JOINT STANDING COMMITTEEE ON TREATIES

INQUIRY INTO AUSTRALIA'S EXTRADITION LAW, POLICY AND PRACTICE

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I have had a longstanding professional interest in extradition law and policy, commencing in 1978 when I studied for a doctorate in law at Cambridge University in England. Subsequently, I worked as a consultant and Senior Fraud Officer for the London-based Commonwealth Secretariat (1981-86) and then was recruited to head the newly established International Branch in the Criminal Law and Security Division of the Commonwealth Federal Attorney- General's Department (1986-1988). During my tenure as Senior Assistant Secretary with the Federal Government, the Extradition Act 1988 was passed and a major programme of extradition negotiations was completed. Since 1988 I have been in private practice as a barrister based in Sydney, and have participated in a number of extradition cases both in Australia and overseas.

GENERAL OBSERVATIONS

The Extradition Act 1988 as amended and the "modern" Australian extradition treaties are designed to reduce the opportunities of "fugitives" for resisting extradition. For over 15 years, it has been Australian Government policy, albeit never publicly stated, to impose limits on the jurisdiction of Australian magistrates and the courts in extradition cases. There has been a significant shift of power to the Attorney General and his advisers, including the public servants in the Attorney Generals Department, in relation to extradition matters. Consequently, an Australian citizen subject to an extradition request from a foreign country may be forced to place an inordinate amount of trust in the Attorney General to safeguard his/her human rights.

Apart from the "no evidence rule on extradition", a "fugitive" in extradition cases faces numerous disadvantages, including the following:

> A presumption against bail even for Australian citizens who have never been previously charged with a criminal offence– in most extradition cases a "fugitive" must contest his/her extradition while in an Australian prison.
>
> A series of rules in the Extradition Act, the extradition regulations and extradition arrangement that have been largely devised by prosecutors and/or government officials to make extradition easier for the foreign country.

Government decision makers in extradition cases have a "natural bias" in favour of extraditing a "fugitive." The decision maker in relation to initiating the extradition process in Australia is the Attorney- General, who in practice acts on the advice of public servants in the Attorney-General's Department. The same public servants will usually advise the Attorney-General in relation to his/her determination to make a surrender determination, in cases where the courts have held that the person is eligible for surrender. It may be expected that human rights considerations except in the most extraordinary circumstances or in cases required by law (see eg death penalty safeguard) will be given a lower priority than international law enforcement interests and considerations of good bilateral relations.

There is no legal restriction on a foreign country making a second extradition request, in circumstances where the first extradition request is rejected by an Australian court. For example, where an extradition is won by a "fugitive" on formal grounds, a new extradition request may be made with new documents correcting the technical defect. In cases where an extradition is won on substantive grounds, such as lack of evidence, the Australian Government will not usually act on the second extradition request unless new evidentiary material is forthcoming. There is a possibility that successive applications for extradition may at some stage constitute an abuse of process but this is a highly unlikely scenario.

The rules of the extradition contest may be altered. For example, where a "fugitive" has been successful in resisting extradition, he/she faces the possibility that the extradition arrangement with the foreign country or even the Extradition Act may be amended to overcome the fugitive's "extradition success." The amended extradition arrangement will be applied retrospectively in relation to the new extradition request

(A) Extradition for the purpose of questioning, not for the purpose of prosecution

The standard rhetoric is that civil law countries face significant difficulties in complying with the prima facie rule of extradition. Various reasons have been given to explain the cause of these difficulties. There is no doubt that the traditional strict rules of evidence have resulted in foreign countries losing extradition cases in Australia, particularly in white-collar crime cases. But the adverse effect of these rules from the governmental viewpoint has been diluted by specific statutory provisions, such as the authentication rules in s 19(6) and s 19(7) of the Extradition Act, the wide ranging admissibility provision in s 19(8) of the Act (that pick up recent changes to the Evidence Acts under the law of the Commonwealth and the states) and the relaxed prima facie standard as espoused in s 11 (4) of the Act.

There is another consideration. It is not widely known that many civil law countries seek the extradition of persons at a very early stage in the investigative process. That is, the real reason why civil law countries may not be able to produce material to satisfy a prima facie standard (even under relaxed admissibility requirements) is that the investigation of the alleged crime is half-baked or incomplete, and extradition is

premature. Indeed, I suspect that in many instances civil law countries may not be seeking the extradition of a person for the purposes of prosecution but rather for the inappropriate purpose of questioning a suspect for his or her involvement in an alleged crime.

