

## **BOUNTY HUNTERS**

It is not widely known that the United States has long recognised the practice of “rendition”. It was formalised by Presidential Decree during Bill Clinton’s term in office in 1995, but in reality dates back to the days of the bounty hunters who would bring back a fugitive, dead or alive, from wherever he or she had fled to. The US Attorneys’ Manual is very explicit as to the attitude of the United States Government to such practice. At chapter 9, section 15, the relevant extracts from the manual read as follows:

There may be available alternatives that will result either in the return of the fugitive or limitations on his or her ability to live or travel overseas. [The Office of International Affairs] will advise the prosecutor concerning the availability of these methods...[.....]

In *United States v. Alvarez-Machain*, 504 U.S. 655 (1992), the Supreme Court ruled that a court has jurisdiction to try a criminal defendant even if the defendant was abducted from a foreign country against his or her will by United States agents. Though this decision reaffirmed the long-standing proposition that personal jurisdiction is not affected by claims of abuse in the process by which the defendant is brought before the court, it sparked concerns about potential abuse of foreign sovereignty and territorial integrity.

Due to the sensitivity of abducting defendants from a foreign country, prosecutors may not take steps to secure custody over persons outside the United States (by government agents or the use of private persons, like bounty hunters or private investigators) by means of *Alvarez-Machain* type renditions without advance approval by the Department of Justice. Prosecutors must notify the Office of International Affairs before they undertake any such operation.

Rendition is kidnap by any other name. Those who successfully resist extradition to the US, or live in a country which does not permit such extradition, need not think that they are safe. If the US wants you badly enough, they are happy to come and get you, whatever you or your Government may believe. The manual goes on to talk about other means of getting people to the US, such as lures to encourage someone to travel to a third country from which extradition or rendition would be easier. And of course use of an Interpol Red Notice, which would result in a suspect’s arrest in any foreign country.

It was the latter that resulted in the arrest and detention in Switzerland of the Oscar-winning film director Roman Polanski, some 30 years after he had fled the US prior to a sentencing hearing after pleading guilty to the

statutory rape of a 13 year old girl. As a French citizen, he was immune from extradition for as long as he stayed in France. Clearly the prosecutors didn't think he was worth kidnapping, and were happy to play the long game. One way or another, the sheriff normally gets his man.

Rendition has been in the news over the last few years in another context, however. In the aftermath of 9/11, the CIA decided that they could extend the use of the concept to kidnapping someone in Country A, and transporting him to Country B rather than back to the US. US law does not permit torture, but it does permit the use of evidence obtained by torture. So you don't need to be Einstein to work out that kidnapping someone in Italy, and then transporting him to somewhere nice like the Yemen, where interrogation standards are perhaps, ahem, slightly less regulated than in Europe, would be a nice little way to sidestep the thorny little torture issue. And so they did.

But extraordinary rendition is a subject all of its own, and there are many many people who are much better informed and placed to comment on it than I, so I shall stick to the much less exciting topic of bog standard rendition, or kidnap for the sole purpose of bringing someone to the US who may not want to come.

Shortly after we arrived in Texas, there was a spate of arrests and extradition requests in relation to online gambling. UK listed companies are some of the world's leaders in this field, or were at the time. The US, by contrast, regarded betting on any sport other than horse racing as criminal, and outlawed all forms of online gambling. Many suggest that this attitude was driven in large part by the offshore location of most of the world's online gambling industry, which consequently produced no revenue for the US Treasury.

The US attitude to gambling goes back a long way, and can best be described as archaic, discriminatory, protectionist and nonsensical. When the white man was busy slaughtering native American Indians and stealing their land, deals were done with the tribes whereby if they agreed to live on a reservation, they would not be subject to any taxes, and in addition they could legally gamble. Certain states (most notably Nevada) permit certain forms of gambling. And so it was ultimately that the huge casinos in places like Las Vegas were born, and continue to thrive, in their own little legal bubbles.

