do you get many?

JUDGE RIDDLE: I haven't in Russia.

JUDGE EVANS: No, but Tim Workman had one, didn't he, when they came – and somebody had been murdered, as far as the allegations –



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JUDGE EVANS: Just to go back to the bit about going regional and having other judges dealing with it, once you widen the pool, if you had a centre in Manchester for example, they probably would not get enough cases to build up expertise, and because everyone, there is no disincentive here about appealing. Similarly, in the divisional court, I mean, up until last year there was always a lord justice sitting in every extradition case, and now because of the volume that judges sit alone, and there is a much wider pool of people doing it, and so that the – I would not say the quality of the decisions, but you are getting lots of decisions – all that happened – it does mean that people latch on to any extemporaneous judgment given, which has a different nuance. It is picked up immediately and within days we are getting, well, Mr Justice so and so said this, and it just gives grounds for any little thing to cling on to that will create a –

CHAIR: It is a fascinating subject, isn't it.

JUDGE EVANS: It is fascinating subject.

JUDGE RIDDLE: What Nick is saying subtly, I think is to do with –

CHAIR: I don't think you should read too much into the fact that we were asking about diversifying the expertise, but it is quite important to get the answers pretty clearly down. And of course the administrative court has gone wider recently. Anyway, it has been a very, very helpful discussion from our point

1 of view, and I am sure that I speak for the three of us, and if there is anything  
2 else that you would like to say that you think we might be barking up the  
3 wrong tree or messages that you need to get across, tell us, and if you think of  
4 anything afterwards, by all means get in touch and if we do think of something  
5 that we need your help on I am sure we will come back to you.

6 JUDGE RIDDLE: Can I just touch on the last point that you touched on very briefly,  
7 which is the administrative courts. The administrative court being elsewhere,  
8 quite different of course. There is no particular problem in a lengthy  
9 extradition case being heard in Walsall. It is the immediate arrival of a case  
10 and dealing with it within a few hours.

11 CHAIR: Thank you very much indeed.

12 *(End of Session)*