Constitutional Court — Right to Fair Hearing — Extradition Proceedings — Notice of Motion for declaration that right to fair hearing contravened, for stay of extradition proceedings and for compensation — Request by applicant to DPP for information about previous convictions of, outstanding charges against and agreements between witnesses against him and US authorities not granted — Whether right to fair hearing infringed — S 13, 20(1), 20(2), 20(6)(b) Constitution — Whether application premature as there had been no hearing — whether adequate means available to applicant under other law. Whether grant of adequate facilities under S 20(6)(b) of Constitution involves granting information about witnesses. Motion dismissed [Cases referred to [illegible]]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CONSTITUTIONAL COURT

IN MISCELLANEOUS

SUIT NO. 47/94

CORAM: THE HON. MR. JUSTICE THEOBALDS
THE HON. MR. JUSTIC LANGRIN
THE HON. MR. JUSTICE COOKE

BETWEEN	VIVIAN BLAKE	APPLICANT
AND	THE DIRECTOR OF PUBLIC PROSECUTIONS	FIRST Respondent
AND	THE ATTORNEY GENERAL	SECOND Respondent

Lord Gifford Q.C. for the Applicant

Lloyd Hibbert, Deputy Director of Public Prosecutions & Miss V. Hall for First Respondent.

Lackston Robinson Asst. Attorney General for Second Respondent.

Heard: July 4, 5 & 29, 1994

LANGRIN, J.

This is an application by motion under Rule (1) of the Constitutional Redress Rules (1963) pursuant to Section 25 of the Jamaica Constitution. The applicant by Notice of Originating Motion dated 4th July, 1994, sought to stay committal proceedings which are pending in the Resident Magistrates Court for his extradition to the United States to answer charges relating to Murder and Drug offences.

The applicant alleges in the Notice of Motion which was amended that Sections 20(1) and/or 20(2) and/or 20(6)(b) of the Constitution have been and/or are likely to be contravened in relation to him. The amended version of the Originating Motion states that certain provisions of Section 20 thereof have been and/or are being contravened in relation to him.

The relevant reliefs sought in the motion are stated as follows:-

1. A Declaration that the rights of the applicant to a fair hearing under Section 20(1) and/or 20(2) and/or 20(6)(b) of the Constitution of Jamaica have been and are contravened in extradition proceedings which have been instituted against

the applicant and which are now pending before the Half-Way-Tree Resident Magistrate's Court by reason of the refusal of the Firstnamed Respondent to disclose information relating to the witnesses whose affidavits are used in the said proceedings.

2. An order that the said proceedings be stayed until the applicant's rights under Section 20(1) and/or Section 20(2) of the Constitution have been observed.

3. An order that the applicant be awarded compensation to be assessed as the Court may direct from the State as redress for the deprivation of the protection of law under the Constitution.

The factual matrix on which the application is based are briefly summarised as follows:-

The applicant was on the 5th January, 1994 arrested pursuant to a warrant issued under the Extradition Act, 1991 following a request made for his extradition by the United States of America and is presently in custody pending extradition proceedings in the Half-Way-Tree Resident Magistrate's Court.

Letters of request dated 11th April, 1994 and May 11, 1994 were sent to the Director of Public Prosecutions on behalf of the applicant for the disclosure of information relating to any previous convictions or outstanding charges againsts the witnesses either in Jamaica or the United States; and for details of any agreements which may have been made between the said witnesses and the United States authorities in relation to their testimony.

The affidavits of the six witnesses clearly demonstrate their involvement with the applicant as well as with other criminal activities.

By subsequent letters dated April 18, 1994 and June 9, 1994 the first respondent refused to provide or to assist in obtaining information as requested on behalf of the applicant.

Section 13 of the Constitution of Jamaica provides that:-

> "Every person in Jamaica is entitled to the fundamental rights and freedoms of the individual" including "the protection

of the law" but "subject to respect for the rights and freedoms of others and for the public interest."

Section 20 sets out the provisions which by Section 13 are afforded to secure the protection of law and provides inter alia:-

"1. Whenever any person is charged with a Criminal offence he shall, unless the charge is withdrawn be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law.

2. Any Court or other authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time."

6. Every person who is charged with a criminal offence -

(b) "shall be given adequate time and facilities for the preparation of his defence."