Other "offshore" casinos such as the big river boats in places like Louisiana also escape the general prohibition on gambling, as do America's biggest race-tracks, because of course betting on horses isn't really gambling. The long and the short of it is that if you want to lose a fortune

gambling, there are plenty of legal ways to do it in America. But if you want to engage in gambling in any form not adhering to the above prescribed list, it's illegal. There are right ways and wrong ways to lose all your money, apparently. Four legs good, two legs bad.

Texas is not a state that permits gambling. But I met very few natives of Houston that didn't gamble. Many gambled on sports other than horseracing. Human nature has a way of finding how to circumvent the law on fundamental matters like this. Giles of course was gutted to learn that he would not be able to continue with his spread-betting addiction which had reached the stage where he was regularly betting on things like the aggregate number of the "shirts" of players scoring points in various events like rugby and American football. Being probably the world's worst gambler, whose annual ritual of losing money on the Grand National was the extent of my activities, I was never really troubled much by this little nuance of Texas life.

In the age of the internet, gambling has become accessible to all. There's pretty much nothing you cannot now bet on, online. And of course because the whole business is relatively modern, it wasn't specifically catered for (or proscribed) in US law. In fact, there was no Federal law proscribing gambling per se, because State laws were deemed sufficient in an age when in order to gamble, you had to be somewhere in person. So in early July 2006 the House of Representatives overwhelmingly approved Federal legislation to crack down on Internet gambling operations, including criminalising the processing of payments to such operations by banks.

And it didn't take long for the indictments. On 16<sup>th</sup> July 2006, just three days after we had arrived in Texas, David Carruthers, the UK Chief Executive of online gambling company Betonsports PLC was arrested when his plane touched down at Dallas Fort Worth Airport. He was en route to the company's headquarters in Costa Rica, having just attended the Annual General Meeting of shareholders in London. He made the mistake of taking an indirect flight, via America.

The US authorities had known he would be touching down at Dallas because of detailed passenger information required to be given to them by all foreign airlines since 9/11. Prosecutors said the arrest happened at that time because "it's when we knew he was coming." It's certainly a lot easier than extradition. He, by contrast, did not even know that there was an indictment outstanding with his name on (or doubtless he would not have flown into Dallas), as his indictment had been kept under seal by the prosecutors specifically so that they could surprise him.

Carruthers was traveling with his wife, Carol. She was allowed to fly onwards to Costa Rica. He was shipped to Missouri, where the indictment originated. He had been a vocal opponent of the new US legislation, and so had put himself very much in the firing line. He had been active in trying to get US legislators to accept that regulation of the industry was the way ahead, and would provide much tax revenue for the US. He compared the proposed new legislation with the prohibition on alcohol of the 1920's, and suggested that criminalising the business would be entirely counterproductive.

He was charged with racketeering. Prosecutors also brought charges against Peter Wilson, Betonsports's media director; Gary Kaplan, the company's founder; and several of Mr. Kaplan's relatives, whom the indictment alleged were involved in the business. The company itself was also indicted.

Betonsports PLC, which had a market capitalisation of approximately £120m, was all but destroyed overnight. Although listed in the UK, the vast majority of its customers were in the US, and the indictments put paid to that in relatively short order. Shares in other online gaming companies fell massively in response to the indictments, and because many banks and credit card companies refused to process payments for any online gambling businesses lest they themselves be indicted.

There was plenty of publicity on the case, coming as it did so soon after our extradition. Much hot air, but no action, of course. A week after his arrest, Carruthers was fired by the company, because his absence made it impossible for him to do his job!

Not long afterwards, Peter Dicks, the non-executive chairman of Sportingbet plc was arrested by Port Authority officials at New York's JFK airport pursuant to an indictment issued in Louisiana. By great good fortune, New York refused to extradite him to Louisiana as the State of New York did not ban gambling, and he was allowed to return home to the UK, where he has been stuck ever since for fear of arrest under an Interpol Red Notice if he travels abroad. This case too received much publicity.

What did not get much airtime, however, was the subsequent kidnap (sorry, rendition) of Gary Kaplan in March 2007. The little press coverage that there was at the time suggested only that he had been arrested by the authorities in the Dominican Republic, acting in concert with the FBI. I first became aware of it by accident when chatting with one of the attorneys who worked on a different floor in the same Houston building as Dan and Jimmy. This chap turned out to represent Kaplan.

