IN THE CITY OF WESTMINSTER MAGISTRATES' COURT:

UNITED STATES OF AMERICA

- V -

STANLEY TOLLMAN

I first give my reasons on the issue of whether certain counts are extradition offences.

1 Under s 78 (4) (b), I am required to decide whether the offences specified in the request are extradition offences. One of the counts alleged against Mr Tollman is that of money laundering and is contained in Count 50 of the third superseding indictment of 29th April 2003 The circumstances giving rise to this count in the indictment are relevant to the issue of passage of time. However, for these purposes, the conduct alleged does not give rise to conduct which would have amounted to money laundering under English law and Count 50 is therefore not an extradition offence.

2. Count 22 in the Third Superseding Indictment involves allegations against a number of unidentified persons alleging a conspiracy to defraud the revenue In the absence of any specific conduct by this defendant, I cannot be satisfied that the conduct would amount to an offence in English law. I therefore conclude that it is not an extraditable offence.

3. In respect of conspiracies to defraud the revenue and unlawfully and knowingly making untrue and incorrect tax returns, I have considered an interesting submission made on behalf of the defence. It has been submitted that these do not amount to extradition offences because they would not meet the test of transposition Any similar offence in English law would be committed against the Crown or Her Majesty The Queen In America the alleged victim would be the Inland Revenue Service and it is submitted that the making of a false representation to the IRS could not amount to the offence of cheating or defrauding the Crown or Her Majesty The Queen

4 This court from time to time has dealt with a number of cases involving the defrauding of the revenue in overseas states. Mr Lewis QC, on behalf of Mr Tollman, acknowledges that in the case of Nuland, the High Court rejected a similar submission That decision being binding upon me, I am satisfied that the alleged revenue offences are extraditable offences.

5 Following the discharge of Mrs Beatrice Tollman under s. 91 of the Extradition Act 2003 on the grounds that it would be unjust or oppressive to extradite her by virtue of her physical and mental ill health, I have now heard submissions and evidence in relation to an application under s. 82 for the discharge of Mr Tollman on the grounds of passage of time

6 The relevant chronology is as follows·

1978	The defendant and a Mr Hundley set up Tollman-Hundley hotels
1987 & 1989	The company negotiated loans with 5 banks
1989	The company purchases Days Inn of America
1990	The company defaults on its servicing of the financial loans that had been raised owing to a sudden downturn in business in the hotel industry
Sept 1991	An "earn-out" agreement is finalised
Sept 1992	Credit repayment agreement finalised
1991 – 1993	It is alleged that false representations were made by the conspirators to the First National Bank and the National Westminster Bank
1993 & 1994	Allegedly false statements and representations were made by the conspirators to the Marine Midland Bank and to the Chemical Bank
1993 – 1996	A number of allegedly false representations were made by conspirators to the Bank of America
1996	The United States investigation commences
Nov 2000	Mr and Mrs Tollman's application for Swiss citizenship was approved
2001	They move to live primarily in Switzerland but with frequent visits to New York

Between 3rd & 7th Apr 2002	Mr and Mrs Tollman visit New York
17th Apr 2002	Mr Tollman was indicted by a Grand Jury, together with others, with offences of defrauding the banks, making false statements to financial institutions and tax evasion
24th Apr 2002	Arraignment hearing which Mr Tollman does not attend
Jul & Nov 2002	Superseding indictments were returned by the Grand Jury
Jan 2003	The complaint against Mrs Beatrice Tollman alleging tax fraud was laid
18th Mar 2003	A request was made for the extradition of Mr Tollman under the 1989 Act
19th Apr 2004	Extradition request withdrawn
6th Aug 2004	Request for a provisional warrant received
17th Aug 2004	Stanley Tollman is arrested
Oct 2004	Formal extradition request received
19th & 20th May 2005	Abuse of process argument at Bow Street Magistrates' Court
6th Jun 2005	Disclosure ordered
7th Feb 2006	United States government apply for judicial review
6th Sep 2006	Administrative Court sets aside orders for disclosure and remits the case to the City of Westminster Magistrates' Court