Lord Gifford, for the applicant referring to the affidavit evidence argued boldly that the applicant is denied information possessed by the requesting state and relevant to the extradition proceedings. The applicant is therefore deprived of material on which he might successfully submit to the Resident Magistrate that the evidence of the said witnesses is worthless. Accordingly, the applicant cannot obtain a fair hearing of the extradition proceedings against him. Further the applicant has been deprived of adequate facilities for the preparation of his defence.

Lord Gifford also made reference to Halstead v. Commissioner of Police 25 WIR p.522. The Antiguan Constitution has a similar provision to the Jamaican provision in which it was held that that country's constitutional provision is applicable to preliminary enquiries. The case of Re Williams v. Salisbury 26 WIR 133 at 144 was also cited.

Lord Gifford argued that the right to a fair hearing includes the right of the person accused to obtain disclosure of relevant information about the character and previous convictions of witnesses relied on by the prosecution. Archbold 43rd edition para.480 was

relied on. Collister (1955) 39 CAR 100 was cited for the proposition that the Director of Public Prosecutions was obliged to inform the defence of any known convictions. Lord Gifford also relied on the Jamaican Privy Council case of Berry (Linton) v. R. (1992) 41 WIR p.244 at p.250 & 253 as authority regarding disclosure of statement of witnesses though he recognises that the type of disclosure sought is not the same as in the Berry case. He submitted that the test to be applied in such a situation is the test of 'real possibility of miscarriage of justice,' though he later stated that 'significant possibility' might be a better test.

He argued that in Extradition Proceedings it is relevant for the Resident Magistrate to take into account the character and antecedent of the witnesses whose affidavits are relied upon by the requesting state in making the determination required by S.10(5) of the Extradition Act, 1991. In support of that proposition R.v Governor of Pentonville Prison and Another exparte Osman (1989) 3 ALL ER 701 at page 720 was to be used as a guide as to how the Resident Magistrate should behave. The test to be applied by the Resident Magistrate in a committal proceeding is to be found in the case of Alves v. Director of Public Prosecutions and Another (1992) 4 ALL ER 787 at 791 where Lord Goff stated: "that in committal proceedings in this country the same test is applicable as in the case of a submission by the defendant of no case to answer at the end of the prosecution evidence at his trial".....

Lord Gifford in his submission feared that some plea - bargaining might have taken place with the witnesses who are self confessed drugs dealers who might gain an advantage by turning state evidence. He further argued that it is repugnant to justice that a man should be subjected to the loss of his liberty and to his removal from his country on the evidence of persons of dubious character whom he cannot cross examine without having the right to know the details of their antecedents and of plea bargaining agreements which may be relied on before the Resident Magistrate's Court. He further submitted that the information which was sought was not difficult to obtain.

Mr. Hibbert, Counsel for the Director of Public Prosecutions in his submission stated that S.20(1) of the Constitution did not apply since there was no hearing. The applicant cannot complain that the hearing is unfair unless there is a hearing. There has been no hearing, and even if it is likely to be unfair the applicant must await out-come of the hearing.

Mr. Hibbert further submitted that S.20(2) does not apply to these proceedings since by the nature of the proceedings before the Resident Magistrate they must be considered criminal proceedings and that S.20(2) deals with civil proceedings. The learned Counsel referred to the Jamaican Court of Appeal case of Lloyd Brooks v. Director of Public Prosecutions 73/91. Here in dealing with S.20(2) in relation to whether the section applies to Criminal Proceedings, Carey JA at page 5 of his judgment stated that S.20(5) dealt only with civil proceedings. S.20(2) cannot therefore avail the applicant.

Mr. Hibbert also made reference to S.20(6)(b) which provides that any person who is charged with a criminal offence shall be given adequate time and facilities for the preparation of his defence. Much was made of this section by Lord Gifford who submitted that in not providing the defence with details of conviction regarding the various witnesses the defence was not afforded adequate facilities for the preparation of his defence. It was contended that the defence was given adequate time and facilities. The case of R.V. Robert Bigwell R.M. CA 15/90 was cited as authority for the meaning of 'adequate facilities'. In that case it was stated at page 9 by Forte JA. that 'adequate facilities' meant 'unimpeded opportunity'.

Mr. Hibbert submitted that paragraph 7 of applicant's affidavit be disregarded by the Court as it was not confined to the knowledge of the applicant and would amount to hearsay. He refers to section 408 of the Civil Procedure Code. Further, in order to get the information that the defence was seeking it would be necessary to contact every state in the United States which would be very time consuming and lengthy. In short the information sought is not easily obtainable and that there is nothing in the affidavit

to suggest that the information sought is available.

