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[REDACTED]
The Scottish Legal Aid Board
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EDINBURGH 36



COPY

Our Ref:ILSB

DC

Your ref. Assisted Person,

3 July 2008

[REDACTED]
reference

SMT08/4138390204

JOINT AUDITOR, EDINBURGH SHERIFF COURT,
COUNSEL'S FEES - MUNGO BOVEY QC
THE SCOTTISH LEGAL AID BOARD

Following the taxation a fortnight ago today, on Tuesday 17 June, I enclose draft Note. The purpose of sending it in draft is not that I can be persuaded to change my decisions, but:

- (1) to give you the opportunity of correcting any factual inaccuracies at this stage, in case there is a Note of Objections, and
- (2) to ask if there are any other matters, about which you might go to the Sheriff, so that I may 'write' about them at this stage.

I look forward to hearing from you, and I will of course let you have any substantial comments made by [REDACTED] to whom I am writing in identical terms.

Yours faithfully

Ian L. S. Balfour
Joint Auditor, Edinburgh Sheriff Court

If phoning, please contact me at home, 0131 337 2880
as I now work from home, but mail should go to
DX ED 4, Edinburgh 1, or to
LP 12, Edinburgh 2,
from where I will collect it twice a week.

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

DRAFT REPORT

by

THE JOINT AUDITOR

in Remit in terms of the Criminal Legal Aid
(Scotland) (Fees) Regulations 1989, Reg'n 11(2).

Mungo Bovey QC

SM/08/4138390204

1. This taxation arose out of a dispute between the Scottish Legal Aid Board (the Board) and Mr Mungo Bovey QC, in relation to fees claimed by Counsel for representing David John Calder in extradition proceedings at Edinburgh Sheriff Court and the High Court of Justiciary between 21 October 2004 and 14 July 2006. Mr Bovey's appearance at the second of two Bills of Advocation, on 14 July 2006, led to the last of forty-three notes of fee before me for taxation.
2. At the taxation on 19 June 2008, the Board was represented by [REDACTED] and [REDACTED]. Mr Bovey attended, together with his [REDACTED]. I am indebted to them for the helpful arguments that they submitted and their answers to the questions that I raised. I will first of all set out the principles that I have used, and then apply these principles to the fees claimed.
3. Applicable Table of Fees
Parties were agreed that the fees fell to be determined within the parameters of the Act of Sederunt, Criminal Legal Aid (Scotland) (Fees) Regulations 1989, (S.I. 1989 No.1491). This has been amended 17 times since 1989, and current editions, such as the one printed in the *Parliament House Book* at G 815 to G 826/11, give effect to these amendments; they therefore include text and figures that are not relevant to this taxation and they omit the figures on which this taxation has to be based. The figures are set out in the chart at

the end of this Report, and the text on which this taxation proceeds is:

10 (1). Counsel shall be allowed such fee as appears to [the Board, or at taxation¹] the auditor to represent reasonable remuneration, calculated in accordance with Schedule 2, for work actually and reasonably done, due regard being had to economy.

SCHEDULE 2 - FEES OF COUNSEL

1. Subject to the following provisions of this Schedule, fees shall be calculated in accordance with the Table of Fees in this Schedule.
2. Where the Table of Fees in this Schedule does not prescribe a fee for any item of work the auditor shall allow such fee as appears to him appropriate to provide reasonable remuneration for work with regard to all the circumstances, including the general levels of fees in the said Table of Fees.
3. The auditor shall have power to increase any fee set out in the Table of Fees in this Schedule where he is satisfied that, because of the particular complexity or difficulty of the work or any other particular circumstances, such an increase is necessary to provide reasonable remuneration for the work.
4. (power to reduce fees).

4. **Principle 1 - work within the Schedule**

Counsel was instructed, and accepted his instructions, within the Schedule of remuneration for criminal legal aid cases. This provides for 'reasonable remuneration for work with regard to all the circumstances, including the general levels of fees in the said Table of Fees' (underlining mine, Schedule 2, paragraph 2). The Table allows a rate of £315 per day for senior counsel for trial days in Edinburgh and £118.00 for consultations in Edinburgh. Although this figure has been not altered for many years, neither inflation nor the 'going-rate' in private cases may be taken into account. The Lord Justice Clerk stressed this in 1999,² disapproving a suggestion by Lord Prosser that auditors might depart from Legal Aid Schedules in complex cases and decide on 'reasonable remuneration' by exercising their own discretion.³ Even in a complex case like the

¹ Added by SSI 2005/113, coming into force on 25 March 2005, during the currency of this case, but the alteration is of no significance for this taxation. The phrase 'or 3', coming after the words 'Schedule 2' in paragraph 10(1) of current editions, was not added until 29 March 2007.

² Uisdean McKay v Her Majesty's Advocate 1999 S.C.C.R.679 at page 686B.

³ Lord Prosser's unreported decision of 17 February 1993 in Douglas Geddes v Lothian Health Board.

present one, an auditor must start with the fees in the Schedule, and, if need be, invoke the discretion which the Schedule allows to auditors in two areas, namely:

- (1) to create new categories under paragraph 2 of the Schedule (quoted above), where necessary work has been done outside the Schedule, i.e., where no fee exists for it, and/or
- (2) to uplift the fees under paragraph 3 of the Schedule (quoted above), if circumstances justify this.

I will consider the former in paragraphs 6 to 9 below, and the latter in paragraph 10 to 15. [REDACTED] stressed, in his opening submission, that the onus was on Counsel to explain why any particular fee should be added or uplifted.

5. The Table allows (as mentioned) a rate of £315 per day for senior counsel for trial days in Edinburgh. There is no provision (other than an auditor's general power under the Schedule to reduce any fee in the Table) for a trial that lasts for only part of a day. Lord Coulsfield underlined the point in HM Advocate v Birrell, 1984 SLT, page 480, at page 483F: 'Although *Mackie* was not a criminal case [it was a civil legally aided case], the court's view as to the basis of remuneration of counsel was relevant to the present case. There was nothing in the regulations to indicate a departure from the ordinary practice that if counsel attended, on instruction, he was entitled to a whole day's fee ...' However, if an auditor departs from the Table, by uplifting a fee in it (paragraphs 10 to 12 below), I believe that he should look at the circumstances of the uplift and not necessarily work in blocks of whole days.

6. **Principle 2 - creation of new categories under paragraph 2 of the Schedule.**

Preparation fees

The Schedule does not provide for 'preparation fees' but [REDACTED] did not challenge the right of an auditor to create a separate charge for preparation, where appropriate, on the basis that although the fees in the Schedule for consultations and trials already include an element for preparation, there may be justification for a separate charge where extensive and exceptional preparation is required. The Auditor of the Court of Session allowed preparation as a separate item in [REDACTED] (15 September 2000). The Sheriff Court Auditor

at Hamilton did so in [REDACTED] on 8 July 1993, and I did so in [REDACTED] (twice, on 23 February 1998 and again on 16 July 1998) and in [REDACTED] (14 February 2002) and in [REDACTED] (18 March 2002).