7. Agreements between the company and certain banks were entered into between 1990 and 1992. The alleged offences of conspiracy to defraud the banks, based upon those agreements, are said to have occurred between in the period between 1991 and 1996 The allegations of tax evasion occur in the period 1994 to 1999

8 The passage of time to which these charges refer (taken to the date of this decision) amounts to a minimum of 11 years and a maximum of 16 years in respect of the fraud offences and a minimum of 8 years and a maximum of 13 years in respect of the allegations of evasion of tax

9 It is submitted by Mr Jones QC on behalf of the United States government that the defendant is not entitled to raise the bar contained in s ~~28~~ 82 of the Extradition Act 2003

because he has been declared by the American courts to be a fugitive and that the delays that have arisen in this case are brought about by the accused himself fleeing the country

10 Mr Jones relies upon the following passage from the case of Kakis

> "Delay in the commencement or conduct of extradition proceedings which is brought about by the accused himself by fleeing the country, concealing his whereabouts or evading arrest, cannot, in my view, be relied upon as a ground for holding it to be either unjust or oppressive to return him"

And he also relies upon the judgement of Latham J in the case of Cookeson -v- Australia

> "It is also important in the context of this case that no account should be taken of any periods of delay which were the result of the applicant himself deliberately avoiding the authorities Any such delay clearly could not be allowed to be used to his advantage".

11 I find as a fact that in April 2002, Mr Tollman had ~~Swiss~~ South African citizenship and was ordinarily resident in Switzerland. He made frequent visits to New York, the last of which was between 3rd and 7th April 2002

12 He left the United States of America without hindrance and before the Grand Jury returned their first indictment on 17th April 2002 He did not attend the arraignment hearing on 24th April 2002 but has since remained resident in the United Kingdom. He has not sought to conceal his whereabouts or evade arrest He is entitled, as he has done, to contest the extradition proceedings

13 I accept that Mr Tollman is described under United States law as a fugitive I do, however, consider that description to be a term of art in United States law I do not regard it as evidence that the accused fled the country or that he is therefore responsible for the delay

14 I am, therefore, satisfied that Mr Tollman is entitled to raise the issue of passage of time.

15 I am conscious that the investigation of fraud and the preparation of cases for prosecution are time consuming exercises but I note that it was some 6 years after the investigation had begun that the first indictment was returned by the Grand Jury. It was a further 2 ½ years before the formal extradition request with which we are now dealing was made Lengthy and complex extradition hearings, both in this court and in the High Court, have further added to the delay

16. I am required under s. 82 of the Extradition Act to bar these extradition proceedings by reason of passage of time, "if (and only if) it appears that it would be unjust or oppressive to extradite the defendant by reason of the passage of time since he is alleged to have committed the extradition offence".

17 In considering whether it would be unjust or oppressive, I am following the guidance of Lord Diplock in Kakis -v- Republic of Cyprus and I have looked at the complete chronology of events to see whether there is evidence which is no longer available which could have been made available had the trial proceeded with "ordinary promptitude". I have then considered whether the absence of that evidence would now make the trial unjust or oppressive

18 To conduct this examination, it is necessary for the defendant to identify the nature of his defence. It is said on behalf of the United States government, that it is necessary to have evidence of the detail of the defence and that because the defendant has not given evidence, his defence cannot be identified and therefore it is not possible to make an assessment of the evidence which is no longer available. I am unable to accept that submission and I am satisfied that the defence has been clearly identified in two defence case statements which have been signed and introduced in evidence by Mr Tollman's solicitor

19 In relation to the bank fraud charges, the defence to be put forward in any trial is that Mr Tollman denies knowingly and wilfully joining any conspiracy, any intent to defraud or any knowledge of the falsity of any statements made to the banks and maintains that at all times he was acting in good faith

20 In relation to the charges involving evasion of tax, Mr Tollman's defence is that no tax was due or owing and if there was any tax due or owing he did not wilfully evade paying that tax.