For example, in **Republic of Argentina v Steven M Rosario** (Unreported, November 14, 2000, Sydney Magistrates Court) the Honourable Blackmore SM ruled that Mr Rosario was not eligible for surrender because s 19(2)(a) and (3) of the Extradition Act were not satisfied. The Argentine court had issued a warrant for the arrest of Mr Rosario in the following terms:

> "to order the arrest of Steven Michael Rosario, whose personal data appears in folios 161/2 for him to make a statement, following section 294 PPC due to his alleged involvement in the investigated facts."

The warrant for arrest issued by the Argentine court did not expressly state the offence(s) for which the accused was wanted in Argentina. This was not a minor deficiency that could be corrected during the extradition hearing by relying on the adjournment provision in s 19(5) of the Extradition Act. The court found that there was no duly authenticated warrant for the arrest of the person for the offence of which he was accused. The failure to produce a warrant of arrest that satisfied the description in s 19(3)(a) of the Act was fatal because the warrant of arrest is a fundamental documentary requirement under the Act. Consequently the court rejected the Argentine request for extradition and released Mr Rosario.

It is clear that the stated purpose of the extradition request of Mr Rosario was "for him to make a statement" under section 294 of the Criminal Procedure Code of Argentina. Section 294 gives a defendant a right to make a statement before a judge in Argentina at the preliminary investigative stage. Under section 307 of the Code the defendant's prosecution cannot be ordered before he makes an unsworn statement, for example, under s 294, or without putting on record his refusal to make a statement.

The Joint Standing Committee may ask why is a foreign country seeking the extradition of an Australian citizen for the purpose of questioning that citizen? There is provision under the Mutual Assistance in Criminal Matters Act 1987 and the Mutual Assistance in Criminal Matters (Argentine Republic) Regulations (SR 1992 No 372) for persons to give evidence or assist investigation. If civil law countries wish to take statements from persons present in Australia, there is adequate legal provision without resorting to extradition.

B Does the prima facie standard protect the rights of a fugitive?

The Attorney-General's Department makes the following submission to the Senate Committee:

> "The requirement to establish the prima facie case cannot be relied on as a test of good faith of the requesting State. If a foreign government is prepared to act in bad faith by providing a false warrant and statement of alleged conduct, it would be naive to suppose that such a government would not also be prepared to

> produce false evidence in support of the request. The court's capacity to look into good faith of the request arises not from the prima facie case requirement, which essentially goes to the cogency of the evidence, but from the right of the fugitive to raise specific issues."

Similarly the Director of Public Prosecutions (DPP) makes the following comment:

> "The requirement to collate evidence ... does little to protect the rights of the individual. It does not take a great deal of evidence to satisfy a prima facie evidence test and if a foreign country was prepared to request extradition for an improper purpose it would be an easy matter for the country to fabricate the evidence required to support the request."

These statements should not be accepted at face value. In my opinion, they ignore the reality of police behaviour even in Australia. For example, some police and prosecutors in a foreign country may be prepared to tell lies about what a witness or the fugitive has said – for example, they may be prepared to provide an untrue or misleading summary of a statement of a witness (see for example **United States v Todhunter** discussed below.) But the same police investigator or prosecutor may be extremely reluctant to fabricate an actual signed statement of a witness and produce it to a foreign court (but **see Stanton v DPP & Republic of the Philippines**, discussed below).

Furthermore, there is a wide range of police practices and prosecutorial behaviour in countries with which Australia has extradition relations. In some countries the police and prosecutors are unduly influenced by local military commanders or powerful political individuals and pay little, if any, regard to the human rights of defendants. In other countries, including sophisticated democracies such as the United States of America, prosecutors have tremendous discretion or influence in the decision to lay charges. Prosecutorial overreach and the overloading of indictments as a means of getting the best result in plea bargain negotiations is not uncommon. In such cases, resisting extradition may result in a reduction of charges and a more just outcome (see for example **United States v Todhunter** discussed below.)

By requiring a foreign prosecutor to submit first hand statements of witnesses relating to the case against the fugitive, there is a greater chance that the illicit purpose of the prosecution or the hopelessness of the prosecution case will be revealed. This is not a fool-proof method of discovery. However, in an adversarial system of law, a defence lawyer will have a greater chance of detecting an improper, inadequate or biased investigation where the foreign prosecution is required to produce prima facie evidence of a crime. This may be illustrated by the case of **Stanton v DPP & Republic of the Philippines** (Unreported, Federal Court, Spender J, 12 January 1993).