7. Preparation fees are often sought for the volume of paperwork that has to be to be considered, but there is no reason why researching the novelty, complexity and difficulty of legal issues should not be taken into account. There may also be a 'responsibility' element, where, as here, the client faces serious criminal charges. I am satisfied that this is a case where paragraph 2 of the Schedule should be invoked in order to create a category called 'preparation' for certain work which falls outside the Schedule. However, it should, in my view, be used only where the exceptional preparation cannot be covered by enhancing the fee for the work that required the preparation. In other words, remuneration for preparation in a complex case should, in my view, be dealt with first of all by increasing the rate for the consultation or the day in Court following the preparation, and not by a multiplicity of separate fees called 'preparation'. Part of Lord Prosser's Opinion in Geddes, which was not disapproved by the Inner House, and which I adopt as it sets out succinctly the basis on which Counsel should be remunerated, is at page 5 of the unreported decision:

Ever since tables of this type were originally prepared, I have understood that those items described as 'Day in Court' were regarded as covering not merely the hours in Court, but the necessary preparation, and indeed ancillary work, such as incidental discussion with solicitor, client or expert witnesses around the time of the proof. Correspondingly, the fee for the 'Day in Court' in the Table contains within it remuneration for such preparatory or ancillary work.

Following that guidance, I have allowed preparation on its own only where the exceptional preparation could not be met by enhancing the fee given for the work that followed. It used to be said that a good lawyer spends the same time in preparation as he spends in Court; whether that is true or not, the normal 'day in Court' fee is intended to include normal preparation for the day, and an enhanced fee to include exceptional preparation.

8. There are two other questions to be addressed before putting a figure on the fees to be allowed for preparation. (1) Should they be based on an hourly rate or a daily rate? In my

view, a daily rate is more appropriate, where possible, but an hourly rate was used in [REDACTED] (11 January 2000) and [REDACTED] (14 January 2000) below, so I will look at each entry on its merits. (2) What is the relationship between a preparation fee and an enhanced trial or consultation fee? Lord Carloway put it concisely in a non-legal-aid case in March 2006, and the principles that he set out have relevance here also:

[34] Traditionally, counsel did not charge separately for preparation. ... preparation, for whatever diet, was generally included in the fee charged for the appearance at that diet. That fee would be on the basis of a daily rate. ... If the case were one of more than usual complexity, the daily rate charged could be higher than normal in order to reflect the degree of difficulty.... [36] ... Ahmed's Trustees v Ahmed (No 1) 1993 SLT 390 ... signalled the way for counsel to charge for preparation separately from the fee for an appearance. [37] The problem, if it be one, from the approach in the argument sustained in Ahmed (supra) is that it does depart from the traditional one, illustrated in the inclusive fee note, of the Auditor allowing a daily rate which reflects the level of preparation. If preparation is charged separately, that is a factor which ought, it should follow, to be taken into account in determining the daily rate. A higher daily rate for a more complex case will become more difficult to justify if a fee, particularly a substantial one, for coming to grips with the complexities has been separately charged and allowed. ... No doubt either method of charging might be permitted in given cases. Some counsel may prefer to charge in the traditional way and others separately for preparation and appearance. ... [38] The Auditor must reach an objective view on what is reasonable. Although that may have some regard to the amount of days actually occupied in preparation, that is unlikely to be a determinative factor and in some cases may carry little weight. In many cases, the scope for meticulous detailed preparation is, if not infinite, considerable. A party may wish such preparation carried out and he is perfectly entitled to instruct that work. That does not mean, however, that it is reasonable for his unsuccessful opponent to be burdened with the resultant charges.⁴

9. So what is an appropriate daily rate for preparation? [REDACTED] made the valid point that preparation does not involve the stress of a Court appearance, and that a day of preparation should be considerably less than a day in Court - probably (he suggested) about two-thirds of it. [REDACTED] (15 September 2000) was both complex and lengthy (the longest running case in the history of the Scottish High Court of Justiciary) and the Auditor of the Court of Session allowed £840 per day for 106.5 days of preparation for Senior Counsel. In [REDACTED] (14 January 2000), Senior Counsel claimed (and the Board accepted) that 128 hours had been spent in preparation, but Counsel then converted this into 'say 16 days @ 8 hours per day @ £600 per day = £9,600'. That gives

4 *Kathryn Jane Jarvie v Greater Glasgow Primary Care NHS Trust*, [2006] CSOH 41

an hourly rate of £75, and the Auditor of the Court of Session had no hesitation in upholding it. Looking at the complexity of that case, and looking at the fees allowed for preparation in the other cases mentioned in this paragraph (£840 per day/£150 per hour) it seems to me that Senior Counsel undervalued his time, but the Auditor was not asked to set a figure, only to sustain what was claimed. [REDACTED] (11 January 2000)⁵ was dealt with by an hourly (as opposed to a daily) rate, and Senior Counsel was allowed £150 per hour by the Auditor of the Court of Session. I allowed that figure for preparation in a Sheriff Court trial of [REDACTED] in 1998. (To quote figures from 1998 and 2000 is relevant, because this case has to be assessed by the same criteria, without regard to inflation.) In all these cases, there was also an enhanced daily rate for the trial itself. I have made the decisions shown in the chart attached on the basis that a full day of preparation justifies a fee of two-thirds of the rate for a full day in Court. I note with interest that this percentage is now embodied in the Criminal Legal Aid (Scotland) Regulations that came into force on 25 March 2005.⁶ When less than a day is taken up with preparation, it may be appropriate either (1) to uplift the fee for the work for which the preparation was necessary or (2) to create a separate preparation fee and use an hourly rate for it.

10. **Principle 3. Whether to uplift the fees in the Schedule?**

As mentioned in paragraph 4, Counsel was instructed, and accepted his instructions, within the Schedule of remuneration for criminal legal aid cases. While there is provision to increase the fees in the Schedule, the Schedule must be the starting point. What Counsel should be allowed in this case is not the 'going rate' for non-Legal Aid cases, but what it is 'reasonable remuneration for work with regard to all the circumstances, including the general levels of fees in the said Table of Fees' (Schedule 2, paragraph 2).⁷ All enhanced criminal legal aid fees must be related to the Schedule for ordinary criminal legal aid cases. Mr Haggarty pointed out that offers made by the Board, to increase fees in

⁵ Uisdean McKay v Her Majesty's Advocate 1999 S.C.C.R.679

⁶ , The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005, (S.I. 2005/113, at Regulation 9(d).