Basically, the Federal Agents flew into the Dominican Republic, kidnapped Kaplan and shipped him back to the US to face trial alongside Carruthers. He was thrown into prison, where he remained until he was ready to enter a guilty plea. Kaplan's Houston attorney wanted to bring an action for kidnap against the US agents involved. He was hampered in his attempts, however, first by the fact that no-one in the US cares how a defendant comes into their jurisdiction, and secondly by the fact that the US is the single largest provider of overseas aid to the Dominican Republic, which made getting any complaint from them about the actions of agents of the US Government all but impossible.

The moral of this story should be clear. It doesn't matter who you are, where you are or what you do. Get on the wrong side of the US prosecutors and you and potentially your company will suffer the consequences. As Catherine Hanaway, the United States Attorney for the Eastern District of Missouri, said at the time, the fact that these betting operations may be legal in their home jurisdictions "does not entitle them to do business in the United States". And of the likes of Carruthers and Kaplan, "their efforts to avoid U.S. law enforcement will be challenged and brought to justice whenever possible." Asked whether it presented a challenge to prosecutors that Mr. Carruthers was not an American citizen, Ms. Hanaway said, "thus far, no."

At much the same time as Kaplan's rendition, the World Trade Organisation (WTO), in a case brought by Antigua, ruled that the US ban on online gambling was in flagrant breach of international law. Needless to say, the US took not a blind bit of notice. In fact, the US is not well known for its respect for international law, where the latter might conflict with its own. It refuses to accept the jurisdiction of the International Criminal Court, primarily because it has no intention of allowing US servicemen to be tried abroad on allegations of human rights abuses.

In May 2007, Betonsports gave up the fight and admitted to a "pattern of racketeering acts". The plea deal with the US Government encompassed a variety of activities, including mail and wire fraud, operating an illegal gambling business, and money-laundering. Naturally the deal included an agreement to cooperate against other defendants, which meant supplying witnesses and evidence against Kaplan and Carruthers.

Ms. Hanaway said the deal allowed the company to avoid further criminal prosecution. "This plea, combined with the terms of the civil injunction should put an end to the BetonSports illegal gambling empire."

All that remained thereafter was the ritual lynching of the indicted executives. Carruthers spent a month behind bars in 2006 before being

granted bail, the terms of which included a \$1 million bond, and 24 hour a day house arrest in a Missouri hotel, at his own expense. He could not initially set foot outside of the hotel other than to see his attorneys or for a medical emergency.

In April 2009, after nearly three years of this arrangement, he finally gave up the ghost and agreed to a plea and co-operation agreement that required him to admit to racketeering, and to give evidence against Kaplan.

Kaplan duly bowed to the inevitable and entered into a plea deal in the summer of 2009. He was sentenced in October 2009 to 51 months imprisonment, but because he had already spent a significant amount of time behind bars, he would be eligible for release in December 2010.

Carruthers was not so lucky. Although his sentence was significantly shorter, at 33 months, he would get no credit whatsoever for all the time spent in limbo in Missouri, and so would not be eligible for release until May 2012, nearly six years after his initial detention in Dallas. As a foreigner, he would also not be allowed to serve his sentence in a minimum security facility, and instead was sent to an immigration facility in West Texas, where the inmate population of about 1500 was 95% Hispanic.

To add insult to injury for David Carruthers, he faced the possibility of not being allowed to return to the UK under the prisoner transfer treaty, because the racketeering charge to which he pled guilty had no UK equivalent, since the conduct was entirely legal in the UK. Without dual criminality, the UK cannot accept the return of its own nationals, since it would be unable to hold them in a UK prison for acts which were not criminal in the UK.

Oh, and just for good measure, he had only been in prison a matter of months when several States announced their intention to decriminalize the very conduct for which he had been convicted.

David Carruthers did eventually secure repatriation and was finally reunited with his wife in August 2011, some five years after his fateful stopover at Dallas Forth Worth airport.