It was further argued that the duty to provide information beneficial to the accused would arise firstly if there was such information in existence either in the prosecutions' possession or the prosecution knew of its whereabouts. It could never be the duty of the prosecution to go out on a "fishing" expedition with a mere hope that something beneficial to the applicant might be discovered. If this were the case the prosecution would be required in all its cases to do extensive background work on all its witnesses. A fortiori the information requested was not relevant in the interest of justice which would compel the prosecution to seek out this information.

In relation to the question of disclosure it was argued that the Director of Public Prosecutions is not the prosecutor and is only involved in the extradition proceedings by mere coincedence and stated that by Section 17 of the Extradition Act any counsel could have been asked to represent the United States Government. The Director of Public Prosecutions merely represents the United States Government. His duty as representative of the United States is to disclose all that is in his possession and admitted that a prosecutor would be required to go further and to get things which are in existence and which can be identifiable in order to support the defence. In my view it is unreasonable to ask the Director of Public Prosecutions to furnish the particulars at this stage of the proceedings.

The submissions made by counsel led to two main issues:-

(1) Whether the application was premature and

(2) whether the giving of adequate facilities for the preparation of his defence under S.20(6)(b) of the constitution involves the granting of information as required by the defence i.e. details about the witnesses.

Let me now turn to the first issue:-

1. Whether the application before this Court is premature.

In choosing to proceed by way of Originating Motion instead of by writ the applicant found himself in the procedural difficulty

that under the Judicature (Constitutional Redress) No.2 Rules 1963, complaint that constitutional rights "are lilely to be contravened" must be made by writ and not by motion. Faced with this diffuculty the applicant abandoned this part of his claim and relied only upon the allegation that his constitutional right had been and were being infringed at the time of the hearing. The only argument which was now available before this court was that owing to the refusal of the prosecution to furnish details of convictions, sentences and character, a fair trial if held at the moment of the application could not be ensured without waiting to see whether at the actual trial the matters requested would be furnished. Indeed, in the arguments before us it was agreed on both sides that these requests in the normal way would be granted in the United States.

In Grant v. Director of Public Prosecutions (1981) 3 WLR 349, Lord Diplock in the Privy Council judgment at p.357 accepted the dictum of Smith C.J:-

> "in my view the state does not .... guarantee in advance that a person charged will receive a fair hearing or that the court will in fact be impartial. It provides means, by law whereby any infringement of that persons rights in these respects at the trial may be redressed."

The simple answer could be that the motion was indeed premature since at the time when the motion was filed there was no hearing. The Court will however, go further and say even if there was a hearing the Court would be reluctant to stay the Extradition Proceedings on the basis that the hearing was not fair since adequate means of redress would be available to the applicant under other law.

It is important to deal with the role of the Resident Magistrate in dealing with this matter. The Extradition Act, restricts the function of the Resident Magistrate in conducting the committal proceedings in the instant case. This is demonstrated by Section 10(5)(a) of the Act:

"(5) Where an authority to proceed has been issued in respect of the persor arrested and the Court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person that the offence to which the authority relates is an extradition offence and is further satisfied -

(a) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if the offence had been committed in Jamaica; or

(b) .....

The Court of committal shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his extradition under this act; but if the Court of Committal is not so satisfied ..... the Court of Committal shall discharge him from custody".

The role of the Resident Magistrate is limited to hearing the evidence tendered in support of the request for the extradition of the applicant and determine whether:-

(1) the offence is an extraditable offence and

(2) the evidence would be sufficient to warrant his trial if the offence had been committed in Jamaica.

This is so for reasons of convenience, efficiency and the saving of time.

The Resident Magistrate then in committal proceedings must stay within the confines of his jurisdiction. All that the Resident Magistrate needs is to establish a prima facie case. Once a prima facie case has been established then the Resident Magistrate will commit. In the case of R.v. Governor of Pentonville Prison exparte Osman [1969] 3 ALL ER 701 at page 721 Lloyd LJ states:

"In our judgment, it was the magistrate's duty to consider the evidence as a whole and to reject any evidence which he considered worthless. In that sense it was his duty to weigh up the evidence. But it was not his duty to weigh the evidence. He was neither entitled nor obliged to determine the amount of

> weight to be attached to any evidence or to compare one witness with another. That would be for the jury at the trial."