⁷ [REDACTED] provided me with three decisions by Sheriff Court auditors under the Civil Legal Aid (Scotland) (Fees) Regulations 1989, where Senior Counsel had been paid £2,400 a day for trials, two-thirds of that for preparation and £500 for consultations in Edinburgh. Since the formula for taxing civil legal aid fees is fundamentally different from the formula in criminal legal aid cases, I have not made any use of these decisions.

complex cases, necessarily depended on how much information is available to the Board. Having considered this case, and the documentation made available to him, he was prepared to uplift the £315 per day in the Schedule to £900 per day for substantive days in Court and to £400 to £500 per day for procedural hearings. This offer was not acceptable to Mr Bovey, and so the taxation continued.

11. [REDACTED] also pointed out that when the Schedule, on which the present taxation is based, was replaced by the Schedules in the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005, the daily rate for a trial in the High Court of the greatest severity (murder, etc) was (and still is) £900, and the rate for a consultation in Edinburgh is £153. He submitted that these figures could and should be looked at to illustrate what was reasonable in 2005, and continuing.
12. Paragraph 3 of the Schedule quoted above (my paragraph 3) empowers an auditor to increase any fees 'where he is satisfied that because of the particular complexity or difficulty of the work or any other particular circumstances, such an increase is necessary to provide reasonable remuneration for the work.' Mr Bovey therefore set out the factors that (in his view) justified an uplift from the fees in the Table to the fees claimed in this case. Some of the following points will need to be looked at again, when considering the individual fees claimed for them, but they need to be looked at collectively at this point, to obtain an overview of the 'particular complexity or difficulty' of this case. (In [REDACTED] the auditor listed eleven different reasons for increasing the fee of £315 for a day in Court to £1,250 a day.) Mr Bovey listed the following points:
 - a. His client initially faced 377 charges, listed in an Indictment dated 2 August 2004 from a Grand Jury in the United States of America (America). On 25 August 2004, the American Embassy requested extradition from Scotland to America, and this made its way, via the Scottish Ministers, to the Sheriff at Edinburgh. The individual charges called for imprisonment for up to twenty years, not necessarily concurrent. [REDACTED] had been arrested in Aberdeen on 29 June 2004, under an earlier Grand Jury Indictment, and released on bail on 7 July, but that episode does not come under the present Legal Aid Certificate)
 - b. Extradition legislation began in 1852 and grew in sophistication over the years,

especially in England, where all applications for extradition were heard at the Bow Street Court, so Counsel had to start with a thorough understanding of the historical background. This was evident from but one part of one paragraph in the 41 paragraphs of Lord McEwan's Opinion in [REDACTED] petition for Judicial Review:

[8] He [Mr Bovey] then looked at the history of Extradition beginning with the 1870 Act. He referred to section 2, and how "arrangements" had to exist. Then came the Extradition Act, 1989 where once again the idea of arrangements both general and special were found. He referred me to sections 3, 4, 15 and 31. The new Act in 2003 was not couched by any reference to Treaties. Category 2 territories were governed by Part 2 of the Act. There had to be a request under section 70(3). A valid request results in a certificate and both are issued to the appropriate judge. Before a warrant to arrest can be given the judge must have "evidence" (section 71(2) and (3)) to justify. However, a designated category 2 territory (here the United States) only has to provide "information". In Scotland ... 8

- c. Legislation in 1973 gave jurisdiction for extradition proceedings in Scotland, however complex, to the Sheriff of the Lothians and Borders at Edinburgh. It was therefore not appropriate to grade fees for extradition cases in the way that the 2005 amendments to the 1989 Regulations do, in differentiating between (1) Appeals in the High Court of Justiciary and (2) Proceedings in the High Court of Justiciary (other than appeals) and the Sheriff Court. First, he said, the Schedule with which this case is concerned makes no such distinction, and this case was started in the Sheriff Court because that is where the 1973 legislation required it to start. Secondly, extradition proceedings are more akin to an appeal than a trial. To quote Mr Bovey: 'This case was as different from a criminal trial as could be – the Rules are "entirely other" – the assistance from the Table for a trial is limited.'
- d. The Extradition Act of 2003, in the year before this present case was started, introduced new provisions, to take account of the European Arrest Warrant. Under it, the Sheriff had to decide whether certain criteria had been met, and to make a recommendation to the Scottish Ministers. They then had to make a decision, and both the recommendation of the Sheriff and the decision of the

8 <http://www.scotcourts.gov.uk/opinions/2005CSOH125.html>. A separate Legal

- Scottish Ministers could be separately appealed to the High Court of Justiciary.
- e. Not only did Counsel have to get to grips with a century and a half of reported cases on extradition law, and recent legislation, but there was a fundamental difference between the approach of British and American requests for extradition; British requests had to demonstrate that there was a 'case to answer', but this was not required in American requests, and there had been a Judicial Review about that during the currency of the present case.
 - f. This case included two Devolution Minutes, the first such Minutes to be prepared under the 2003 Act. The first (the refusal of which led to a Bill of Advocation) involved fundamental constitutional issues under the European Convention of Human Rights, articles 5, 6, 8 and 14, about the right of appeal to the House of Lords. The second Devolution Minute raised the complex issue of 'dual criminality' (whether American charges in American language were extraditable if they were not also offences in Scotland). As a result of the 'dual criminality' challenge, the extradition request was reduced from 377 American charges to 49, a significant success for the Scottish team. The Scottish team had successfully demonstrated that many of the charges related to conduct occurring prior to 1 July 2003, when such conduct would not have been criminal in Scotland; furthermore, the remaining 49 charges in the extradition request had been restricted to conduct occurring between July 2003 and August 2004. Nevertheless, the 49 charges still alleged conspiracy to manufacture and supply chemicals from which the 'date rape' drug can be made, in violation of American Criminal Law and contrary to the British Misuse of Drugs Act 1971, and also conspiracy to commit money laundering and laundering monetary instruments, so [REDACTED] had good reason to continue to be apprehensive about the extradition request.
 - g. For conduct from July 2003 onward – the only dates left in the American Indictment – [REDACTED] could now be prosecuted in Scotland for alleged trafficking in illegal drugs, so this was another whole area that Mr Bovey had to explore in his efforts to prevent extradition; Mr Bovey provided me with a 9 page submission under EHRC Article 8, one of the documents he had had to prepare

Aid Certificate was issued for this, so it does not feature in this taxation.

for this purpose.

