IN THE DISTRICT COURT
AT AUCKLAND

UNDER	THE EXTRADITION ACT 1999
IN THE MATTER OF	PROCEEDINGS TO EXTRADITE KIM DOTCOM AND OTHERS
BETWEEN	THE UNITED STATES OF AMERICA Applicant
AND	KIM DOTCOM AND OTHERS Respondents

Date: 6 December 2013

Appearances: Ms JC Gordon QC, Mr M Ruffin and Mr F Sinclair for the United States of America
Mr P Davison QC Mr H Steele, Mr W Akel for Kim Dotcom
Mr G Foley for Van der Kolk, Batato and Ortmann

DECISION OF JUDGE N R DAWSON

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[1] One of the respondents Mr Dotcom is concerned that he or his family may have been subjected to surveillance activities undertaken by or on behalf of the applicant that would be prejudicial to Mr Dotcom at the extradition hearing to be held. This application is supported by the other three respondents.

[2] Mr Dotcom seeks the following orders:-

1. Directing the United States of America, to provide an affidavit stating in unequivocal terms whether or not:

(a) it has conducted any surveillance of Mr Dotcom or his family, and/or interceptions whatsoever of their communications, or that of his solicitors and counsel, in any manner since 20 January 2012, including the particulars of any such surveillance;

(b) it has any knowledge of or has received or had the benefit of any investigative product resulting from surveillance of Mr Dotcom or his family, and/or any interception whatsoever of their communications, or that of his solicitors and counsel, in any manner since 20 January 2012, whether by any Governmental agency or, by any other person or organisation, including full particulars of any such surveillance.

2. Requiring the United States to provide an affidavit or affidavits detailing particulars of any such surveillance and/or interceptions.

3. Such further or other orders as may be necessary.

4. For the costs of and incidental to this application.

[3] It is submitted for Mr Dotcom that this court has the inherent power to regulate its own procedure as relates to abuse of process. The application is supported by affidavits filed by Mr Dotcom and by Mr John Thackray.

[4] Mr Dotcom has filed affidavits dated 16th September 2013 and 22nd November 2013. He affirms that on the 2nd August 2013 at about 12.29pm he called his legal counsel, Mr Akel. Mr Akel's secretary answered the phone and asked if Mr Dotcom would like Mr Akel to call him back. That request was confirmed and at about 12.40 pm Mr Akel from his office landline number called Mr Dotcom on his iPhone. Mr Dotcom accepted the call and had a solicitor/client privileged conversation with Mr Akel about his case. Mr Dotcom had enabled the speaker-phone function on his iPhone so he could talk hands free. Mr Dotcom says that about 12.59 pm when Mr Akel had been talking for only 3 or 4 seconds Mr Akel

suddenly went mute. Mr Dotcom says he heard some weird noise for about a second and then he could hear himself through the speaker phone and could hear what he had said to Mr Akel about 15 seconds prior to Mr Akel's response going mute. Mr Dotcom could hear himself like a recording playing back. Mr Dotcom said "Willy, can you hear this? What's going on?" Every word he was saying over the top of the playback was delayed by about a second and there was an echo of everything that he said. He had no response from Mr Akel and then the playback stopped at the same time as when Mr Akel had previously gone mute about 15 seconds earlier. Mr Dotcom could see from his iPhone display the call was still active. Mr Dotcom kept saying the words "Hello. Helloooo. What the hell is this?" and those words were echoed back to him.

[5] Mr Dotcom says he realised that this could not have been a bug in his iPhone as it could not record 15 seconds of his conversation and play it back. He immediately talked into his phone in the belief he was talking directly to whoever it was intercepting the call. He started the "Sound Recorder" application from his Windows Start bar and the echo was still there. He was about to click the "Start Recording" button when the call dropped by itself and immediately after that Mr Akel's office number appeared on the display again with the option to accept or decline the call. He clicked on accept and told Mr Akel what had just happened.