I turn now to the second issue:

II. Whether the giving of adequate facilities for the preparation of the applicant's defence under Sec.20(6)(b) of the Constitution involves the granting of information as required by the defence i.e. details about the witness?

This issue is perhaps the more perplexing. The applicant's case hinges on the notion of adequate facilities as provided by S.20(6)(b) of the Jamaica Constitution. His case is that without the antecedents of witnesses he is not afforded adequate facilities to prepare his defence. In the first instance the applicant is asking for information which is unprecedented in itself and in none of the cases cited by counsel for the applicant was there any similar situation where details of witnesses were required. The various cases cited by counsel dealt with disclosure but even with the broadest of analogies one cannot equate the type of disclosure with the information which the applicant sought. To prove his case the applicant would therefore have to establish that the information sought was the type of procedural requirement which existed before the coming into being of the constitution. In other words the applicant must prove that the delivery of particulars of conviction and antecedents of witnesses in extradition proceedings was a procedural right enshrined before the constitution came into force as an existing law comparable to that stated in the Trinidadian case of Thornhill v. Attorney General of Trinidad & Tobago [1981] AC 61. The delivery of these particulars at the committal proceedings is not a procedural provision necessary to give effect and protection to the right to a fair hearing. The applicant's case cannot pass this test and accordingly must fail.

The applicant in seeking the antecedent of witnesses harboured the intention of proving the witnesses worthless by discrediting them to the extent whereby the Resident Magistrate would arrive at the conclusion that their evidence cannot be relied on. The obvious

reasoning being that if their evidence cannot be relied on then there cannot be established a prima facie case. Lord Woolf in the case of Lloyd Brooks v. Director of Public Prosecutions and the Attorney General Privy Council Appeal No.43 of 1992 at p.9 had this to say:-

> "Questions of credibility, except in the worst of cases, do not normally result in a finding that there is no prima facie case. They are usually left to be determined at the trial."

The applicant would therefore except in the worst of cases fail in discrediting the witnesses at the committal proceedings. In my opinion it cannot be said that this case is clear that the witnesses are not to be believed.

Lord Gifford for the applicant in his submission cited the case of John Franklyn and Ian Vincent v. The Queen, a P.C. Appeal Nos.20 and 21 of 1992 for full disclosure before Resident Magistrate. This was cited for the proposition that the applicant's constitutional right under S.20(6)(b) had been imfringed in that he was not afforded adequate facilities for his defence. Firstly, that case dealt with a trial. Extradition Proceedings for committal is not a trial. The Resident Magistrate is basically only conducting a hearing to determine if the applicant should go to trial, therefore the Franklyn and Vincent case could not apply. What is of interest however is that the Privy Council Judgment stated that in the interests of securing a fair trial pursuant to S.20(6)(b), the requirement was for statements to be provided "where this is practicable" (page 7 of Judgment). The practicability of obtaining the information the applicant sought is questionable. It must also be pointed out that what was referred to in the Franklyn and Vincent case was statements, not details of witnesses plea bargaining arrangements. A completely different situation. Section 20(6)(b) could not therefore avail the applicant in light of the type of information he is seeking. Further, S.20(6)(b) could only avail an applicant where he is required to stand trial in a requesting state and these facilities are likely to be withheld from him. This is certainly not the

case with the applicant.

In the case of Maharaj v. Attorney General of Trinidad & Tobago [1979] A.C. 385 at 399 Lord Diplock said:

> "The fundamental human right is not to a legal system that is infallible but to one that is fair. It is only errors in procedure that are capable of constituting infringements of rights protected by section 1(a); and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure to observe one of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a rare event."

This passage expresses the fundamental principle that resort to the original jurisdiction of the Supreme Court is a last resort and this is expressly stated in the proviso to Section 25 of the Jamaica Constitution. This is even more pertinent when one considers that the requests of the applicant will be met at the trial.

For these reasons the arguments advanced by Learned Counsel for the applicant cannot withstand legal objective analysis and the motion therefore fails.

Theobalds J.