- h. [REDACTED] passport, which should have been in the hands of the Sheriff Clerk in Aberdeen as part of his bail conditions, turned up in America after a warrant was granted by the Sheriff in Aberdeen to search [REDACTED] home. Mr Bovey was actively involved in the quest to find out how this had happened, and eventually the passport was returned.
- i. A second Bill of Advocation was required because [REDACTED] had not been made aware of proceedings in the Aberdeen Sheriff Court, which resulted in his computer and other items being sent to America without his knowledge or opportunity to be heard.
- j. While the Scottish Ministers were considering their position in this case, two other cases were decided in the High Court of Justiciary (Goatley v H.M. Advocate [2006] HCJAC 55 and La Torre v H.M. Advocate [2006] HCJAC 56), both adverse to [REDACTED] position; this required Mr Bovey to review his submissions on behalf of [REDACTED] to take account of the decisions in these case.
- k. When the Sheriff ruled against [REDACTED] on 24 February 2006, the extradition request was passed to the Scottish Ministers, and representations had to be made to them on an area that is peculiar to extradition law, namely 'speciality', introduced in the 1972 Treaty. This required Mr Bovey to consult an American lawyer on the likely sentence if [REDACTED] was found guilty of the charges in America. The lawyer explained the complexity of the sentencing system in California (the period of supply times the quantity of drugs was then applied to a table), and Mr Bovey had to become familiar with this in order to advise how 'speciality' worked in this case. He produced the submission to the Scottish Ministers that he had prepared after getting to grips with the American system and obtaining an Affidavit from the American lawyer.
- l. Mr Bovey's final submission on 'important and novel points' went through the documents marked 'G' and 'J'; rather than précis these submissions here, I will comment on them when looking at the individual fees charged for them.
[REDACTED] response to these opening submissions was (1) that he was still concerned at the charges for 'preparation', both what was being studied and the time taken for it, and

(2) a reminder that the majority of the fees charged were for issues in the Sheriff Court.

13. In light of these submissions, I accept that this was a complex and groundbreaking case, which placed great responsibility on Counsel. While it did not have the extraordinary volume of documentation of [REDACTED] (14 January 2000), and while Counsel was not required to have at his fingertips the detailed knowledge of facts over many years that characterized that case, this case shared three features with [REDACTED] – (1) difficult and novel legal issues were raised, (2) during the course of proceedings, the law changed, requiring Counsel to rethink his arguments and to present fresh grounds of appeal,⁹ and (3) the imprisonment of the client for a great many years was at stake. While the preparation required in this case was not anything like the preparation required for [REDACTED] this paragraph of my Report is not concerned with preparation, but with a reasonable fee for days in Court. [REDACTED] was an appeal against conviction, and occupied eight days in the Court of Appeal. Senior Counsel claimed £1,250 per day for the eight days. The Auditor of the Court of Session was:

satisfied that the novelty, complexity, difficulty and responsibility of the work justify the fees charged by Senior Counsel. In reaching this view, the Auditor has satisfied himself that there is a reasonable relationship between the fee prescribed in the Table and the fee sought by Senior Counsel. In his experience, the level of fees Senior Counsel might charge on a private basis are so much higher than those sought here that they could not have been in Senior Counsel's contemplation when charging his fee.¹⁰

It seems to me, in looking at the whole circumstances, that the fee of £1,250 a day, allowed by the Auditor of the Court of Session in [REDACTED] is not unreasonable for Senior Counsel for a full day in Court in a case of the complexity of Mr [REDACTED] where substantive issues were at stake. I take [REDACTED] point (paragraph 10 above) that a procedural hearing must be distinguished from a substantive one, and I will deal with these on their merits. I will, however, normally allow a fee of £1,250 a day for substantive issues.

⁹ In [REDACTED], the coming into force of the Crime and Punishment (Act 1997 and in the case of [REDACTED] the cases mentioned in paragraph 12(j).

¹⁰ Page 24 of the Auditor's Report of 14 January 2000.

14. I am fortified in this decision by three factors. (1) I am aware that £1,250 was offered by the Board and accepted by the Faculty for a number of Court days in another extradition case.¹¹ (2) The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005, which, as mentioned above, replaced the Schedule on which the present taxation is based, specifically mention £1,250 per day as the maximum fee that the Board or an auditor may ever allow for 'a case involving the most complex or difficult work'. [REDACTED] pointed out that, apart from a composite fee for an 'early plea', this figure was applicable only for an appeal against conviction, not for cases in the Sheriff Court; Mr Bovey responded (paragraph 12(c) above) that this case was more akin to an appeal than to a trial. I am not seeking to draw exact parallels, because the two Schedules have different approaches (the 1989 Regulations do not set a ceiling), but if the Schedule now in force lays down £1,250 per day as the maximum for 'a case involving the most complex or difficult work', I am not prepared go above that figure in the present case. (3) I do not see this case as more complex than [REDACTED]
15. As to consultations, [REDACTED] pointed out that although the Schedule allows £118.00 for a consultation in Edinburgh, he was not against uplifting this to £300 in complex cases and his colleague had, without prejudice, had already offered £300 in this case. However, Mr Bovey was seeking £500 or more for consultations. [REDACTED] again pointed to the 2005 Amendment Regulations as illustrative of what was considered reasonable in 2005, and the basic rate for a Consultation under them is £153.
16. With these three principles in mind, that:
- (1) work must be within the Schedule,
 - (2) new categories may be created under paragraph 2 of the Schedule,
 - (3) the fees in the Schedule may be uplifted under paragraph 3 of the Schedule
- my decisions are set out in the attached chart.
17. **Expenses.**
- It is usual to allow a modest fee for preparation for, and attendance at, taxations like this. This one lasted for just under three hours, and it was evident that both Mr Bovey and Mr

¹¹ [REDACTED] email in my possession of 31 January 2008.

[REDACTED] had made preparations for it, in preparing submissions and in copying bundles of papers for my benefit. Considering the preparation made for the taxation, and the time occupied at it, I have added £200 for Mr Bovey and £100 for [REDACTED] to the docquet of taxation at the end of the chart attached.

18. **Final figure and audit fee**

I understand that the Board have an arrangement with the Faculty for Vat, so only the total fees payable by the Board to the Faculty under this taxation as: ONE THOUSAND, SIX HUNDRED AND SEVENTY-THREE POUNDS (£3 to which Vat falls to be added. There is audit fee of 4%, rounded up to nearest the fees as taxed, so the audit fee is 4% of £31,700.00 £1,268.00

Vat thereon	£50.72
	<u>£1,318.72</u>

[REDACTED] agreed that I should render this directly to the Board, rather than render it to the Faculty for recovery by them from the Board.

19. **Further procedure**

The taxation took place on 19 June 2008, and this Report was issued to the parties in draft on 3 July. It is formally issued on xx July 2008. I mention this because there is a period of only fourteen days from the formal issue of the Report for stating objections to the Sheriff, if either party wishes to take the matter further.

Ian L.S. Balfour,
Joint Auditor, Edinburgh Sheriff Court,
58 Frederick Street, Edinburgh EH2 1LS.

