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Inquiry on

EXTRADITION LAW

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Witnesses: Amy Jeffress

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Members present

Lord Inglewood (Chairman)
Lord Brown of Eaton-under-Heywood
Lord Empey
Lord Hart of Chilton
Lord Henley
Lord Hussain
Lord Mackay of Drumadoon
Lord Rowlands
Baroness Wilcox

Examination of Witness

Amy Jeffress, Former Department of Justice Attaché to the US Embassy in London and currently Partner at Arnold & Porter, Washington DC

Q67 The Chairman: First of all, it is very good of you to get up so early in the morning for us. We much appreciate that. It is kind of you to come and give evidence. I am Richard Inglewood; I am the Chairman of the Committee. The rest of them you will see on your monitor around the table. We have had a CV; we know you worked in London. I am sure you can help us and thank you very much for doing that. We do not have any special interests to declare, I understand, at this end. Could you just briefly tell us who you are for the sake of the record here? Then what I would like to do is move into the questioning proper. Please tell us what you think matters, even if it is not quite in answer to the question, because we want to know what you think. I think I am right in saying you have to get off to a train about quarter past. Is that right, in about three quarters of an hour?

Amy Jeffress: That is right, thank you.

The Chairman: If we go on too long, just flag it up and let us know.

Amy Jeffress: I appreciate that.

The Chairman: If you could just tell us who you are, then we can go into the questioning proper, if we may.

Amy Jeffress: Good morning. I am Amy Jeffress and I am currently a partner at Arnold & Porter, a law firm in Washington DC. I used to be the Department of Justice Attaché to the US Embassy in London, but I would like to point out at the outset that I no longer work for the US Government, so I am here in my personal capacity and my remarks cannot be attributed to the US Government.

The Chairman: Thank you very much. If I might start, you can obviously tell us your perception of what the US Government thinks about the extradition arrangements we have with you. In particular, are there any criticisms that you think that they have about the way we handle extradition requests? As a follow on to that, there is clear concern in the UK about certain aspects of the UK-US extradition processes. Do you think any of those are well founded?

Amy Jeffress: First, there is a concern about delay in the extradition process in the United Kingdom. Some cases have taken years to go through the courts, both in the United Kingdom, and then in the European Court of Human Rights, when they have been appealed there. That is the chief criticism that US persons would have of the arrangements with the United Kingdom. I do understand that the US-UK treaty remains controversial in the United Kingdom and I think that is unfortunate because, I believe, if you examine the facts, you would conclude, as Sir Scott Baker's panel did several years ago, that the treaty is fair, is balanced and operates in the best interests of both of our countries. I understand that there is a lot of criticism of the treaty and I think that is largely because of the media reports about specific cases. Those reports are not always balanced or fair. I understand that; it is not a great story to say that someone was extradited to the United States to face a fair trial. It is

much more interesting to point out the flaws in the system. I think that that is partly responsible.

The Chairman: Is there any concern in the same way in the United States about what happens here?

Amy Jeffress: Interestingly, extraditions do not receive a lot of attention in the United States.

Q68 Lord Brown of Eaton-under-Heywood: Ms Jeffress, we more or less understand the situation now as between our two countries, but I am just wondering how matters stand between the United States and other countries, particularly European arrest warrant countries, with regards to extradition. Are the arrangements similar? That is to say, do you only have to show reasonable suspicion in order to get people back from Holland, France, Germany and wherever else?

Amy Jeffress: My expertise is mostly on the US-UK treaty, but my understanding is that most of our modern treaties operate in a very similar manner. The standard for most of those treaties is the probable-cause or reasonable-basis standard. I would note that there still remains some disagreement about whether those standards are unequal. Sir Scott Baker's panel examined the cases and found that, in fact, they operate the same in practice. No one has been able to identify, to my knowledge, a case that would come out differently in the extradition context, under one standard versus the other. That is just a point that I wanted to make about the standards. You may be referring to the requirement for a prima facie case, which used to be the case with the United Kingdom before the treaty was updated.