I have read the draft judgments of my learned colleagues. I agree with the reasoning and decisions expressed therein and only wish to add a brief comment of my own. Once paragraph 7 of the Applicants' affidavit dated 17th July 1994 and filed in support of this Motion discloses non-compliance with section 408 of the Civil Procedure Code then there is nothing left in the affidavit on which to grant the Declaration sought or indeed any Declaration. It cannot be urged that a party with known previous convictions cannot properly provide evidence on which extradition proceedings can be grounded. The case of R. Governor of Pentoville Prison ex parte Osman (1989) 3 AER page 701 mentioned in the principal judgment of Langrin J clearly sets out the responsibility and approach of examining magistrates. Indeed when this case was cited by learned Counsel for the applicant it provoked a unanimous query from the Bench as to whether this was an appropriate case to cite in support of the Motion.

This applicant in paragraph 7 (mentioned above) has not gone as far as to say "I am informed and verily believe." His is a stated belief not based on any foundation of fact which is shared with the Court. The exercise can be categorized as a "fishing expedition." Any declaration granted on this basis would open the flood gates and result in every Accused person against whom extradition proceedings are brought seeking such a declaration. We find no merit in this application. The motion is accordingly dismissed with cost to the Respondents to be agreed or taxed.

COOKE J.

There has been a request for the extradition of the applicant Vivian Blake by the United States of America. The procedural requirements having been satisfied he is now in custody pending extradition proceedings in the Half Way Tree Resident Magistrate's Court. He now seeks by an amended motion:-

1. A DECLARATION that the rights of the applicant to a fair hearing under section 20 (1) and/or (2) and/or 20 (6) (b) of the Constitution of Jamaica has been and/or are being contravened in extradition proceedings which have been instituted against the Applicant and which are now pending before the Half Way Tree Resident Magistrate's Court, by reason of the refusal of the Firstnamed Respondent to disclose information relating to the witnesses whose affidavits are being used in the said proceedings.

He also seeks various orders predicated on his success in being granted the requisite declaration.

I believe Counsel for the applicant recognised that sections 20 (1) and 20(2) of the Constitution of Jamaica 'the constitution' could not assist his cause. Section 20 (2) is concerned with civil rights and extradition proceedings being criminal proceedings, do not fall within its ambit. Section 20 (2) of the 'the constitution' is as follows:-

> "Any court or other authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time."

In respect of section 20 (1) of 'the constitution' which states:-

> "Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

it is impossible to argue that there has been any contravention. As yet there has been no hearing. Therefore to say that the applicants rights 'have been and/or are being contravened' is misconceived. Accordingly, if there is merit in this motion it must be based on the complaint that the applicant has not been given adequate facilities for the preparation of his defence. Reliance is placed on Section 20 (6) (b) of 'the constitution' which provides that:-

> "Every person who is charged with a criminal offence —
>
> (a) .....
>
> (b) shall be given adequate time and facilities for the preparation of his defence;"

The facilities which the applicant says he has been denied is the refusal of the Office of the Director of Public Prosecutions to provide the information requested by his counsel in letter dated the 11th April 1994. Therein the request is for:-

(1) .....(not relevant)

(2) Details of the previous convictions in Jamaica of Cecil Connor and of any other witnesses.

(3) Details of previous convictions in the United States of all witnesses in this case.

(4) Details of any charge outstanding in Jamaica or the United States against any witness in this case.

(5) Details of any agreements made between the United States Authorities and witnesses in this case whereby they have received any immunity, reduction of sentence, withdrawal of charges or any other favour in exchange for testifying in this matter.

(6) .....(not relevant)

By letter dated the 18th April 1994, the Office of the Director of Public Prosecutions replied that "we are not in possession of any documents from which details requested by you may be supplied." Dissatisfied with this response counsel for the applicant in letter dated May 11, 1994 countered by asserting that:-

> "However we are suprised at your advice that you are unable to supply the information requested in points 2 to 5 inclusive of our letter.
>
> In relation to previous convictions and charges outstanding against witnesses in Jamaica, this information is clearly available to you as Director of Public Prosecutions.
>
> In relation to previous convictions, charges outstanding, and immunity agreements in the United States, this information is in possession of the United States Government, whom you represent in these procedures.
>
> It is relevant to our clients defence in the extradition procedures to know what is the character and previous criminal records of the witnesses upon whose testimony the United States Government relies.
>
> We therefore repeat the request made in points 2, 3, 4, and 5 in our letter of April 11, 1994.