Xx July 2008

W40
15
CHANGE
for
audit
fee

Chart for
Mungo Bovey QC

SM/08/4138390204

Date	Event	Table	Claimed	Offered	Decision
2004 Oct 21	Reading in, 5.5 hours	0.00	825.00	0.00	825.00 ¹
Oct 22	Consultation (2.75 hours) (to include also further 2.25 hours of preparation)	118.00	750.00	300.00	600.00 ²
Oct 25	Extradition Hearing (to (include 8.25 hours preparation)	315.00	1,750.00	400.00 (later, 900.00)	1,250.00 ³
	C/f Fees allowed so far		3,325.00		2,675.00

1 Mr Bovey: Presented with the American indictment and due to meet the client on the following day – not familiar with the new Act – extradition hearing due in 4 days – tried to find a rational approach to a fee, and £150 an hour was a reasonable rate for Senior Counsel in a case like this. [REDACTED] Preparation should be included in the consultation and hearing fees, not shown as a separate item – Counsel were paid fees to reflect their experience and knowledge of the law, and should not receive additional fees for looking up the law. Decision by the Auditor: In a complex situation like this, it is not desirable simply to enhance the consultation fee in order to cover the necessary preparation, and a separate fee is allowed for researching the history of extradition proceedings, beginning with the 1870 Act and working through to the 2003 Act. Daily rates (5.5 hours here) are usually preferable to hourly rates, and the £825 claimed here is just under two-thirds of the daily fee I propose to allow for substantive Court appearance in this case. (Paragraph 13 of the Report for the £1,250 and paragraph 9 of the Report for the two-thirds calculation.) The hourly-rate approach brings out almost the same as the two-thirds approach, so in the whole circumstances the fee of £825, charged here, is sustained.

2 [REDACTED] Taking the first two items together, preparation of nearly 8 hours was claimed, in addition to the preparation element already built into the consultation fee. The starting point for a consultation is £118. As stated in the last objection, Counsel's fees reflect their experience of the law, and no additional fee should be payable under the Criminal Legal Aid Scheme (even if it might be payable in a non-Legal Aid case). Mr Bovey: The consultation was lengthy and complex in itself, and could not have been conducted without the preparation that had been carried out over two days. Decision by the Auditor: £300 was offered for the consultation, and that is not unreasonable if additional preparation time is to be allowed as well. Allow another 2 hours (not 2.25 hours) of additional preparation at £150 per hour, to give a total of £600.00.

3 [REDACTED] 40 minutes in Court – everyone went in on the basis that nothing significant would happen, and nothing did happen – it was not a substantive day in Court. Mr Bovey: This was his first appearance before the Sheriff in this case, and he did not know whether the lodging of the Devolution Minute would result in the hearing taking only 40 minutes – Sheriff Stoddart had previously decided in Hedrick that Devolution Minutes were incompetent in extradition proceedings, so Mr Bovey had to prepare to persuade him to accept this one. 8.25 hours was reasonable for preparation, as the more that Mr Bovey researched current extradition law, the more complexities he came across. Decision by the Auditor: The fee for a Court appearance includes an element of research, and the higher the fee, the more research is subsumed in it. Additional research is allowed at two-thirds of the appearance fee. A full day of preparation attracts a fee of £825; preparation here took 8.25 hours, but some of that is subsumed in the 'day in Court' fee. Even if the Court fee was only £425, which is modest for a first appearance that might have been lengthy, the total reaches £1,250. I am not prepared to go above that for any one day – see Lord Prosser's Opinion in Geddes, quoted at page 4 of the Report.

2
TABLE 'C' 'D' Decision

Oct 25	1st Devolution Minute	0.00	350.00	300.00	350.00agreed
Nov 7 to 19	Preparation on competency of Devolution Minute, 6.25 hours	0.00	937.50	0.00	835.00 ⁴
Nov 9 to 21	Preparation on merits of 1st Devolution Minute, 14 hours, 40 minutes	0.00	2,200.00	0.00	1,670.00 ⁵
Nov 22	Procedural Hearing, full day until 5.30 pm	315.00	1,750.00	750.00 (later, 4-500)	1,250.00 ⁶
Nov 29	Consultation (on outcome of hearing on 22/11/04) (to include further 4.25 hours preparation C/f fees allowed so far	118.00	637.50 ----- 9,200.00	150.00	300.00 ⁷ ----- 7,080.00

4 Mr Bovey: Kept discrete notes of time spent on preparation on competency, and charged it out at £150 per hour. Mr Haggarty: If £315 is the basic rate for a day in Court under the Table, and if two-thirds of a day in Court is the agreed percentage where preparation is allowed as a separate item, £150 an hour is far too high an uplift – a lower hourly rate should be taken. Decision by the Auditor: 6.25 hours were spent on preparation on competency; looking at the documentation produced and the law cited in it, I am satisfied that a separate charge for preparation is reasonable, although not all 6.25 hours should be allowed as the fee for the hearing on 22 November subsumes some preparation. Since, however, the fee for 22 November has been ‘capped’ at £1,250, I will allow one day of preparation here at £835.

5 Reading the Opinion of the Appeal Court dated 29 September 2006, where Mr Bovey’s appeal against refusal of his Minute was considered, I can understand why he logged 14 hours and 40 minutes as preparation time on the merits of the first Devolution Minute. However, under the Criminal Legal Aid Scheme, the fee for a full day in Court (next entry) includes time spent in preparation. As I am going to allow a full day in Court for the hearing, something will have to come off the preparation. Applying the principles set out in the last note, I will create a separate entry for preparation and allow two days for preparation on the merits, at £835 per day, as well as the fee for the hearing, and take off 2 hours and forty minutes as ‘overlap’.

6 The reference to 5.30 pm puzzles me, because when the Bill of Advocation was presented, following the refusal of the Devolution Minute, it was stated (paragraph 8 of the Bill) that the Sheriff rose at approximately 15.50 hours to consider the arguments and delivered his decision at approximately 16.30. The Board calculated 5.25 hours in Court. It may be that discussions with the client followed, but on any view this was one full day and so (if it was substantive) payable at £1,250. At the taxation, I understood the parties to use the word ‘substantive’ for hearings of major issues and ‘procedural’ for something less important, but this day is described in the fee-note as a ‘Procedural Hearing’, and [REDACTED] said at the taxation (presumably because of that description) that it was ‘not a crunch hearing’. However, Mr Bovey has charged it at the £1,750 a day rate, and it seems to me that this hearing went to the root of the extradition proceedings, so I have (despite the description) treated it as ‘substantive’ (substantial) and allowed £1,250.

7 This was a 75-minute consultation about what to do, following the refusal of the Devolution Minute. Mr Bovey described it as a ‘crisis consultation’. For that, a fee of £300 is reasonable, but I have disallowed any further preparation on 29 November, partly because a consultation fee includes preparation for it, and partly on the principle that preparation should, where possible, be covered by an enhanced fee for the work that follows the preparation – in this case, work to do with the Bill of Advocation (next entry).