Lord Brown of Eaton-under-Heywood: Before 1 January 10 years ago.

Amy Jeffress: That was the standard in the old US-UK treaty and some other countries that adopted that old standard still have that standard, but most of our treaties with our partners have been modernised. A small number of countries still have the prima facie requirement. I

would note that the prima facie requirement was a great burden on prosecutors in the United States, but also on the authorities in the United Kingdom, because volumes of evidence had to be shipped over, examined and handled in the context of extradition. That contributed a great deal to the delay, which I noted was a problem previously. I would also like to note that the United States never had that requirement from the United Kingdom.

Lord Brown of Eaton-under-Heywood: As a matter of practice, when the prima facie evidence requirement is there, is it significantly more difficult—it may be more time-consuming, but is it significantly more difficult—to get somebody extradited?

Amy Jeffress: The principal difference is in the time that it takes. I do not think that it has a significant impact on whether the extradition is ultimately successful or not.

Q69 Lord Brown of Eaton-under-Heywood: Can I just ask you one other thing? Are there any other aspects of your treaty arrangements with other countries that are notably different from our own? I think we were told at one stage, for example, that the Dutch will not extradite their own nationals unless any sentence of imprisonment is then to be served in the home country. Is that right?

Amy Jeffress: I do not know the answer to that. I do not know whether that, if true, is in the treaty itself or is a matter of government policy. I would say that most of our treaties with our partner countries are very similar and I cannot think of provisions that are distinct, which the US-UK treaty does not have. There are some countries that, as a matter of policy, will not extradite their own nationals, but both the US Government and the UK Government do not think that that is a policy that is a sound one, in the modern age, with cross-border crime.

Lord Brown of Eaton-under-Heywood: Finally, you are aware that there is still a certain unease in this country about the balance in the relationship between us, in terms of extradition. Is that true of your relations with any other country for extradition purposes?

Amy Jeffress: That is a very good question and I am not aware of controversy over our extradition arrangements in any other country that reaches the level that it does in the United Kingdom. I appreciate that you have mentioned imbalance, because I wanted to address that in two other respects. As I mentioned, the standards are often criticised for being imbalanced but, in fact, they are the same. Just to address two other points along those lines, people often criticise the numbers and there is a view that many more people are extradited from the United Kingdom to the United States than vice versa. It is in fact the case that roughly two or three times as many people are extradited from the United Kingdom to the United States than vice versa but, as Sir Scott Baker's panel found, the population of the United States is five times that of the United Kingdom so, when you place those numbers in that context, there really is no imbalance. I believe that is the case. Finally, there is another point that people often make about the protections in our systems. Some people say that there are greater protections from extradition in the United States than there are in the United Kingdom. Again, the protections in my view are really very similar. To the extent that there is a disparity, I believe that there are in fact greater protections in the United Kingdom. That is borne out by the fact that the United States has never denied an extradition request from the United Kingdom, under the current treaty, whereas the United Kingdom has denied multiple requests.

The Chairman: Before we go on to Lord Rowlands, I would just like to ask you if you would clarify something. You used the words "partner countries" once or twice, talking about the kinds of relationships that exist in extradition. By "partner countries", do you mean countries of a similar status to European Union countries and Australia? What exactly do you mean by that phrase?

Amy Jeffress: We have extradition treaties with a wide range of countries. You had specifically asked, I thought, about Europe, although maybe I am mis-remembering.

The Chairman: I was talking about Europe. I just wanted to be sure that that is what you were talking about.

Amy Jeffress: That is right, but I would say the same about most of the countries with which we have extradition treaties.

The Chairman: Does that include, for example, certain South American countries, certain countries that have a slightly bad reputation, the eastern half of Asia? I am just trying to get a measure of it, that is all.