The last letter dated 9th June 1994 in these exchanges was from Office of the Director of Public Prosecutions. The relevant portion reads:-

> "As you no doubt are aware, previous convictions may be proven by comparing fingerprints as well as antecedent history of a person with the fingerprints on record at the Fingerprints Bureau. Although I am aware that a person named Cecil Connors had been charged for several offences in Jamaica and I believe he might be the same person who gave depositions in the above matter. we do not have in our possession fingerprints given by him in the United States of America, if any was in fact given, for comparison with our records in Jamaica. A similar situation holds for the other witnesses.
>
> Although there is no requirements in law for us to provide background checks on witnesses we intend to rely on, for the person accused or his legal representative, we would do this, if in our opinion the interest of justice warrants it. In the instant case, bearing in mind the nature of the proceedings and the fact that a Resident Magistrate presiding at the hearing is not concerned with the weight to be attached to the evidence adduced from individual witnesses, I cannot see the relevance of the background of the witness, including offers of reduction of sentences, or grants of immunity, et cetera, to these proceedings. It is my view that this would only be relevant at trial if extradition is granted.

The contents of these letters presaged the contest which was to take place in court. The battle lines had been drawn.

Section 10 (5) of the Extradition Act 1991 'the act' states that:-

> Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person, that the offence to which the authority relates is an extradition offence and is further satisfied —
>
> (a) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if the offence had been committed in Jamaica; or
>
> (b) .....(not applicable)
>
> the court of committal shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his extradition under this Act;

Section 10(1) and (2) of 'the act' sets out in general terms the conduct of committal proceedings. It is akin to our preliminary examinations.

> "10 (1) A person arrested in pursuance of a warrant issued under section 9 shall, unless previously discharged under subsection (4) of that section, be

> brought as soon as practicable before a magistrate (in this act referred to as "the court of committal") who shall hear the case in the same manner, as nearly as may be, as if were sitting as an examining justice and as if that person were brought before him charged with an indictable offence committed within his jurisdiction.
>
> 10 (2) For the purposes of proceedings under this section, a court of committal shall have, as nearly as may be, the like jurisdiction and powers (including power to remand in custody or to release on bail) as it would have if it were sitting as an examining justice and the person arrested were charged with an indictable offence committed within its jurisdiction.

These are the most relevant sections of 'the act' which concerns the issue to be determined and hereafter reference will be made to them.

I accept that section 20 (6) (b) of 'the constitution' (supra) applies to extradition proceedings. It is my view that as soon as an accused appears in court he has began to conduct his defence. If the case goes all the way there will be three distinct phases; committal proceedings; trial and appellate hearings. It should be readily discerned that the focus and emphasis differs from phase to phase. Accordingly what may be regarded as adequate facilities may well vary from phase to phase. To my mind whether or not adequate facilities have been given for the preparation of the defence of the accused must be determined within the context of the phase that is taking place. Further it would be unwise to ignore an intendment of 'the act.'

Now by section 10 (5) (a) of 'the act' (supra) the magistrate has to detemine if the evidence is sufficient to warrant a committal of the accused to stand his trial. What should be the approach of the magistrate in carrying out this task? The answer is given by Lloyd L J in R v Governor of Pentoville Prison and another, ex parte Osman [1989] 3 AER p.701 at p. 721 letter (g) where he said in the judgment of the Court that:-

> "In our judgment, it was the magistrate's duty to consider the evidence as a whole, and to reject any evidence which he considered worthless. In that sense it was his duty to weigh up the evidence. But it was not his duty to weigh the evidence. He was neither entitled

> nor obliged to determine the amount of weight to be attached to any evidence or to compare one witness with another. That would be for the jury at the trial."

This statement was made in the respect of section 7 (5) (a) of the Fugitive Offenders act 1967 which is essentially identical to section 10 (5) (a) of 'the act' (supra). I respectfully adopt this prouncement of Lloyd L J and regard it as a correct exposition of the Law. If this is so, (and there has been no debate that it is not) let us assume that the requested information contained everything that the applicant could ever wish for, how could this assist him?

The magistrate can determine that the credibility of a witness or witnesses is completely and utterly destroyed so as not to warrant a committal. Then that evidence could be regarded as worthless. However that conclusion must be based on what the witness or witnesses say - not what is said about them. If on what is said in the affidavits it appears that a witness or some witnesses fall within the category of an accomplice the magistrate would be entitled to take this factor into consideration. It is to be noted that the basis for any such categorization would be contained in the affidavits and would be part of the structure of or the case presented by the requesting state. If a magistrate were to take into account observations by the applicant about the character of the witnesses such magistrate would be in error. Such observations may no doubt be appropriate at a different phase - that of trial, if there has been a committal. Counsel when taxed as to the value to the applicant of the requested information submitted that there was "a significant possibility" that such information could affect the magistrate's determination. I cannot agree that this is so. Because of view I have taken, it is neither necessary for me to deal with the submissions made in respect of the duty of the prosecution to make full disclosure nor the authorities cited in support thereof. However en passant I note that the authorities cited all had to do with the trial phase. See Ward [1933] 2 AER p. 577 John Franklyn and (2) Ian Vincent v the Queen (Privy Council appeals nos. 20 and 21 of 1992 41 WIR p. 244).