[6] Mr Dotcom also says that in about June 2013 he had noticed that the battery on his iPhone was sporadically running low, that this could happen quite suddenly and became a real issue. He removed a number of applications from his phone in an attempt to prevent this from happening but it made no difference. He says he had the same issues with a previous iPhone from when he arrived back in New Zealand from Hong Kong in October 2011.

[7] Mr Dotcom says that it is his understanding that the elevated battery usage could be symptomatic of the interception of his communications and in particular, the imports of some "Trojan" like software into his phone. He understands that a device could be installed in or near his home for the purposes of intercepting communications and it would be extremely difficult for him to prevent anyone from entering his property to install such a device.

[8] Mr Dotcom says that since the raid on his home on 20 January 2012 he has been concerned that his communications have been subjected to interception by security agencies, whether by US Security Authorities, New Zealand Security Authorities or other members of the Five Eyes authorities. He says that in September 2012 the GCSB admitted it had illegally intercepted his communications and the Prime Minister had issued a public apology. However he believes there were interceptions of his communications for a period prior to what the GCSB has acknowledged.

[9] Mr Dotcom says he is very concerned at the incident that took place in his telephone discussion with Mr Akel as he regards his discussions with Mr Akel and other legal advisors as privileged and confidential between them as they relate to giving instructions and receiving legal advice. He says that through his solicitors he has sought assurances from Crown Law in the context of civil damages proceedings that he and his communications have not been the subject of interceptions since 20 January 2012 by any of the security agencies of the Governments of either New Zealand or of the United States of America and to date no such assurance has been received. He therefore seeks the orders in this Application.

[10] Mr Dotcom says that he has obtained information and assembled evidence which indicates his own cell phone and possibly other cell phone users at his residence in Coatesville were subject to surveillance by means of an interception device that would appear to have been operating since sometime prior to his arrest on 20 January 2012.

[11] He says that upon moving into his Coatsville property they had difficulty obtaining a sufficient cell phone signal to enable cellular calls to be made or received at that property. As a result he engaged the firm Liquid Automation to take steps to rectify the problem. He requested Stephan Goodhue of Liquid Automation to contact Vodafone who were their cell phone network provider to see if steps could be taken to improve the cellular signal strength available at his property. He says Mr Goodhue reported to him that he had taken up the matter with Vodafone and in August 2011 Mr Dotcom purchased a series of signal boosting devices that were installed in and around the property in an attempt to improve cellular coverage. He

says that the devices improved the situation but no means rectified the problem and there were some parts of the property and house where there was little or no connectivity.

[12] Mr Dotcom says that he spent some time out of New Zealand in 2011 and upon his return on the 26th September 2011 he found that the problem appeared to have been solved with good signal coverage everywhere around the property including areas that previously had no signal. At the time he assumed Vodafone had taken steps to improve their service. He says that he made inquires to determine whether there was an explanation for the improved cell phone coverage and so far as he is aware Vodafone had not taken any steps to improve the signal.

[13] It is Mr Dotcom's belief that publicly known interception devices are used by the US Federal investigators including the FBI and other law enforcement agencies and the cessation of the use of such devices would explain why the cellular signal at his Coatsville address suddenly became the full strength again and the operation of such devices would also explain the incident described by him during his telephone call with Mr Akel on the 2nd August 2013.

[14] Affidavits dated the 3rd October 2013 and the 4th December 2013 have been filed by Mr John Thackray in support of Mr Dotcom's application.

[15] Mr Thackray is a Forensic Investigator who says he is familiar with Schedule 4 of the High Court Rules "Code of Conduct for Expert Witnesses", and in his affidavit says he agreed to comply with its requirements. He is the principal investigator of Thackray Forensics Limited and since 1997 has provided expert computer forensic services throughout the world and has been professionally involved with information technology for over 25 years. He has previously served in the British Army for 16 years qualifying as a Service Fund Audit and Military Accountant and was actively involved in computer administration and operational roles. He has also served for 13 years in the Police service of Britain and New Zealand with experience in information technology and as an investigator in crime scene examinations investigating international and national computer criminal activities.