Amy Jeffress: We have extradition treaties with some countries and not with others. Given that I am not an expert on the whole world's extradition arrangements, I would prefer not to offer something that would not be accurate.

The Chairman: That is an entirely fair reply.

Lord Rowlands: Before I ask about the diplomatic aspects, I wonder if I could go back to the controversy on the treaty. At this end, part of the controversy was the secretive nature of the negotiating process. From your experience, was that any different from any other type of extradition negotiations?

Amy Jeffress: That is an interesting question. I was not involved in the negotiation of the US-UK treaty, but I have read a lot about it and it seemed to me that, in fact, there was a great deal of debate in Parliament on this side and in the US Senate on our side. Both congresses—our Congress and your Parliament—had to ratify the treaty, but that is a different question than what you asked about the negotiation. Negotiations between Governments typically are confidential, because we want to encourage frank and candid communication between our Governments. I think that that is actually the normal course.

I would not infer anything from that, other than that it helps to be able to talk frankly to one another in the negotiation process. I do not think that there is any reason to think that any secrets were kept from Parliament or from Congress when the treaties were ratified.

Q70 Lord Rowlands: May we turn to the question about what impact extradition might have on diplomatic relations? Does it matter whether the decision to extradite was made by the courts or by the Secretary of State, in our case? What is your experience?

Amy Jeffress: I will just say that the United States and the United Kingdom have such a strong diplomatic relationship on such a broad front that the issue of extradition is nothing more than a small thorn in that relationship, when there is conflict over it.

Lord Rowlands: Would you say Gary McKinnon was a small thorn?

Amy Jeffress: The United States Government was disappointed in the way that that case turned out, but has it affected our overall diplomatic relationship? I would say in a very small way, yes.

Lord Rowlands: A small way. Has it in any way changed the approach in which the extradition requests are being made? Has the US Government changed its approach at all?

Amy Jeffress: No, there is no desire to retaliate in any way that I am aware of.

Q71 Lord Hart of Chilton: Good morning. It has been said that there is a greater zeal to interpret legal jurisdiction on your part—greater effort, greater energy and greater resources put into it. Do you think that is right?

Amy Jeffress: The United States does exercise extraterritorial jurisdiction, and I would note that the United Kingdom has that authority with respect to certain offences as well. It comes under criticism, but most people who criticise our exercise of extraterritorial jurisdiction are really criticising the case; they criticise the jurisdiction, because they do not like the case itself for whatever reason. For example, most people do not criticise it in the terrorism

context. But I will say that the exercise of jurisdiction is something that has to be addressed on a case-by-case basis.

Lord Hart of Chilton: Thank you. Can you help us a little by explaining how prosecutors from the UK and the US actually work together to reach decisions on cases of concurrent jurisdiction? Should that process be a little more transparent?

Amy Jeffress: Yes, I can. That was one of the responsibilities that I had when I was the attaché at the embassy, to assist our prosecutors in carrying out those discussions. The way that it works is that, when a prosecutor in either country has a case that the prosecutor believes affects the interests of the other, the prosecutor initiates a conversation through the respective appropriate offices. The prosecutors may discuss it by phone or meet in person, if possible, or even over video sometimes. They talk about where the case should most appropriately be prosecuted, and there are certain factors that are considered.

Sir Scott Baker's panel recommended greater transparency with respect to making public the factors that are considered and I agree with that recommendation. I would note that the Director of Public Prosecutions in fact followed up with it, and has now published the factors that the UK prosecutors are directed to consider. In specific cases, there are sometimes good reasons for the confidentiality of those discussions. Sometimes the investigation is not public, and it protects both law enforcement interests and, in many cases, the interests of the person under investigation or who is ultimately charged not to have those discussions in a public setting or transparent in a public way.

Lord Hart of Chilton: Were those negotiations that you were involved in always calm and peaceful or was there any excitability and tension?