STANTON CASE

On March 7, 1988 Australia entered into a "no-evidence extradition treaty" with the Republic of the Philippines. The Philippines was chosen as Australia's first Asian extradition treaty partner under the then recently developed Model Extradition Treaty. The decision to enter into such an arrangement was made on purely political grounds,

namely that the Australian government sought to express support to the newly established democracy under President Cory Aquino. The problem of Australian criminal elements in Manila's bars was a secondary consideration. As far as I am aware, the Australian government did not carry out a comprehensive review of the human rights situation in the Philippines prior to entering into extradition negotiations. The Australian Government hoped that the human rights position in the Philippines would improve under a newly established democratic government. However, recent reports in the Philippines suggest that abuse of human rights by the police in the Philippines is as great a problem today as during the martial law years under former President Ferdinand Marcos.

On October 15, 1991 the Philippine Government sought the extradition of Terence Stanton, an Australian national, and his Filipino/Australian wife for the alleged murder of an Australian national. The Stipendiary Magistrate and, on review, His Honour Mr Justice Spender held that Mr Stanton and his wife were eligible for surrender to the Philippines for the crime of murder.

In the instant case the Philippine Government had provided material that went to the strength of its case against Mr Stanton, even though such material was not required under the Extradition Treaty with the Republic of the Philippines. Given that such material was before the Australian court, Mr Justice Spender took the opportunity of commenting on this material, albeit that such material was irrelevant for the purpose of discharging his functions under the Extradition Act. His Honour reviewed the evidence in 7 pages of his judgement and made the following observations:

> "In exercising his discretion under paragraph 22(3)(f), the Attorney-General will no doubt give attention to the circumstances of the case and the nature of the allegations against the applicants. It is at this stage of the process that the qualitative merit of the request for extradition has to be assessed, and the responsibility for that assessment under the Act is that of the Attorney-General.
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> 54. In this regard, a number of disturbing features should be noted about the evidence in this case. These features raise serious doubts about the quality of the police investigation conducted in the Philippines and, at worst, the genuineness of the charges laid against the applicants. …
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> 60. There seems no doubt that Hulmes was murdered by somebody. There are, however, no witnesses to the crime, no confessional statements implicating the applicants, and a complete lack of supporting forensic evidence. The limited nature of the circumstantial evidence is compounded by the improbable circumstances of the alleged murder. Many important questions remained unanswered. …
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> 62. The approach to the investigation revealed in the "supporting documents" raises the serious possibility of fabrication of witnesses' statements….
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> 65. In short, it is apparent there are serious questions about the "conduct constituting the offence" revealed in the supporting documents, and the report of the National Bureau of Investigation of 28 February 1991 is wholly lacking

> in conviction. …
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> 66. In my respectful view, the particular circumstances of this matter indicate that the question of surrender under s. 22(3)(f) of the Act calls for a most careful scrutiny by the Attorney-General."

It is highly ironical that under the Australian extradition treaty with the Republic of the Philippines it was unnecessary for the Philippine prosecutor to provide any material on the conduct of the investigations in the Philippines. If the Philippine extradition request had not included such material then his Honour Mr Justice Spender could not have made his comments and the Australian Attorney-General would not have been in a position to reject the extradition request. However, the Philippine prosecutor prepared the extradition case as if he was preparing an extradition request to the United States of America. Hence, the prosecutor provided witnesses statements to satisfy the US test for extradition, namely that there was reasonable grounds to believe that an offence has been committed and probable cause that the defendants were involved in that offence. These evidentiary statements thus provided the means of detecting the grossly inadequate investigation and/or "malicious prosecution."

(C) **There is no empirical evidence that the US probable cause standard of extradition imposes serious problems for civil law countries. The US standard is a significant improvement on the "no evidence" test for extradition.**

The DPP submission canvasses three options: full evidence; probable cause; and no evidence. The DPP submits that " it is difficult to predict what the effect would be if Australia was to adopt probable cause as the test for dealing with extradition requests from civil law countries." This comment is inexplicable given that for over 150 years civil law countries have been required to produce material showing probable cause when seeking extradition of "fugitives" from the United States of America. It is interesting that neither the Attorney-General's Department nor the DPP suggest that civil law countries have had significant difficulties in complying with US standards of extradition.