21 It is submitted on behalf of the government that because the defendant maintains his innocence, it cannot be unjust or oppressive to extradite him. I regret I have been unable to establish the reasoning behind this submission because it will only be those who maintain their innocence who would be facing trial in the requesting state and if the lapse of time is such they would suffer injustice and or oppression, then the protection is provided by s 82

22 It is further submitted on behalf of the United States of America that following the case of Woodcock, the proper approach is to leave questions of injustice caused by lapse of time to the American courts. I would be content to follow the guidance in Woodcock and presume that, as a matter of law in the United States, this issue would be comprehensively addressed. However, this is a rebuttable presumption and the primary responsibility for this issue is upon this court I have received evidence from Professor Sara Beale and Mr James Webster

23 Professor Beale told me that under American law there would be no possibility of aggregating pre-indictment and post-indictment delay and then looking to see whether the overall lapse of time had led to a real risk of prejudice or injustice Moreover, she told me that submissions in relation to post indictment delay have to meet a very high threshold and that no such remedy would be available to those alleged to be "fugitives". I am satisfied that the American courts have deemed Mr Tollman to be a fugitive and that therefore he would be unable to ask the court for protection from injustice due to the passage of time

24 In considering Lord Diplock's phrase "ordinary promptitude", I have made the assumption that an investigation of this complexity could well take 6 years in investigation and preparation for trial I have, therefore, looked to the events from 2002 to consider whether there is evidence that was available then and is no longer available, which would make the trial unjust or oppressive

25 I next considered what evidence might have been available to the defence had these matters come for trial in a timely way

26 The defendant's brother, Arnold Tollman, died on 19th August 2004, some 8 years after the investigation began. It is clear that his evidence is of considerable importance in this case and indeed the United States Assistant Attorney went to considerable and, in my view, inappropriate lengths, to obtain testimony from him. Mr Arnold Tollman played a significant part in the negotiations, preparation of documents and the making of representations to the banks The importance of his evidence is apparent from the fact that he was given immunity from prosecution His evidence may have assisted the prosecution but it is apparent that his evidence may well have assisted the defence greatly.

27 Derek Evans was a chartered accountant who undertook accountancy work for Mr Stanley Tollman and the Travel Group of companies. His evidence is important to the defence in relation to a number of matters, particularly the allegations of revenue fraud He was responsible for the preparation of the Inland Revenue Returns and for the movement of funds throughout the period covered by the charges. He retired in March 1998 and died in December 2002 Whilst much of the documentation would still be available, his oral testimony on how the documents were prepared and the reasons for the movement of funds would have been of importance.

28. The negotiations leading to the Credit Repayment Agreement which was entered into on 30th September 1992 form a significant part of Mr Tollman's defence A Mr Eisendrath was one of those involved in the negotiations and could have given material evidence He died on 29th June 2006.

29. Mr George Baronkay provided evidence to me about the likely destruction of records retained by the banks which he believed would not have been retained for more than 6 or 7 years Whilst I have no doubt that much of the documentation will have been secured by the prosecution and therefore available for trial, other documents which might have assisted in establishing Mr Tollman's degree of knowledge and his movements are probably no longer available

30. Mr Colin Passmore gave evidence to me about his efforts to trace a number of witnesses that the defence may have wished to have called. Some witnesses have so far proved untraceable

31. Inevitably, a number of witnesses will now have difficulty in recalling the events of the early 1990s Indeed in the transcript of evidence given in associated trials in 2003, witnesses have acknowledged an inability to recall salient events and conversations.

32 Important evidence could also have been given by Mrs Tollman. I have already found as a fact that Mrs Tollman's mental and physical condition is such that she should not be extradited and it is clear from the medical evidence that I received that she is unlikely ever to be well enough to give cogent evidence of the facts that would have been within her knowledge.