Amy Jeffress: There was sometimes disagreement, to be honest. I am aware of some cases that were difficult to address, but I will say that the United States and the United Kingdom

have a very strong relationship and our prosecutors have a very good working relationship. In my time, we always worked through those cases in a way that I think was ultimately satisfactory to everyone.

Lord Hart of Chilton: Where you substantially disagreed with one another, how did you ultimately come to a conclusion?

Amy Jeffress: By looking at the factors and trying to be objective. Prosecutors in both countries, when they have a good case, want to prosecute it, and so we had to analyse the factors. Ultimately, unless the individual is located in a third country, the individual involved is located either in one country or the other, and that country often will have greater authority over where that person is prosecuted, just by virtue of where the person is located.

The Chairman: Just to follow up something arising out of one of your comments to Lord Hart, you talked about the UK prosecution guidelines being transparent. Are you satisfied, as an individual, with what is happening on your side of the Atlantic?

Amy Jeffress: There has not been a real call for transparency in the process here because, as I mentioned earlier, extradition does not get a lot of attention in the US and is not as much of a political issue. But it is no secret what the factors are, because the factors that US prosecutors consider are largely the same as what your Government has published, so I do not think that there is any mystery about it, on our side.

The Chairman: The point is that, as you know, and we discussed this, there is disquiet—shall I put it that way?—on this side of the Atlantic about some of the decisions that are taken in the US, and that might be mitigated a bit if the process that the prosecutors go through was a trifle more transparent. That is where I was coming from. The other point that I and the Committee would be interested to know about is that, given we are about to introduce new

rules about the forum bar, and that obviously will have an impact on extradition, do you think that will have any impact in turn on decisions by US prosecutors to try to obtain extradition from this country? Will it be a kind of chilling measure? You may not know.

Amy Jeffress: When I was in the embassy, the forum bar was being debated and we were concerned about the impact that it might have on our arrangements, but my understanding is that prosecutors will do their best to do what is right and what is in both Governments' best interests, regardless of how the law is implemented. With respect to the forum provision, it seems that it is a bit too early to tell how it is affecting our arrangements, because there have not been that many cases as yet.

The Chairman: We simply cannot form a view, you would say, about what impact it might have on the US approach to extradition from this country.

Amy Jeffress: I think that is right.

Q72 Baroness Wilcox: Good morning, Amy. Thank you for getting up so early. Paul and Sandra Dunham fought extradition to the United States on the basis that plea-bargaining demands an admission of guilt, rather than assertion of innocence. To what extent should the likelihood that a person requested by the United States will be encouraged to plea-bargain be taken into account during an extradition hearing in the United Kingdom?

Amy Jeffress: I do not think that that should be taken into account at all. The United Kingdom has plea-bargaining as well, and Lord Brown on your Committee has looked into this. I think there are differences in the way our systems operate, but they are often overstated. When a person is extradited to the United States, every individual extradited has an absolute right to a trial. If that person is not guilty, they should exercise that right to trial. If the person is guilty, then it is often in that person's best interests to plead guilty, so that they receive the benefit of the plea-bargaining process.

Baroness Wilcox: I was just wondering if the circumstances of extradited people, who are often away from home in pre-trial detention, facing possibly lengthy sentences, exacerbate the concerns that they may have. I just wonder how much help is given, how much consideration is given, to people who have been taken from one country to another, obviously feeling completely alienated where they are, and whether they feel that, in truth, they need some help. Do they get any help? In other words, if you are going from one jurisdiction to another, do you have anybody who stands alongside those people to explain quite what the system is and how different it actually is for them?

Amy Jeffress: Everyone is entitled to a lawyer. For people who cannot afford a lawyer, the US courts will appoint a lawyer to represent them. That is true in every case. That lawyer's responsibility is exactly as you described: to explain what the process is and what the options are, and to advise on what the best course of action is. That is the same whether the person charged is in the United States or whether the person is extradited from another country.

