



## Exit strategies

.....

**Former Morgan Crucible employee Ian Norris may have avoided extradition to the US, but don't expect to see judges do the same for everyone, says Anand Doobay.**

It is difficult to spot general trends in extradition case law, and the decision of the House of Lords to partially refuse the US extradition request for Ian Norris may provide a useful excuse to attempt this analysis.

Norris's extradition was sought for his part in the price-fixing engaged in by his former employer Morgan Crucible and his alleged actions in seeking to obstruct a US criminal investigation into this.

Most first-instance extradition decisions are unreported and only the most sensational receive any publicity. Appeals are heard by the High Court and do not generally receive as wide a circulation as most criminal cases through case reports or digest entries.

This can accentuate the ordinary difficulty of criminal appeals as judges hearing an extradition appeal may have little or no familiarity with extradition law or the historical concepts which underpin specific statutory provisions. All of this can conspire to make judges especially reliant on counsel.

This is compounded by the House of Lords agreeing to hear very few extradition cases. Norris's case is one of a handful accepted since the Extradition Act 2003 came into force.

Extradition cases generally fall into one of two categories. The first are those which argue for giving effect to the international arrangements that have been made to fight serious crime and terrorism.

The second are cases in which it appears that a very technical analysis of complex legislation leads to the discharge of a defendant normally with a comment that strict procedural safeguards must apply given the dramatic personal consequences of extradition. This tension is perhaps best illustrated in the following passage from the decision of the House of Lords in Norris: "At the very least, Mr Norris submits, there is ambiguity as to the meaning of section 137 and accordingly, as a criminal statute, it should bear the construction more favourable to the liberty of the subject – the approach favoured by each member of the majority in Aronson towards the 1967 act.

"Against this, however, there is telling authority the other way... in *In re Ismail* [1999], Lord Steyn said that 'a broad and generous construction' should be given to extradition statutes 'intended to serve the purpose of bringing to justice those accused of serious crimes. There is a transnational interest in the achievement of this aim'."

However, to apply this analysis may be to fall into the obvious trap. Some of the decisions would appear to suggest that judges are no less prone to deciding extradition cases influenced by the particular circumstances of a defendant or the nature of the allegations against them (for example, paedophilia or terrorism) than in ordinary criminal cases.

In some cases the personal circumstances of the defendant or their family makes it seem unjust or unfair that they should be sent to another country for a trial often for an offence alleged to have taken place many years previously. This is not always the overt reasoning applied by the court.

In Norris the Lords held that Norris could not be extradited for the price-fixing allegations but could be extradited for the allegations of obstruction of justice. However, the case has been remitted to the district judge to consider whether to order extradition on these charges would violate Norris's right to private and family life under Article 8 of the European Convention on Human Rights. Norris resigned from Morgan Crucible in 2002 in order to fight prostate cancer and is now 65. The company admitted taking part in cartel activities to the European Commission and the US Department of Justice and has paid substantial fines.

Many lawyers representing defendants before the magistrates' court may not have sympathetic facts in their own cases. Given this, they will often employ the approach of the successful surfer. Keep an eye on the swell (the appeal lists) and try to spot a wave on the horizon that they can ride, attempting to match its speed (by aligning the submissions in their case with an appeal that is pending), then manoeuvre into a position where the wave (appeal decision) curls over the top, forming a tube.

Those lawyers will have followed Norris's case with great interest and will now be hoping that this decision will allow them to ride to safety on his wave. However, this decision is unlikely to mark the advent of active and potentially controversial judicial intervention in the extradition process.

*Anand Doobay is co-author of Jones and Doobay on Extradition and Mutual Assistance and a partner in the fraud and regulatory department of Peters & Peters*

Section: TL Features  
Author: 96234

Date: 17-Jun-2008  
Source: The Lawyer

---

The Lawyer Group is a division of [Centaur Media PLC](#). 2008  
TheLawyer.com was built by [Sift](#) Group Ltd.