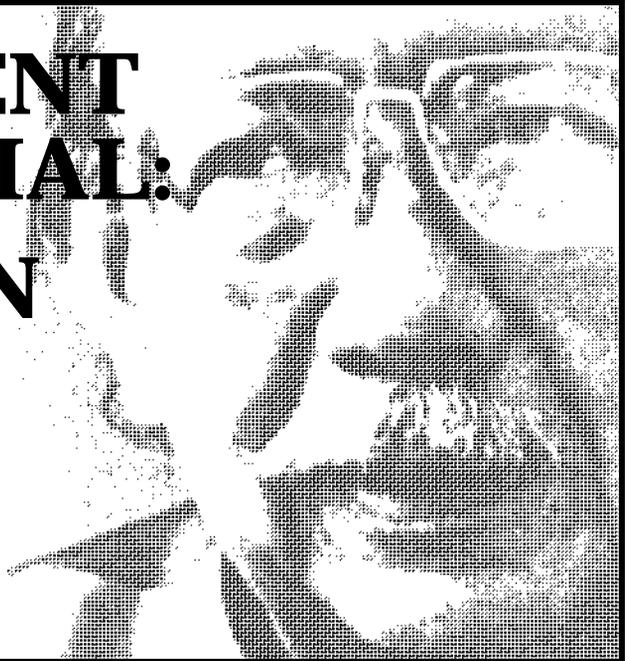


IMPRISONMENT WITHOUT TRIAL: THE LORRAIN OSMAN CASE



AL BARON



INTRODUCTION

The LA's Legal Notes series was primarily intended for work addressing abstract issues of jurisprudence, legal philosophy, and, to a lesser degree, the reform of legal institutions. We have departed from this practice in this issue with good reason. Freelance writer Al Baron, the organiser of The Friends of Lorraine Osman campaign, has brought to our attention an appalling violation of the traditional British principle of *habeus corpus*. The case is not only important in its own right, but is symptomatic of increasing departures from common law practice that are seemingly occurring with little opposition or awareness of their significance (see The Rt. Hon. J. Enoch Powell, *Political Hysteria and the Destruction of Liberties*, Political Notes No. 48; Idem., *The Drug Trafficking Versus Natural Justice*, Legal Notes No. 2;

and Sean Gabb, *The Full Coercive Apparatus of a Police State: Thoughts on the Dark Side of the Thatcher Decade*, Legal Notes No. 6).

Al Baron's description of this case needs no elaboration from me. However, one cannot but hazard the speculation that behind the extraordinary behaviour of the judiciary in this case lies the pressure of the British establishment's old boy network, parts of which might well be affected should the whole truth behind the Osman case emerge.

Those wishing to give support to The Friends of Lorraine Osman should contact it at: Room 10, 29 Harper Road, London, SE1; Telephone: 081-809 3931/071-403 9377.

Chris R. Tame

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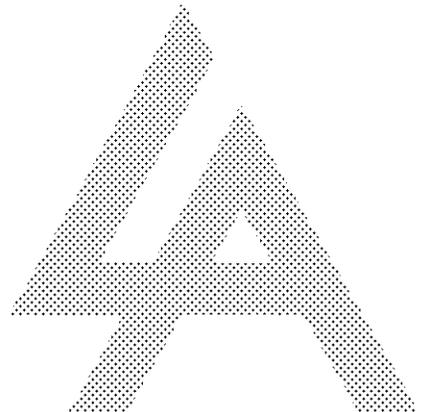
Director: Dr Chris R. Tame

Editorial Director: Brian Micklethwait

Webmaster: Dr Sean Gabb



FOR LIFE, LIBERTY AND PROPERTY



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AL BARON

The British legal system was once the envy of the world; it's a moot point whether or not it still is, but there is certainly no more injustice in Britain than in most other developed, Western nations, the Guildford Four and Birmingham Six cases notwithstanding. However, one injustice which is being perpetrated at this very moment, and a pretty unique one at that, is the continued incarceration of Lorrain Esme Osman, a Malaysian businessman, who has been fighting extradition to Hong Kong for the past five and a half years, and has been held in Pentonville and Brixton Prisons for all that time, unconvicted of any offence.

RAGS TO RICHES TO RAGS

The full circumstances of what might be called the *Osman Scandal* are anything but simple, nevertheless it is possible to summarise them in a few paragraphs.