Baroness Wilcox: Can I just ask a small question? I should know the answer to it, but I do not. Is it done in other languages? How many languages do you work through in your courts? If you have somebody coming from one country to another who does not speak English as you do, do you have a great range of help in areas like that?

Amy Jeffress: We do not have British interpreters, as far as I am aware.

Baroness Wilcox: We try to cope. We are all right.

Amy Jeffress: For people who do not speak English, there is an interpreter provided at any court proceeding. That is something that the judge has to ensure is provided. The judge has to personally address the defendant and make sure that either that person speaks English and can understand the proceedings or has an interpreter.

The Chairman: Before we go on to Lord Mackay, I would be interested to know from you, please, if you have a US citizen who has been extradited to another country, what kind of support, if any, is provided by the US embassies and the US system more generally to assist them, if any at all?

Amy Jeffress: In that respect, I do not think that the United States does anything different than other countries do. When someone is extradited, the embassy in the country where the person is sent is notified, so that that embassy can provide the usual consular services and visit the person, if the person is in custody. Those services are provided by the British Embassy here in the US and they are provided by the US Embassy in the United Kingdom. I believe that that is standard across the globe.

The Chairman: For example, if a US citizen is put in jail for some time in another country, do the US embassies regularly monitor what is happening and their circumstances?

Amy Jeffress: At the very least, they pay a visit to ensure that the person is being treated fairly and humanely. They should follow up and monitor the case, although sometimes that does not happen, depending on the volume. That should happen in most cases, yes.

The Chairman: The theoretical policy, even if it may not always work, is that they keep regular contact with the US citizens who are in jail. You may not know the answer.

Amy Jeffress: I am not sure exactly what the consular requirements are, but there is at least a visit and then any follow-up that is needed, certainly.

Q73 Lord Mackay of Drumadoon: Can I turn to the subject of prison conditions and ask you how United Kingdom courts should deal with criticism of prison conditions in the United States while at the same time respecting that country's penal system and recognising that conditions in state and federal prisons, throughout the country, will inevitably vary?

Amy Jeffress: The European Court of Human Rights has addressed this question, because it came up in a case several years ago, and the European Court concluded that the conditions in US prisons are, in fact, superior in many ways to those in many European prisons. That is an important point. The broader point, though, that I would like to make about this is that there is criticism about prison conditions in the United States. I think they are actually broadly similar to those in the United Kingdom, from what I know, although you are correct also that there is some variation between the federal and state prison systems, and particular criticism of certain states.

Generally, the United States prisons are humane; they are well run and well operated. The extradition treaty that we have is premised on mutual trust and respect. We could all talk about ways in which our justice systems are different. There are aspects of the US justice system that come under criticism in the United Kingdom; there are aspects that come under criticism in the United States. In the same way, there are aspects of the justice system here in the United Kingdom that come under criticism. I would note that, while we have great respect for the judicial system here, it falls short of ours in some ways. There is often no recognition of that, but courts in the United Kingdom routinely admit evidence that would violate our fourth amendment, and hearsay evidence that would violate our sixth amendment. Defendants in the United Kingdom do not have the protections of the United States' Fifth Amendment. That is not to say that your justice system in the United Kingdom is not fair; we believe that it is. The mutual respect for one another's justice systems is really the foundation that underlies the extradition treaty, and I think that is important to remember.

Lord Mackay of Drumadoon: A further issue that may be related to the point you have just been making is the current mechanisms that are available for British citizens who have been

extradited to stand trial in the United States and are subsequently sentenced and imprisoned there. Could you assist us by just explaining, in terms that would be of practical assistance to us, the procedure for such prisoners seeking to transfer their sentence, so that it would return them back to the United Kingdom and they could serve their sentence there?

Amy Jeffress: Yes, there is a process under which that can be accomplished. In fact, in many recent cases that has happened. Normally the person has to serve at least a portion of their sentence in the United States, so that the arrangements can be made. There is a process that has to be conducted in the United States, where the prison authorities have to approve. The judge sometimes has to approve; the prosecutor sometimes has to approve. If the parties agree and can recommend that, then it often does happen that a person can be transferred to the United Kingdom to serve the remainder of a sentence.