[16] The opinion of Mr Thackray is that the phenomena experienced by Mr Dotcom in his conversation with Mr Akel is likely to have resulted from the interception and recording of that conversation. He says that while there could be an innocent explanation for a delayed playback or echo, such a delay would usually be in the region of 1 to 2 seconds and could not be as long as the 15 seconds described by Mr Dotcom. In Mr Thackray's view that long delay described by Mr Dotcom is indicative of an interception and recording of his conversation with Mr Akel.

[17] Mr Thackray says that there are three distinct possibilities as to the cause of the phenomena described by Mr Dotcom:-

(a) That an application (app) has been remotely installed which can enable the installer to monitor the usage of that particular device as well as forward all data from that device to a nominated Internet Protocol address. The installer can also turn on the microphone on the phone, use the camera remotely, and monitor the GPS location of the handset. These apps can also be remotely uninstalled. One of the symptoms of such an app is a spike in the battery usage of the targeted device which would be similar to the problems described by Mr Dotcom with regard to his iPhone battery.

(b) The second and in the opinion of Mr Thackray more likely explanation is that an interception device has been installed locally within close proximity to Mr Dotcom or his home which enables the installer to capture and decode data from a nominated cell phone number. He says that the phenomena experienced by Mr Dotcom would be explicable by a failure in the interception connection which would have the effect he describes of a playback of the previously intercepted communication.

(c) The third possibility is that the landline to Mr Akel's phone has been targeted. He says that a landline is the weak link and much easier to

> intercept and a typical side effect of such interception is echoing and delayed communication on the cellular side.

Mr Thackray concludes that his opinion is that the phenomenon experienced by Mr Dotcom is explicable by an interception and recording of his communication by an unknown type.

[18] Mr Thackray confirms that he is involved in and has technical knowledge of the implementation of telecommunications surveillance technology in the course of current investigations in Mexico and the Middle East. He says this work is predominantly done at the request of allied government agencies including governments of the United Kingdom and the United States.

[19] He acknowledges he has not had the benefit of any forensic analysis of either the network or physical devices associated with the events described by Mr Dotcom and accepts that such information would bring a greater degree of accuracy to any analysis. However he says the absence of such information does not in his opinion preclude such an analysis altogether. He concludes from the phenomena described by Mr Dotcom and his experience that there is a reasonable argument surveillance techniques may have been used in this case.

[20] Mr Thackray says that equipment does exist to enable interceptions and receive voice conversations and are used on a daily basis around the world by governments, terrorist organisations and enthusiastic amateur "Phreakers" (a Phreaker being the equivalent of a hacker in the telecommunications world). He says that one such device known as StingRay has recently been publicly exposed in court in the United States as being widely used by the Federal Bureau of Investigation and they have also deployed devices known as "Loggerhead" and "Trigger Fish". The information provided with his affidavit indicates that StingRay is a device primarily designed to be used for tracking the location of phones and that both the Triggerfish and Loggerhead were designed to allow eaves dropping on the content of calls.

[21] The Crown have filed an affidavit from Jay V Prabhu dated 7th November 2013. Jay V Prabhu is an Assistant United States Attorney, Chief of the Cybercrime, United States Attorney Office for the Eastern District of Virginia and is one of the prosecutors assigned to the case of *United States v Kim Dotcom, et al*; Criminal Case number 1:12 CR3 (E. D.Va) and has been assigned to this matter since the beginning of the investigation in March 2010. Jay V Prabhu affirms that as the Assistant United States Attorney prosecuting this case a thorough review of the government's evidence against the respondents has been undertaken and confirms that none of the evidence that is summarised in the Record of the Case or its supplements contains, or has been derived from, the real time interception of telephonic communications. Furthermore, neither the US Attorney's Office or the Eastern District of Virginia nor the Computer Crime and Intellectual Property Section of the US Department of Justice has requested that any such interception be conducted and has not to the deponent's knowledge received information derived from any such interception. Nor is the deponent aware of any post-arrest interception having been conducted.