In 1965/6, Mr Osman, a Cambridge graduate, was in practice as a lawyer in Kuala Lumpur when he helped establish a bank, Bank Bumiputra Malaysia Berhad. BBMB was no ordinary bank; it had a political *raison d'être*: to assist native Malays (Bumiputras) to establish businesses. In Malaysia, the large Malaysian-Chinese community is an economically dominant minority. A subsidiary of BBMB, Bumiputra Malaysia Finance, was established in Hong Kong, and Mr Osman became a non-executive director of this company also.

In 1979, a Malaysian-Chinese businessman, George Tan Soon Gin, formed a property developing/speculating company, the Carrian Group, which for a time was a market leader in Hong Kong. The Carrian story was one of rags to riches then back to rags again. Mysteriously funded and the subject of innumerable rumours, it grew and grew, acquiring an airline, a taxi fleet and buying property as far afield as the Philippines and California. In 1982 however, the success story came to an end when the group announced *liquidity problems*. A year long struggle to save Carrian from liquidation failed, and on a close inspection of its books the reason for its overnight success became apparent; it had grossly exaggerated its assets and owed staggering sums of money to numerous financial institutions, including BMF.

In October 1983, George Tan and his fellow director, Bentley Ho were charged with offences under Hong Kong's *Theft Ordinance*. Specifically the two men were accused of false accounting, cooking the books. In Hong Kong, the scandal naturally became known as the Carrian affair; in Malaysia it was known as the BMF scandal, and in some ways, the repercussions here were far more serious. The fact that BMF was set up as a bank with a political/social purpose and had lent money to a property speculator, and a Chinese one at that, was seen as a betrayal of the Malays. BMF lost a great deal of money in bad loans to the Carrian Group, and, not unnaturally, the directors of the bank were

viewed in certain quarters as being personally responsible, especially as for example, Hashim Shamsuddin, who was not only a director but heavily involved in politics, was known to have received generous "consultancy fees" from George Tan through one of his companies, Silver Present.

OSMAN FIGHTS EXTRADITION

The scandal and investigations continued, the bank's directors, including Lorrain Osman resigned, and, on December 6th 1985, one murder, one mysterious death, exhaustive enquiries and innumerable front page stories later, Lorrain Osman was arrested in London. Arrested at the same time was Hashim Shamsuddin; both men have firm British roots, but they do not appear to have shared a common purpose in moving to London, though certainly Osman had received death threats in Malaysia, and it is probable that Shamsuddin left the country for similar reasons.

Shamsuddin was extradited to Hong Kong in 1986, and eventually received a ten year sentence for financial corruption. Osman though decided to fight extradition tooth and nail, and for the past five years and more he has been doing just that.

The following is extracted from *Hansard*, 7th February 1990, (written answers):

6th December 1985	Lorrain Osman arrested at his London home on provisional extradition warrant
7th December	remanded in custody
20th January 1986	arrest warrant issued in Hong Kong
24th January	Home Office issues authority to magistrates to proceed with extradition case under the <i>Fugitive Offenders Act</i>
25th April	further warrant issued in Hong Kong
13th May	second authority to proceed issued
27th May	committal proceedings begun
1st June 1987	Osman committed for surrender to Hong Kong
9th June	application for writ of <i>habeas corpus</i>
30th June	complaint to European Commission of Human Rights
30th March 1988	application for writ of <i>habeas corpus</i> dismissed
29th April	refused leave to appeal to House of Lords
13th May	direct petition to House of Lords; second <i>habeas corpus</i> application made
14th July	petition to Lords rejected

21st October	second hearing of <i>habeas corpus</i>
21st December	second application dismissed
14th February 1989	refused leave to appeal to House of Lords
24th February	direct petition to House of Lords
13th March	complaint to European Court declared inadmissible under European Convention on Human Rights
4th May	original arrest warrant quashed in Hong Kong
6th June	leave to appeal for third <i>habeas corpus</i> granted by High Court
26th July	bail application refused by Divisional Court
26th September	application for judicial review deferred to start of <i>habeas corpus</i>
4th October	judicial review proceedings begun
26th October	court adjourned for judgement on proceedings
17th November	application for <i>habeas corpus</i> and judicial review dismissed
5th December	leave to appeal to House of Lords refused
15th December	further petition lodged to appeal to House of Lords direct
1st February 1990	outstanding petitions for leave to appeal to House of Lords refused
2nd February	fourth <i>habeas corpus</i> appeal lodged

Mr Osman's fourth *habeas corpus* and judicial review was heard in December of last year; needless to say it was dismissed.