Lord Mackay of Drumadoon: Does that involve the case concerned and the sentence imposed being re-examined, once the sentence is under way and the parties and the court deciding whether or not an order should be granted allowing the return to the United Kingdom in the instant case?

Amy Jeffress: The sentence is imposed in the United States, and then where that sentence is carried out is what we are talking about. I think that, when someone is transferred back to their country of origin, that country has the authority to determine what should be done with what is left of the sentence.

Q74 Lord Empey: I wonder if I might ask Amy one further question. There is a bit of concern and certainly a lack of knowledge in this country about the fact that a number of your prosecutors and indeed judges are elected political officials in states. Do you feel that that can lead to circumstances in which a person who is being extradited is not subject to the

same standards and would you accept that, because that system is quite different from our system, it can lead to a great deal of misgiving about the process?

Amy Jeffress: I do not think that it should. I would note at the outset though that most extradition requests, come from the US federal system, not the states, although many requests do come from the states as well. The federal system does not have elected judges. Judges in the federal system are appointed by the President and confirmed by the Senate. Even in those states that have elected judges, those judges take an oath to administer justice and, with very rare exceptions, they do so fairly and impartially, as they are sworn to do. I do not think that that should be something that is taken into consideration. Again, that goes back to my point that the systems may differ, but there should be mutual respect for one another's systems.

The Chairman: Advertisements that we have seen for candidates for judicial office, shall I say, run counter to the traditions associated to that office in our country, as you will appreciate. Have you any thoughts for us about that?

Amy Jeffress: I am not personally in favour of judicial elections. It is not something that I am expert on either, I might add. Whatever is said during campaigns, and I can understand the misgivings about some of that, I am not aware of many examples where it actually has affected how a judge performs once elected and once serving. Most judges try very hard to do a good job and do so.

Lord Brown of Eaton-under-Heywood: Can you just help with this? Can you think of any case, in your experience, in which the rule that we have here about not allowing intercept evidence has affected a decision as to where a particular alleged crime should be tried?

Amy Jeffress: That is a very good question. That can be considered as one of the factors, because one of the factors that prosecutors consider when deciding which country is the

best country in which to bring the prosecution is where the evidence is located and where the evidence is best. That is a factor that can be considered. I do not recall it being decisive in any particular case, but I cannot say that it is not relevant. It does seem to be relevant.

Q75 The Chairman: Time is moving on. Does anybody else have a question they would like to ask Ms Jeffress? Could I then say thank you? If there is anything you would like to say to us above and beyond what you have already done, which you feel is important for us and for our understanding particularly of the US side, which we have agreed is in many ways rather different, despite superficial similarities, from the way we do things, please feel free.

Amy Jeffress: Thank you. Even given the differences, I actually think our justice systems are closer than most. Our justice system is much closer to yours than yours is to most other countries with which the United Kingdom has extradition treaties. Our system came from yours and, although there have been some changes in 200 years, really they are more similar than most people recognise. With that said, where there are differences, I think that we need to respect one another's systems and recognise that, regardless of those differences, the justice system in the United States is fair and, likewise, the justice in the United Kingdom, while it might not measure up in certain ways to what United States authorities are used to, is also fair and we have mutual respect for one another's systems.

I thank you for inviting me. I really appreciate the work that the Committee is doing. It is clear that you are looking at the facts and I think that, when you look at the facts in a really fair and careful way, you will conclude, as Sir Scott Baker's very thorough review did several years ago, that the US-UK treaty is fair, balanced and operates in the interests of both of our countries.

The Chairman: Thank you very much indeed. We are all very grateful to you for having had to get up so early in the morning. Thank you very much.

Amy Jeffress: Thank you. It is a pleasure.