TABLE 'C' 'D' Decision

Dec 2	Revising Bill of Advocation (4.25 hours)	86.50	675.00	200.00	675.00 ⁸
Dec 2	Drafting second Devolution Minute (2 hours, 20 minutes)	0.00	350.00	250.00	350.00 ⁹
Dec 7	Procedural Hearing	315.00	1,200.00	350.00 (later, 4-500)	835.00 ¹⁰
Dec 16	Hearing on competency of Devolution Issues (to include Consultation (1 hour) and 6 hours further preparation before and on the day	315.00	1,750.00	350.00 (later, £900.00)	1,000.00 ¹¹
	C/f fees allowed so far		13,175.00		9,940.00

8 This was produced to me. Although the fee is for revising it, not for drawing it, it is a carefully argued protest at the decision of the Sheriff, stressing 8 areas where it was alleged that the Sheriff had erred in law, and making use of various parts of the Human Rights Act 1998 and the Extradition Act 2003, as well as a reported Human Rights case. As I disallowed the fee for preparation under the last entry, there has been no fee since the consultation on 29 November. In view of the complexity of the case, as well as the speed at which it was moving, £150 an hour for 4.25 hours is a not unreasonable uplift from the basic fee in the Table.

9 This too was produced to me. While the opening paragraphs are narrative, it develops an argument under the Scotland Act 1998 and then under the Human Rights Act 1998 and several of the ECHR articles, so I consider that it justifies the creation of a new category of fee – not is dispute, because £250 was on offer. Both the time charged and the rate applied are reasonable, and the £350 is sustained.

10 La Torre v H.M. Advocate [2006] HCJAC 56 had recently established that Devolution Minutes were competent in extradition cases, but the hearing in Mr Calder's case still took 1.25 hours of Court time. Mr Bovey accepted that it was not a substantive day, so he had charged only £1,200 instead of his usual £1,750 for a day in Court. No preparation fee is charged, so the fee for the day must reflect an element of preparation as well as Court time. Mr Bovey was proposing approximately two-thirds of £1,750; as I am allowing only £1,250 for a substantive day, two-thirds of that is £835, to cover preparation and appearance. The hearing lasted only 1.25 hours, but Mr Bovey had to mark out the day in his diary.

11 The hearing lasted for only one hour, but the entry includes a 1-hour consultation and 6 hours of preparation before and on the day. No other preparation is charged, so the entry covers 8 hours in all, although the times in Court and at the consultation have a preparation element built into them. If none of it had been in Court, the day would have attracted a fee of £835, but it was a complex day, and of the 8 hours, one was in Court, so I have allowed a bit more than one day, and a bit more for the hour in Court, and brought out a total of £1,000.

4
TABLE 'C' 'D' *Keir*

Dec 17	Preparation for Extradition Hearing (5 hours)	0.00	750.00	0.00	0.00 – see next entry
Dec 20	Extradition Hearing (to include further 4.50 hours' preparation and revising Joint Note	315.00	1,200.00	450.00 (later, 4-500)	1,250.00 ¹²
2005 Feb 14	Consultation	118.00	500.00	118.00	200.00 ¹³
Feb 15	Preparation for Extradition Hearing (5 hours)	0.00	750.00	0.00	0.00 – see next entry
Feb 16	Extradition hearing (to include further 4 hours preparation)	315.00	1,200.00	350.00 (later, 4-500)	1,100.00 ¹⁴
Feb 25	Consultation (to include 1.55 hours preparation)	118.00	500.00	200.00	300.00 ¹⁵
	----- C/f fees allowed so far		----- 18,075		----- 12,790.00

12 The hearing lasted for 1.5 hours in Court, but Mr Bovey had prepared for it for 9.5 hours. [REDACTED] submitted that when there is a lot of preparation and a short hearing, they should be taken together as one item, reflected in a single fee. As I have said, I favour that approach, where possible. Mr Bovey has charged £1,200, indicating that he saw this as a procedural hearing rather than a substantive one. The Court appearance should therefore be charged at £835 per day (two-thirds of £1,250). 9.5 hours of preparation and 1.5 hours in Court add up to 11 hours, although the time in Court has a preparation element built into it. I have treated the two entries as a day and a half at £835 per day, and allow £1,250 in total – against the £1,950 claimed.

13 No submission was made to me about this consultation, other than [REDACTED] repeating the general submission recorded in the previous note, that a series of preparations, including a short consultation (this one was half-an-hour), should be rolled up and charged as one fee at an appropriate rate. While I agree in principle, Mr Bovey had not met the client for nearly two months and an extradition hearing was due on the following day. No preparation fee has been charged, so whatever I allow has to cover all that went into preparing for the consultation. On the one hand, it was for only half-an-hour, but on the other hand there have been no entries for nearly two months, so I consider that £200 is fair, considering the complexity of extradition legislation and reported cases.

14 The same principles apply as in notes 3, 11 and 12, except that the Court day here was charged at £1,200, not £1,750 as in notes 3 and 11. The hearing lasted for only one hour, but there were 9 hours of preparation before and on the day. Both the time in Court and the preparation attract a fee of £835 a day, although the time in Court has a preparation element built into it. Trying to be consistent with notes 3, 11 and 12, I have allowed £1,100 here.

15 A two-hour consultation, with nearly two hours of preparation. There were no submissions on this, so, looking at the basic £118 for a run-of-the mill case, I have treated it as 'unremarkable in itself but part of a complex case', for which I have been allowing £300.

Table⁵ 'C' 'D' 'Decision'

Mar 23	Consultation (to include 2.75 hours preparation)	118.00	500.00	350.00	500.00 ¹⁶
Mar 24	Telephone conversation with US lawyer (to include 3.75 hours preparation)	0.00	650.00	150.00	150.00 ¹⁷
Mar 30	Outline argument (ordered by Court) (6 hours work)	0.00	900.00	400.00	835.00 ¹⁸
Mar 31	Hearing before Sheriff	315.00	1,200.00	350.00	350.00 ¹⁹
April 26	Consultation (1 hour)	118.00	150.00	150.00	£150.00 agreed
May 10	Extradition hearing	315.00	1,200.00	350.00	835.00 ²⁰
	C/f fees allowed so far		22,675.00	(later, 4-500)	15,610.00

16 A 3.5 hour consultation, with 2.75 hours of preparation noted as well. Even allowing for the fact that a consultation fee includes preparation, I regard the offer of £350 as too low and I have allowed the £500 claimed.

17 [REDACTED] did not accept any preparation for the telephone conversation, but offered £150 for the call itself, which lasted for 45 minute. Mr Bovey responded that he had to get to grips with 'speciality', a peculiarity of extradition law which is set out in paragraph 12(k) of the Report. He had to consult an American lawyer on the likely sentence if [REDACTED] was found guilty of the charges in America. The lawyer explained the complexity of the sentencing system in California, and Mr Bovey had to become familiar with this in order to advise how 'specialty' worked in this case. However, Mr Bovey had by now an overview of the whole background, and while the purpose of the phone conversation was to elicit information about the American system, this was the first call and he must have been asking general questions. I will allow substantial preparation for the follow-up call on 31 March 2006, but just a nominal fee for preparation for this one. As mentioned, Mr Haggarty offered £150, and on the basis that Mr Bovey's 'hourly rate' on substantive matters was £150, that will cover the 45-minute phone conversation and 15 minutes of preparation for it.