Extradition treaties form part of international co-operation. It is expected that there will be dispatch in the honouring of treaty obligations. "The act" is the instrument which provides the legal frame-work in the instant case as to how requests for extradition are to be pursued. It is my view that the need for expedition is recognised in 'the act.' By section 14 (1) (a) (supra) it is seen that evidence tendered by the requesting state is by way of affidavit. There is no necessity for the witnesses to give viva voce evidence. Further 'the act' does not give the accused any right to cross-examine any of the witnesses relied on. Thus in comparison with committal proceedings as regards indictable offences committed within this jurisdiction an accused in extradition proceedings is at a relative disadvantage. In considering this issue I cannot ignore an intendment of the act - that the matter should be handled promptly. The committal court is being asked to determine whether or not on the properly authenticated documents placed before it there is sufficient evidence to warrant committal. Requests of the sort sought by the applicant in this case could possibly be regarded as a tool of delay. It does not demand any great ingenuity to conceive of other type of requests which could be made.

By section 10(1) and (2) of the act (supra) the committal court, "as nearly as may be" is conducted in the same way as if the magistrate was sitting as an examining justice in a preliminary examination. I have already pointed out significant differences between extradition committal proceedings and our preliminary examinations. I would like to add that in respect of our preliminary examinations no authority has been cited to support the stance of the applicant. I am further unaware of any practice which could lend support.

For these reasons I would dismiss the motion.

Cases referred to

1. Halstead v Commissioner of Police 25 WIR 522
2. Re Williams v Salisbury 26 WIR 133
3. Collister (1955) 39 CAR 100
4. Linton Berry v R (1992) 41 WIR 244
5. R v Governor of Pentonville Prison and Another ex parte Osman (1989) 3 All ER 701
6. Rhuso v Director of Public Prosecutions and another (1993) 44 WIR 287
7. Lloyd Brooks v DPP - 73/91 CA
8. R v Robert Bigwell R/M. CA 15/90
9. Grant v DPT (1985) 3 WLR 349
10. Thumbull v Att General of Trinidad & Tobago [1985] AC
11. Lloyd Brooks v DPP & AG PC Appeal 43/92
12. John Frankson and Ian Vincent v The Queen P.C. Barbados 20 and 21 of 1992 | 4 WIR 248
13. Maharaj v Att. General of Trinidad & Tobago [1979] AC 385
14. Ward [1935] 2 All ER 687

Extradition treaties form part of international co-operation. It is expected that there will be dispatch in the honouring of treaty obligations. "The act" is the instrument which provides the legal frame-work in the instant case as to how requests for extradition are to be pursued. It is my view that the need for expedition is recognised in 'the act.' By section 14 (1) (a) (supra) it is seen that evidence tendered by the requesting state is by way of affidavit. There is no necessity for the witnesses to give viva voce evidence. Further 'the act' does not give the accused any right to cross-examine any of the witnesses relied on. Thus in comparison with committal proceedings as regards indictable offences committed within this jurisdiction an accused in extradition proceedings is at a relative disadvantage. In considering this issue I cannot ignore an intendment of the act - that the matter should be handled promptly. The committal court is being asked to determine whether or not on the properly authenticated documents placed before it there is sufficient evidence to warrant committal. Requests of the sort sought by the applicant in this case could possibly be regarded as a tool of delay. It does not demand any great ingenuity to conceive of other type of requests which could be made.

By section 10(1) and (2) of the act (supra) the committal court, "as nearly as may be" is conducted in the same way as if the magistrate was sitting as an examining justice in a preliminary examination. I have already pointed out significant differences between extradition committal proceedings and our preliminary examinations. I would like to add that in respect of our preliminary examinations no authority has been cited to support the stance of the applicant. I am further unaware of any practice which could lend support.

For these reasons I would dismiss the motion.