[22] On behalf of Mr Dotcom it is pointed out that:

(a) That what is contained in the Record of the Case or its supplements is not the issue. It is much broader than that.

(b) The reference by Mr Prabhu to "such interceptions" refers to the real time interception of telephonic communications with regard to the Record of Case and its supplements.

(c) That Mr Prabhu concludes that he is not aware of any post-arrest interceptions having been conducted and whether this is a reference to the real time interceptions is not made clear. Further Mr Prabhu does not say whether he has made any inquiries with regard to such interceptions or the extent of such inquiries. It is expected that such inquiries could be expected so that he could satisfy himself that nothing has taken place that would warrant concern by the Court that there has been a serious abuse of process.

[23] The applicant has also filed an affidavit by Dr Murray Milner who confirms that he has read the Code of Conduct for Expert Witnesses set out in Schedule 4 to the High Court Rules and that he will comply with that Code. Dr Milner is the Managing Director and Principal Consultant of Milner Consulting Limited that provides strategic leadership in the application of information and communication technology to various service providers, vendors, governments and enterprises. Dr Milner has more than 40 years experience in the information and community technology area, including 17 years with Telecom New Zealand, 17 years with New Zealand Post Office and amongst other qualifications has a doctorate degree in electrical engineering from the University of Canterbury.

[24] Dr Milner's affidavit is based on the assumption that the factual matters described by Mr Dotcom are correct but has not been able to examine Mr Dotcom's cell phone or the records associated with any networks being used by the call in question.

[25] In Dr Milner's view there are many components within networks that can deliver delay and echo associated with a telephone call. He says it is hard to ensure that every telephone call is perfect as perceived by the end users, and there can be a variety of situations where the end to end performance can be degraded which can cause anomalous telephone quality. Dr Milner says that he has very little information to diagnose the likely cause of the echo but there are a number of possible options that may cause that to happen. However it is hard to explain the long delay echo Mr Dotcom experienced after the initial 15 second replayed speech. Dr Milner concludes that a poorly established or faulty lawful voice interception would generate an echo delayed by several seconds but there would need to be some very strange anomaly at play for such a long delay echo to occur. An echo causing a delay of 15 seconds in his view would be highly unusual. He agrees with Mr Thackray that network performance issues are not likely to be the explanation for a delay of that length of time.

[26] Dr Milner confirms that he has examined the three interception options described by Mr Thackray and he concludes that all three are highly unlikely but based upon the poor evidence available the first option of a "Trojan" or some other

form of rogue application would be the highest probability for an explanation of the observed anomaly.

[27] For Mr Dotcom it is submitted that this court has the inherent power to regulate its procedure and in particular the power to prevent an abuse of process. It is submitted that all courts have the inherent power subject to the rules of the court and of statute to regulate their own procedure and these powers are ancillary but give effect to the Court's substantive jurisdiction to hear and decide the matter before it. These powers it is submitted include the power to prevent any abuse that would endanger "public confidence in the integrity of the criminal justice system" - *R v Antonievic* [2013] NZCA 483 at [54].

[28] It is submitted that the United States of America as a requesting party in these proceedings seek to have the Court exercise its substantive jurisdiction under the Extradition Act 1999 and as such is subject to the Court's inherent powers.

[29] It is submitted that the most common context in which the issue of the exercise of the Court's inherent powers is that of a stay application. Reference is made to the Court of Appeal decision in *Antonievic* at [48] where it is stated that the Court has the power to stay criminal proceedings where:

(a) It is impossible for the accused to receive a fair trial; or

(b) Where allowing the trial to take place would undermine public confidence in the integrity of the criminal justice system.