18 This was produced to me, and it is a complex document, running to 9 pages. Mr Bovey explained that he had restricted the fee to 6 hours (at £150 per hour) because he had taken most of the material from other documents and had 'cut and pasted' it into the Submission. In response to [REDACTED] question, as to why Junior Counsel had not done this work, Mr Bovey replied that he had taken the lead in European Convention submissions, and that this document was his own handiwork. The Court requested this Submission, and it seems to me to be a reasonable charge. However, as I have been allowing a day of preparation at £835, it would be inconsistent to depart from that figure for a full day of drafting a document.

19 The hearing lasted for 35 minutes. I discussed, in paragraph 5 of the Report, the proposition that if counsel attended, on instruction, he was entitled to a whole day's fee. I therefore cannot (without invoking the discretion to reduce fees) go below £315. The whole of the previous day had been spent working on the document (last entry), so further preparation is not an issue. The Board had previously offered £350. In keeping with the principle (paragraph 4 of the Report) that Counsel was instructed, and accepted instructions, within the Schedule of remuneration for criminal legal aid cases, 'including the general levels of fees in the said Table of Fees', and since nothing out of the ordinary seems to have happened on this day, the £350 offered is generous and should be accepted.

20 Hearing for 1.5 hours – same principles as in note 10.

Table *c* *d* *Decision*

June 28	Procedural hearing (to include subsequent consultation)	315.00 (Court) + 118.00 (consult'ion)	1,200.00	350.00 (later, 4-500)	£433.00 ²¹
July 11	Hearing	315.00	1,200.00	350.00	350.00 ²²
Nov 4	Intermediate diet	315.00	1,200.00	350.00	350.00 ²³
Dec 7 and-9	Extradition hearing (to include further 8.5 hours of preparation) (2 days @ £1,750)	630.00	3,500.00	1000.00 (later, £1,800.00)	2,500.00 ²⁴
	C/f fees allowed so far		29,775.00		19,243.00

21 Five minutes in Court and 40 minutes consultation. Mr Bovey: Court fees should be recognized for the day, not divided into segments of the day. [REDACTED] That is true of the basic fee, but if Counsel is seeking an enhanced fee for a brief hearing, Counsel has to show cause for enhancing it. The Board had offered £350 for both the hearing and the consultation. Decision by the Auditor: Since no fee has been charged for the previous 6 weeks, some preparation would have been required for even a brief hearing, and although the Court hearing could hardly have been briefer, it still dealt with complex extradition issues. I will allow the basic day in Court fee £315.00 plus the basic consultation fee, £118.00, total £433.00.

22 [REDACTED] queried whether the date should be 12 September 2005, and his note suggested that the hearing lasted 15 minutes. The Board had offered £350. Mr Bovey suggested that Court fees should be for the day (same point as in the last note). Decision by the Auditor: if a fee is enhanced, the size of the enhanced 'fee' should be taken into account by the auditor in deciding whether a 'whole day' rate applies when there has been only a short Court appearance. There were no further submissions in favour of a greatly enhanced rate, and the £350 offered by the Board is adequate for a 15 minute appearance (including preparation for it).

23 Neither Mr Bovey nor [REDACTED] had any further submission, beyond the position taken by them on the previous note, so I have applied the same criteria.

24 Three hours in Court on the first day and 1.75 hours on the second. The Board had offered £500 per day. Mr [REDACTED] the highest offer that the Board had ever made, under the Schedule applicable here, was £1,250 per day, and that was in the Appeal Court, so a lesser figure should apply in the Sheriff Court. Mr Bovey repeated the point made at paragraph 12(c) of the Report, that this was akin to an appeal. Mr Haggarty responded that the decisions in Goatley v H.M. Advocate [2006] HCJAC 55 and La Torre v H.M. Advocate [2006] HCJAC 56) had clarified the position at issue here, and so made Mr Calder's case less complex, as the points argued on his behalf were no longer novel. Mr Bovey responded (as at paragraph 12(j) of the Report) that this required him to review his submissions on behalf of Mr Calder, to take account of these decisions, and that every case still had to be looked at on its merits. Decision by the Auditor: take this entry with the next one. Mr Bovey carried out 4.25 hours of preparation per day for three consecutive days in Court. That might be regarded as more preparation than would normally be subsumed in the 'day in Court' fee, but the time in Court was 3 hours, 1.75 hours and 'short, but including a consultation', which means that the afternoons were free for preparation for the following day. (The preparation for day one was done before day one, but there was nothing left to prepare for in the afternoon of day 3, so it balances out.) The time spent in preparation is recognized by giving three full 'day in Court' fees at £1,250 a day.

7
Table 'C' 'D' Reason

Dec 16	Continued extradition hearing (short Court day but also includes subsequent consultation and 4 hours 20 minutes further preparation)	315.00	1,750.00	0.00	1,250.00 – see note 24.
Dec 28	Note (1.5 hours work)	0.00	225.00	0.00	0.00 ²⁵
2006 Jan 18	Preparation for continued extradition hearing (3.5 hours)	0.00	525.00	0.00	418.00 ²⁶
Jan 19	Continued extradition hearing (to include further 4 hours preparation before the day and subsequent consultation)	315.00	1750.00	750.00 (later, £900.00)	1,250.00 – see note 26
Jan 25	Drafting Bill of Advocation (3 hours 20 minutes)	0.00	500.00	450.00	450.00 ²⁷
Jan 25	Devolution Minute	0.00	150.00	0.00	150.00 ²⁸
Jan 26	Continued extradition hearing (to include further 4 hours preparation)	315.00	1,200.00	750.00	835.00 ²⁹
	C/f fees allowed so far		----- 35,875.00		----- 23,596.00

25 Neither party commented on this entry and, in the absence of any detail about it, I have treated it as an incidental item, to be subsumed within 'preparation' generally.

26 The continued extradition hearing on the following day lasted for 5 hours and was followed by a consultation. Although the fee allowed for a full substantive day in Court (£1,250) includes an element of preparation, a total of 7.25 hours of preparation cannot reasonably be subsumed in the £1,250. I have allowed the 3.5 hours of preparation on the previous day as a separate item, converted into half-a-day. Half of £835, the figure allowed throughout for a day of preparation, is £418. The continued hearing on 19 January justifies a full substantive day at £1,250.

27 This, the second Bill of Advocation in this case, was presented to the Court because [REDACTED] had not been made aware of proceedings in the Aberdeen Sheriff Court, which resulted in his computer and other items being sent to America without his knowledge or opportunity to be heard.. Three hours and 20 minutes were spent on drafting the Bill, in an area of some novelty and complexity. That equates to half-a-day spent on preparation (half of £835), but the Board had offered £450, and that is accepted.