Typically US extradition treaties require a foreign country to produce material showing probable cause (or reasonable grounds to believe) that the "fugitive" is involved in the alleged criminality. For example, Article XI (3) of the Extradition Treaty between Australian and the United States is in the following terms:

> " A request for the extradition of a person who is sought for prosecution or who has been found guilty in his absence shall also be supported by:
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> ....
>
> (c) a description of the facts, by way of affidavit, statement, or declaration, setting forth reasonable grounds for believing that an offence has been committed and that the person sought committed it."

While the Attorney-General's Department provides an accurate summary of US law on the requirement of "probable cause" (see pages 24-25 of submission), it fails to refer to any specific Australian judicial decision on this requirement. In contrast, the DPP makes various comments on the "probable cause requirement" which in my respectful submission are wrong as a matter of law. The DPP suggests that the probable cause requirement may be satisfied if the extradition papers include a mere "outline of evidence" or a "summary of evidence" which may be contained in an indictment or a statement of an investigative magistrate or judge. The implicit suggestion is that the court is not required to assess the quality or adequacy of the material in arriving at its decision under Article X1(3) of the Treaty and s 19(2)(b) of the Extradition Act.

The leading cases on the meaning of Article X1(3) are **Todhunter v United States of America** (1995) 57 FCR 70 (Full Federal Court); (1994) 52 FCR 248 (Spender J) and **Jacobi v United States of America** (Unreported Federal Court (Kiefel J) 8 November 1996). I intend to examine these cases in great detail because they illustrate how even a "probable cause rule" of extradition provides some protection to the rights of a "fugitive."

TODHUNTER CASE

The Todhunter case concerned a complex set of facts relating to the alleged involvement of Mr Todhunter in assisting an American businessman to launder monies obtained by fraud. Mr Todhunter was alleged to have given instructions to a London commodities firm which used a "trade manipulation called a brokers cross" which facilitated money laundering. The evidence that Mr Todhunter had given instructions to the commodities firm was a hearsay statement of a United States investigator summarising an interview with the owner of the commodities firm. The United States investigator suggested that Mr Todhunter had guilty knowledge because "brokers crosses" were unusual, illegal or improper. This suggestion was patently incorrect because it is well known in the commodities futures business that crosses serve a number of legitimate business purposes, such as hedging of risks. Although the theory of criminal liability of Mr Todhunter was flawed, the defence was handicapped in making these arguments in the Australian extradition hearing.

In *Todhunter v United States of America* the Full Federal Court upheld the construction of the primary judge, Spender J, that what was required under Article XI (3) of the Extradition Treaty with the United States was:

> " a description of facts providing reasonable grounds for believing that each element of the United States offence for which extradition was sought had been committed. Further, because extradition was being sought in relation to a number of offences,.. there had to be in the material a description of facts providing reasonable grounds for believing that each of the offences had been committed and that Mr Todhunter had committed it."(Full Federal Court at p 89).

The Full Federal Court observed that "what is involved is not notional, but is the commission of an offence by the person whose extradition is sought in respect of the commission of that crime. That, in turn, directs attention to the lex loci delicti in the United States." The Court concluded that:

> "Paragraph 3c of Art XI was directed to requiring something more that the supporting documents, namely, an affidavit, statement or declaration which gave a description of the facts and set forth reasonable grounds for believing that the person for whom the extradition was sought had in fact committed an offence under the applicable law of the United States." (Full Federal Court at p 90)

In assessing the material produced by the United States all authenticated documents, including hearsay statements, are considered. But the magistrate is required to shift and assess the material and take into account the quality of the evidence. As His Honour Spender J pointed out in his judgment:

> "The nature of hearsay, whether it be attributable or nor attributable, the quality of the source, and other factors may all bear on the question whether the description, be it hearsay or otherwise, is such as to found "reasonable grounds to believe." (p 251)

His Honour Mr Justice Spender concluded that the material did not provide reasonable grounds to believe as to the guilt of Mr Todhunter in respect of 23 of the offences (transportation of stolen goods charges). However, His Honour did rule that there were reasonable grounds to believe that Mr Todhunter had committed two offences (conspiracy to transport money obtained by fraud and conspiracy to defraud the Internal Revenue Service). The Full Federal Court affirmed the decision of His Honour.