33 I have noted and take account of the fact the Mr Tollman is now aged 77.

34 In addition to claiming that Mr Stanley Tollman would be prejudiced by the passage of time because it would be unjust, the defence also maintain that there is evidence of oppression

35. This complaint turns upon the behaviour of the United States Prosecuting Attorney, Mr Stanley Okula. It is alleged that Mr Okula has displayed personal animosity towards Mr Stanley Tollman and his family which went far beyond the responsibilities of a thorough prosecutor He is said to have declared that he intends to make Mr Tollman's "life as miserable as possible" which is a comment he has not denied. He is also said to have commented that he was looking forward to having a "perp walk" with Beatrice Tollman I understand this to mean that he intended to walk publicly with Mrs Tollman through the streets of New York from the processing centre to the court house with her handcuffed and chained for the benefit of the press. In his affidavit, Mr Okula denies this allegation

36 I have heard evidence from Mr Robert Fink to whom this statement was made. Mr Fink represented Mr Tollman's son. Brett Tollman His evidence was corroborated by Caroline Rule who made a contemporaneous note of the conversation when it was repeated to her by Mr Fink shortly afterwards. I found Mr Fink to be an entirely honest and trustworthy

witness I believe his account to be true and I find Mr Okula's affidavit on this point to be untruthful.

37 Gavin Tollman is Stanley Tollman's nephew and whilst Gavin Tollman was in Canada, Mr Okula attempted to secure Mr Gavin Tollman into United States custody without proceeding through the extradition process. In September 2006, the Canadian court found that there had been an unequivocal abuse of the process of the court and that Mr Okula had misled the Canadian court. In these proceedings, Mr Okula claims that his actions had the support and approval of his superiors I find that evidence unlikely to be true

38 Brett Tollman is the defendant's son who was the subject of a prosecution by Mr Okula. Despite Brett Tollman's attendance at court voluntarily, Mr Okula at first opposed bail and then subsequently asked for bail in the sum of $25 million Mr Fink told me that Mr Okula had made it clear to him on a number of occasions that things "would be easier for Brett if his parents came back"

39 Mr Okula's actions, although reprehensible, when taken alone, do not in my view, amount to sufficient evidence to make a finding of "oppression" which would bar extradition However, they are factors to be considered when assessing the overall fairness in reaching the decision as to whether it would be unjust or oppressive for Mr Tollman to be returned

40. I turn next to the case of Cookeson and in particular the conclusion reached by Lord Justice Latham that:

> " the very real risk of deterioration in (the defendant's son's) health which would result from the applicant being moved to Australia is such as to cause oppression to him and through him to the applicant which is sufficient to meet the requirements of this section. As a result of which, and in my judgement, this court is bound to order his release"

41 Mrs Tollman, now aged 73, was the subject of an extradition request which has been discharged on the grounds that it would be unjust or oppressive to extradite her by virtue of her physical and mental condition. The doctors who gave evidence before me made it clear that she was suffering from serious physical and mental ill health which was probably not

reversible She was being treated at home but all 3 doctors confirmed that in the event of Mr Tollman being sent to America there would be an inevitable and disastrous effect upon her health Her health has already shown a considerable deterioration in recent months.

42 The overwhelming conclusion to be drawn from the medical evidence that I have heard is that the extradition of Mr Tollman would undoubtedly endanger the health of Mrs Tollman and possibly her life As such, in my judgement, this case cannot be distinguished from the case of Cookeson and that extradition would inevitably cause oppression to Mrs Tollman and through her to Mr Tollman who is caring for her at the present time after some 53 years of marriage.

43 Taking all these factors into account, I am satisfied that by virtue of the passage of time, it would now be unjust and oppressive for the defendant to be extradited and the defendant is discharged pursuant to s 79 (3) Extradition Act 2003.
↳ in relation to each offence

28th June 2007

Tim Workman
Senior District Judge
City of Westminster Magistrates' Court
London, SW1