28 I have no note of submissions on this item, but £350 was agreed for drafting one on 25 October 2005, and £350 was awarded for drafting a second one on 2 December 2005. For what it is worth, the 2005 Regulations allow Junior Counsel £150 for drafting one, so I will allow the £150 claimed here.

29 This lasted for 5 hours in Court, and 4 hours preparation went into it. Clearly that equates to a full day, but Counsel has asked only for £1,250, his rate for procedural rather than for substantive appearances, so I will allow a full day at the £835 rate.

March 8	Consultation about representation to Scottish Ministers (2 hours) (to include 3 hours preparation)	118.00	750.00	500.00	750.00 ³⁰
March 8	Telephone conference with US lawyer re representation (50 minutes)	0.00	150.00	included in above £500.00	150.00 ³¹
March 31	Telephone conference with expert in US (45 minutes) (to include 2 hours 25 minutes preparation)	0.00	450.00	150.00	450.00 ³²
April 4	Telephone conference with expert in US (50 minutes)	0.00	150.00	150.00	150.00 agreed
March 8 to April 12	Preparation of submissions to Ministers (13 hours 45 minutes)	0.00	2,000.00	500.00	1,670.00 ³³
	C/f fees allowed so far		39,375.00		26,766.00

30 Mr Bovey pointed out that representation to the Scottish Ministers, who had a specific remit under the legislation, different from the remit to the Sheriff, and so required a different approach and therefore justified a consultation devoted to this issue alone. The preparation time and the consultation occupied almost a whole day, and the fee asked for this, compared to the £835 that would have been allowed for a full day, is reasonable.

31 [REDACTED] sought assurance that these telephone conversations related this case and not to the Appeal (which was covered by a different Legal Aid Certificate), and Mr Bovey gave him this assurance. [REDACTED] then asked why it was necessary to consult an American lawyer when the Bill of Advocation (which Mr [REDACTED] assumed to be the subject of the phone calls) related only to alleged irregularities in the Sheriff Court in Aberdeen. Mr Bovey explained that they were at cross purposes – there were two strands left in the appeal, running concurrently, (1) the submission to the Scottish Ministers (entry of 8 March to 12 April, below) and (2) the Bill of Advocation. The phone calls to America related only to the former. Partly for the reasons set out about the first phone call, on 24 March 2005 (note 17), and partly because £150 was agreed for a call of the same length on 4 April 2006, that is a fair charge for this 50-minute call.

32 Mr Bovey's submissions to the Scottish Ministers (2 items later) centred on 'speciality', a concept peculiar to extradition law. They set out the likely sentence if Mr Calder was found guilty of the charges in America. This required Mr Bovey to consult at length with an American lawyer, and, having got to grips with the concept, to make the necessary submissions to the Scottish Ministers and to back it up with an Affidavit from the American lawyer. I allowed just nominal preparation for the first phone conversation, on 24 March 2005, but crunch time was now approaching and lengthy preparation was necessary to have intelligent conversations with the American lawyer, so the fee is allowed in full.

33 Mr Bovey took me through the submissions, of which he had only a draft (the top copy having been sent to the Board along with the fee-note). The draft is only 4 and a bit pages of A4, but it is accompanied by an Affidavit from the American lawyer. Mr Bovey explained that when the Sheriff ruled against [REDACTED] on 26 January 2006, the next stage in the extradition process was for the Scottish Ministers to make a decision, so it was crucial to present [REDACTED] case fully to them. Although the submission was not long, the finalization of both it and the Affidavit had been complex. Paragraph 3 of the submission included reference to a key Human Rights case. It appeared from the trans-Atlantic telephone calls: (a) that the American courts might issue new Federal charges, despite the law on 'speciality' (item 7 on page 2), (b) that dropped charges might be taken into

9					
		Table	'c'	'd'	Decision
May 25	Consultation re Ministers' decision (1.5 hours) (to include further 2 hours 20 minutes preparation)	118.00	600.00	200.00	557.00 ³⁴
June 10	Outline argument on Bill of Advocation	0.00	1,000.00	250.00	250.00 ³⁵
June 30	Procedural hearing on Bill of Advocation and Appeals (divided equally between the Appeals (2) and the Bill of Advocation) (156.00	50.00	50.00	50.00 agreed
July 12 to 14	Hearing on Bill of Advocation (3 days @ 1,750 per day (Judgement on 14 July)	156.00 x 3	5,250.00	2,250.00 (later, three times £900.00)	3,750.00 ³⁶
	TOTALS		46,275.00		31,373.00
Preparing for and attending taxation (Mr Bovey, £200.00, Mr Murray, £100.00)					£ 300.00
TOTAL FEES PAYABLE BY THE BOARD TO THE FACULTY					£31,673.00 ✓

14.9.06
32%
Remainder

account in sentencing (item 9 on page 3), (c) that both Federal and State charges might be brought, again despite the law on 'speciality' (item 11 on page 3), and (d) that States other than California might bring charges, also precluded by the law on 'speciality' (item 12 on page 3). The submission urged, in paragraphs 14 and 15 on pages 4 and 5, that the Scottish Ministers should take these points fully on board. [REDACTED] response to these submissions was that the two documents did not justify nearly 14 hours of work, and that the submissions were based on the Affidavit, so they did not require original research by Mr Bovey, but were based on material provided by the American lawyer. Decision by the Auditor: I did wonder whether, in the words of Lord Carloway in paragraph 8 of the Report: 'the scope for meticulous detailed preparation is, if not infinite, considerable. A party may wish such preparation carried out and he is perfectly entitled to instruct that work. That does not mean, however, that it is reasonable for his unsuccessful opponent to be burdened with the resultant charges.' I have however, been influenced by perusal of an email from Mr Bovey to the American lawyer on 5 April 2006, dealing with revisions to the Affidavit, the relationship between it and the submissions, and the detailed concentration required to get the submissions exactly right. I have allowed two days of non-Court time at £835 per day.

34 This followed the decision of the Scottish Ministers to support the request for extradition, and it was therefore a critical consultation, to discover what, if anything, could now be done for [REDACTED]. The preparation was therefore directed toward a new situation, and in view of the importance of the matter for the client, and the novelty of the questions addressed, I will allow two-thirds of a day at the £835 rate, namely £557.00.

35 As I am going to allow three days in Court at £1,250 per day, most of the preparation for presenting the Bill of Advocation is subsumed in the Court fees. However, the Opinion of the Court, dated 14 July 2006, demonstrates just what a complex argument was presented, and since the Board have offered £250 for the outlining of the argument, I will allow that.

36 As mentioned in the previous note, perusal of the Opinion of the Court leaves me in no doubt about the complexities and intricacies of the arguments presented. Time in Court was only 1.25 hours, 1 hour and 4 hours on the three days, 12-14 July, but it was not suggested to me that Counsel was other than occupied with this case over the 3 days (including preparation for the following day on 12 and 13 July), so the £1,250 rate applies for all three days.