In the Todhunter extradition case the defence was very concerned about a number of suspicious circumstances concerning the investigation and the circumstances surrounding the extradition. For example, the United States Government submitted to the Australian courts an affidavit by a special agent that summarised a series of interviews with 4 witnesses. None of those witnesses had made sworn statements. Subsequently, 2 of those witnesses swore statutory declarations that repudiated in detail many of the crucial statements contained in the affidavit of the US Government special agent. In essence, the 2 witnesses, who are reputable British businessmen, called the US special agent a liar. (These statutory declarations were not admissible in the Australian extradition proceeding because of s 19(5) of the Extradition Act).

Eventually Mr Todhunter was extradited to the United States and entered into a plea bargain agreement whereby he pled guilty to one of the two charges, namely conspiracy to defraud the IRS. There is no question that the statutory declarations of the 2 witnesses (together with other exculpatory material which had been gathered while Mr Todhunter was resisting extradition), had a significant influence in the outcome of the plea bargain negotiation. It was agreed that the United States Attorney would make no recommendation as to sentence. The United States District

Court imposed on Mr Todhunter the most lenient possible sentence, namely "time served" with no fine.

In my opinion, Mr Todhunter should never have been charged with any offence. Originally, the US authorities wished to interview Mr Todhunter pursuant to a letters rogatory, but unfortunately the US investigators ran out of time and did not contact him at his English address. The ignorance of the US investigators and their flawed understanding of commodities markets and money laundering prejudiced them against Mr Todhunter. When the investigators could not find evidence of critical matters, they simply created the evidence by putting words into witness's mouths. None of these witnesses provided sworn evidence to the US investigators, but 2 of the witnesses gave statutory declarations supporting Mr Todhunter.

JACOBI CASE

Mr Reiner Jacobi was indicted in the United States in 1991 on a charge on conspiracy to import and distribute hashish. The allegation against Mr Jacobi is that in 1985/86 he conspired with Mr Thomas Sunde to import drugs into the United States aboard a vessel known as Axel D. The core of the conspiracy allegation is that Mr Jacobi agreed through Mr Sunde to supply confidential information that would assist the conspirators to avoid detection and prosecution. In particular, Mr Jacobi's role in the drug importation allegedly consisted of informing a king pin drug trafficker as to the location of a surveillance bug on a boat called Axel D that had been secretly planted by the US Drug Enforcement Administration while the boat was in Darwin, Australia.

The conspiracy case against Mr Jacobi relies substantially, if not entirely, on the uncorroborated assertions made by the witness, Tom Sunde. Sunde had worked for the drug organization for 11 years and had in fact been persuaded by Mr Jacobi to co-operate with US Customs to break the international drug ring..

In 1991 when the indictment was issued, Mr Jacobi was employed as an agent of the Philippine Presidential Commission on Good Government (PCGG) with responsibility for tracking the hidden illicit Swiss assets of the former Philippine dictator Ferdinand Marcos. The effect of the US indictment was to set back the PCGG's recovery efforts for 10 years. The circumstances surrounding the indictment are highly suspicious, including the fact that at the time that Mr Sunde was providing evidence against Mr Jacobi, he was used to try and lure Mr Jacobi to Switzerland where he was under investigation for obtaining bank secrets about the Marcos assets.

The Swiss authorities sought to extradite Mr Jacobi from Germany for the charges of economic espionage and prohibited action on behalf of a foreign state. The German courts rejected the extradition request on the ground that it was a political offence. After his extradition victory in Germany, Mr Jacobi flew to Hong Kong where he was arrested under a United States warrant for drug trafficking.

The United States authorities sought to extradite Mr Jacobi from Hong Kong but without success. On 1 July 1992 the Hon Peter White, a Hong Kong Magistrate, rejected the extradition of Mr Jacobi on the ground that "there was insufficient evidence in the affidavit of the witness Mr Sunde upon which a properly instructed

jury could convict." (this is a prima facie evidence test). The court noted that no weight could be properly attached to the evidence of Mr Sunde because his "evidence had been given in a careless manner and include(d) basic and significant allegations of which little or no sense can be made.

Two years later in 1994 the United States made a request to the Australian Government for the arrest of Mr Jacobi on the same charge of drug trafficking that he had faced in Hong Kong. No new evidence was supplied by the United States. Indeed, the affiants relied on by the United States for Mr Jacobi's extradition were the same as those that the United States Government had relied on its failed request to extradite Mr Jacobi from Hong Kong.