The conclusion the Executive and the Judiciary draw from all this is that Lorrain Osman and Lorrain Osman alone is responsible for the position he finds himself in, and that any time he wants, all he has to do is give up his fight for freedom and allow himself to be extradited to Hong Kong. Technically, this may be correct; on the other hand, why should he?

DISTURBING ANOMALIES

An elementary critical examination of the evidence against Lorrain Osman reveals some disturbing anomalies. In short, if Lorrain Osman were to be tried in Britain under the circumstances in which he is likely to be tried in Hong Kong, there would be a public outcry.

To begin with, the principal evidence against Mr Osman is the word of one of his alleged fellow conspirators. Lorrain Osman is alleged to have accepted some \$10-12 million in bribes in order to facilitate loans to the Carrian Group. Ibrahim Jaafar has himself admitted accepting such bribes, has been granted Crown Immunity by the government of Hong Kong and civil liability by the parent bank, BBMB. And:

“As part of agreement Jaafar *continues* to be employed by BBMB on the terms and conditions relevant to his previous employment.”¹

This statement is not quite believable, but, unfortunately, it is true; in other words, Jaafar has been allowed to keep his job with the bank, (and the money he allegedly accepted in bribes) *and* granted immunity from prosecution, criminal and civil, *provided* he testifies against his former employer.²

Another disturbing development in this case is that Warwick Reid, the State Prosecutor who initiated the prosecution of Lorrain Osman was himself sentenced to eight years imprisonment in March of last year for financial corruption.

George Tan, the man without whom none of this would have happened, spent a grand total of one night in prison before being released on HK\$50 million bail ... which was put up by his secretary(!) and now, *seven years* after these alleged offences took place, while Tan is a free man, Jaafar, the former general manager of the bank, is free to enjoy his ill-gotten gains, and the man who was responsible for his (Osman's) arrest has been discredited, Lorrain Osman, who has already spent more than five years in prison, faces the prospect of being returned to Hong Kong where he will be held for a further *two years* pending trial.³ As the prospect of Lorrain Osman receiving a *fair* trial in Hong Kong is about as realistic as Saddam Hussein expecting a fair trial in Israel, and as he is now sixty years old, any sentence he does eventually receive will almost certainly amount to a life sentence.

We could add that on October 1st last year, Lorrain Osman, a slightly built sixty year old, was moved to Brixton Prison where he is now a “Category A” prisoner, i.e. he is considered to be a threat to the safety of the public, the police, or the state if he should escape. We could add also that the telephones of his wife and his legal team have been (illegally?) tapped for some time, and that on 27th November last, in an act of blatant intimidation, his wife's home was raided after Scotland Yard received a “tip off” that one of her bodyguards was armed. We could add also that Lorrain Osman has been the scapegoat and the victim of dirty politics in three countries: Hong Kong, Malaysia and now the United Kingdom, and that the governments of Hong Kong and the UK are suppressing some one hundred and fifty documents which could clear his name. We could add also that we believe passionately in Lorrain Osman's innocence, and a lot more besides, but we won't, because none of this is strictly relevant. What then is relevant?

The only thing that is relevant is that Lorrain Osman has now served the equivalent of a ten year sentence with remission and a fifteen year sentence with parole, and he is still, in law, not guilty. The fact that he has been able to fight extradition to Hong Kong for as long as he has done is also significant. Extradition law exists for a purpose: different countries have widely differing notions about what is legal and what is not. There is also the question of sanctions imposed upon offenders. For example, in the Sudan, if you are convicted of theft, you may have your hand cut off, while in Saudi Arabia you may be flogged for the “crime” of drinking alcohol.

If (hypothetically) a man accused of shoplifting in some Islamic theocracy or other, were to flee to Britain and a warrant were presented to the authorities demanding his surrender, and if it were likely (or even possible) that he would be sentenced to death or ten years imprisonment on his return, would we return him? I for one should like to think not.

If Lorrain Osman were to be tried and convicted by a British court of the offences he is charged with now, there is no way he would be sentenced to ten years, much less fifteen. It goes against all sense of natural justice and common decency that he or anyone else should be imprisoned for so long without trial for such an offence. If he were accused of murder, then we might possibly be dealing with an entirely different kettle of fish, but can financial corruption, however serious, ever warrant such a basic violation of the spirit if not the letter of the law?