But in the Australian extradition proceedings, the United States Government presented only one affidavit of Mr Sunde, in contrast to the 3 affidavits that he had sworn for the Hong Kong extradition proceedings. It was the inconsistencies between the 3 Sunde affidavits in Hong Kong that had played a critical role in the decision of the Hong Kong court.

Because of the procedural limitation under section 19(5) of the Extradition Act 1988, the defence is not permitted to tender any evidence from a fugitive to contradict an allegation that he has engaged in criminal conduct. That is the American allegation of criminality is assumed to be correct and cannot be challenged by the defence, for example by producing contradictory evidence even out of the mouth of the prosecution's own witness. The effect of this rule is that Mr Jacobi was not entitled to tender in the Australian extradition proceedings any of the inconsistent and contradictory affidavits of Mr Sunde that had previously been presented to the Hong Kong court. In my view, the conduct of the United States authorities may be viewed as an exploitation of section 19(5) in that the Australian courts were prevented from receiving the earlier affidavits of Mr Sunde.

On 31 May 1995 the Honourable Mr Owens, Stipendiary Magistrate, held that Mr Jacobi was eligible for surrender to the United States. This decision was reversed on appeal to the Federal Court. In an unreported judgment dated 8 November 1996, Her Honour Justice S Kiefel rejected the United States request to extradite Mr Jacobi and awarded Mr Jacobi costs against the United States Government. Her Honour applied the "reasonable grounds to believe test" as formulated in the Todhunter. Her Honour also made the following additional observations:

> " A belief may be held without addressing all of the questions which might arise when reading a narrative of events…. Nevertheless that does not mean that a narrative of events provided as the description of facts required by the Article, must be taken at its highest or that questions which as a matter of commonsense arise with respect to the story put forward are to be shut out from consideration. It may be that a statement of facts is in its detail so general and unspecific, so confusing or apparently unreliable, that it could not be said to be arrived at by a basis in reason. Although lacking the formal requirement of proof one must be able to reason towards the belief. So whilst there may remain some element of surmise or conjecture, if the deficiencies in the factual outline are too great, the test will not be satisfied." (at p 9)

Her Honour then examined the facts as described in the United States affidavits. The court examined Tom Sunde's affidavit with precision. Her Honour said that the "exercise here is not simply one which requires acceptance of what is put forward as what has occurred." (at pp 15-16). Her Honour made the following devastating conclusions about Sunde's evidence:
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> " With respect to Sunde's description of events, it contains too many strange and unexplained features to engender any belief. There is nothing provided to give the story by Sunde reliability or credibility in any important respect. It follows that one could not then proceed to consider the facts as disclosed in connexion with the elements of the offence said to have been committed.
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> …….
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> The facts as described give rise to many questions but are, in my view, wholly insubstantial to provide grounds for a belief that the events occurred as asserted. A contrary view would require acceptance of them at face value. In turn this would involve the unquestioning acceptance of a somewhat bizarre version of events by a criminal who is also said to be a co-conspirator."

The United States Government did not appeal against the decision of the Federal Court to reject the extradition request of Mr Reiner Jacobi. Subsequently, from 1996 to 2000, Mr Jacobi's lawyers collected significant material showing that Mr Sunde's testimony was perjurious. However, all approaches to the United States prosecutor were rejected, and this included an offer by Mr Jacobi to voluntarily return to the United States.

Finally, in August 2001, a new United States prosecutor was appointed to review the evidence against Mr Jacobi. After a three and a half month investigation, the United States Attorney for the Southern District of Florida recommended that the indictment against Mr Jacobi be dismissed. On December 15, 2000 the United States District Court dismissed the indictment against Mr Jacobi, even though he was technically a fugitive living in Australia. The dismissal of the indictment is a clear recognition that the charge against Mr Jacobi should never have been brought in the first place.

Conclusions

I have made extensive reference to the facts and judgments in the case of Jonathan Todhunter and Reiner Jacobi so that the Senate Committee can understand the practical implications of giving Australian courts jurisdiction to apply a "probable cause rule" of extradition. A fortiori, in the case of a "prima facie evidence rule.'

The question arises as to what should be done in relation to extradition law. I will discuss this question when I appear before the Senate.

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