The real problem here is not that Osman is fighting extradition but that he is able to fight it. And he is able to do this for one simple reason: he is rich. The man in the street would never have been able to mount such a vigorous defence; Lorrain Osman has had the best solicitors and barristers money can buy; he has had people jetting all over the world for him — literally. The supreme irony here, is that if Osman were not wealthy beyond the dreams of avarice he might well be better off; his appeals would have run out years ago and he would have been extradited to Hong Kong where he just *may* have received a sentence far less excessive than the one he is sure to receive when the inevitable happens. Clearly Osman at least feels this is not true; he is obviously terrified of being sent back to Hong Kong. We may never know for certain, but this case could well be one of those rare instances of money talking the wrong language.

OSMAN SHOULD BE RELEASED

What then should be done, both in this particular case and in the (hopefully unlikely) event of anything like this ever happening again? In the present case the thing which should be done, clearly, is for the Minister of State to recommend to the Home Secretary that Osman should be released and an undertaking given that he will not be returned to Hong Kong. For whatever reason, this seems highly improbable. In the future, provision should be made for extradition cases to be decided without unnecessary delay. In murder, terrorist or other serious cases it still might not be possible to satisfy both the written law and natural justice, but nobody ever said jurisprudence would be easy; clearly it is not, but fortunately, some of the finest minds in history have been devoted to it, and, just as fortunately, the Lorrain Osman cases of this world are few and far between.

There remain therefore two possibilities: one is that a prisoner held pending extradition could be tried here on the evidence available and, in the event of conviction, sentenced accordingly. This would mean that a thief facing extradition to Sudan, rather than having his hand cut off, would get six months, a suspended sentence, or whatever sentence a British court would normally pass under the circumstances.

The other possibility is that, if a prisoner had been held or was likely to be held in custody for a period longer than the sentence he would be likely to receive from a British court if he were to be convicted of the offence he was being held in connection with, then the Home Secretary should use his discretion to order his release. There is in fact, no good reason for this last provision not to be made statutory. Unfortunately for Lorrain Osman, even if such a law were to be passed by Parliament tomorrow, it would be five years too late.

REFERENCES:

1. Extract from a document entitled "Ibrahim Jaafar" obtained by the author from Lorrain Osman's legal team. Under pressure from Osman's legal team, Ibrahim Jaafar has now been sacked.
2. The following quotes are extracted from the same document (ibid):
Judgement: from a civil case brought against BMF by the liquidators of Eda Ltd — another property developing firm which went under about the same time as the Carrion Group - Hon. Liu J. on 15th December 1987:
"He is a self confessed liar to both firms of auditors, Mr Chung Ching Man, Commissioner Robert Tang QC, his own Bumi Board and Headquarters as well as Bumi's own solicitors, Messrs. Wilkinson and Grist."
"Then, Mr Jaafar described his follow up activities which sound monumentally unreal."
"Mr Jaafar, despite the letter he produced, does not impress me as a truthful witness. He has given versions which are almost beyond belief. It may well be Mr Jaafar's notion that so long as he lies to the advantage of his former masters, he could or is to be allowed to retain the benefits of the documents given him."
3. This claim was made by Mr Osman's defence in open court; it does not appear to have been disputed by the prosecution.

UPDATE JUNE 1991

The above was written in December 1990. Since then Mr Osman has been back to the European Court of Human Rights, and lodged a (surely unprecedented) fifth appeal for *habeas corpus* and judicial review. He is still domiciled in Brixton Prison as a Category A prisoner and his lawyers are still trying to find further evidence that will discredit the case against him. At his fourth appeal in December last year, it was revealed that the bank, BMF, had "lost" some three thousand documents, many of which are or would have been relevant to Mr Osman's case.

I have been privileged to a certain amount of inside information and must tread warily, but I can point out that there is now a clear connection between a very high ranking member of the Malaysian government and the central character in the BMF/Carrion scandal, George Tan Soon Gin. Previously this connection had only been rumoured, but now it is an established fact. Less certain but no less credible is the connection between this same minister and Mak Foon Than.

Mak was convicted of the murder of the BMF auditor Jalil Ibrahim, the case which catalysed the police investigation into the Carrion group. During his interrogation, Mak was to claim that he had been sent to Hong Kong on "ministerial business"; he made a lengthy statement, some twenty-four pages of which disappeared. At his trial, he denied the accusations he had made previously, and this has led one member of Mr Osman's legal team to suggest that Mak was warned that if he continued to make embarrassing noises, his family in Malaysia would suffer. There is also a certain amount of evidence to suggest that the British government came to an agreement with the Malaysian government over the prosecution of Lorrain Osman and the other directors of the bank.