[30] It is submitted that the threshold for an abuse of process sufficient to warrant the granting of a stay in the proceedings is high and given that Mr Dotcom does not seek this remedy in this application, it is submitted that a lower threshold for this application is applicable. Whilst Mr Dotcom did not at this time seek a stay of this proceeding he does reserve his position regarding any such potential future application.

[31] For Mr Dotcom it is submitted that it would be "an egregious abuse of process for one party to this proceeding, or any proceeding, to intercept the communications of another party to the proceeding. The respondent should not have to conduct these, and related proceedings, in circumstances where there is any suggestion of continuing surveillance and interception. Particularly of communications protected by legal privilege". Reference is made to *Beckham v R* [2013] 1 NZLR 613 which was in agreement with the observations of Lord Taylor of Gosforth in *Regina v Derby Magistrates' Court, Ex parte B*:

> "The principle which runs through all these cases... is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client must be sure what he tells his lawyer in confidence will never be revealed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence, limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests."

[32] For Mr Dotcom it is submitted that if it were it to be revealed that the United States of America or its agencies were intercepting Mr Dotcom's telephone calls, and in particular those with legal counsel that it would constitute a sufficiently serious abuse of the court process to warrant a stay of proceedings. It is also submitted that the swearing of such an affidavit as sought is a relatively simple matter for the United States of America to do and given the potential seriousness of any such abuse, such an affidavit should be provided.

[33] For the United States of America it is submitted that in the Court of Appeal decision of *USA v Dotcom & Ors* [2013] 2 NZLR 139 it was stated:

> [111] ... Although we agree that in general further information should be sought from a requesting state such as the United States through the art 12 mechanism rather than by ordering disclosure, there may be situations where a disclosure order would be justified (for example, where there is cogent evidence that the court's processes are being abused). Certainly, we are unwilling to rule out that possibility especially as it has some support in the Canadian authorities although not in those from the United Kingdom. Given the difficulty of anticipating all possible situations, we think it unwise to go beyond what is required to determine the present case.

[34] It is accepted that the Court of Appeal did not deal directly on whether or in what sense a requesting country may be said to be a "party" in an extradition proceeding and whether such a party is subject to the binding powers of a court. It is

submitted that a foreign state does not waive sovereign immunity by making a request under the extradition treaty, that proceedings are commenced on its behalf by the Minister of Justice in New Zealand, and the ultimate decision on the request is conveyed by diplomatic process. Reference is made to the case of *Schreiber* where the Supreme Court of Canada held that[1]:

> "... it would be contrary to the concepts of comity and mutual respect between nations to hold that a country that calls upon Canada to assist in extradition only does so at the price of losing its sovereign immunity and of submitting to the domestic jurisdiction of Canadian courts in matters connected to the extradition request, and not only in respect of the extradition proceeding itself".

[35] It is submitted that the current position regarding the jurisdiction of this Court may be summarised as follows:

(a) The New Zealand Court of Appeal has not dismissed the possibility of an extradition court making a disclosure order against a requesting state where there is "cogent evidence" that an abuse of process has occurred.

(b) The New Zealand Court of Appeal obiter concerned disclosure of documents and it is not clear whether the same reasoning applies in other situations. It is submitted the current application is in the nature of an interrogatory directed to the Executive of another country rather than the prosecuting authority.

(c) A decision yet to issue from the Supreme Court of New Zealand on the disclosure appeal from the New Zealand Court of Appeal may change the position. It is submitted that if the Supreme Court followed *Schreiber* there would be no jurisdiction to make an order as sought here. It is submitted if there was an apparent abuse then that would be needed to be dealt with through diplomatic channels.

(d) There does not appear to be any precedent or authority supportive of the application in this case.

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[1] *Schreiber v Canada* (A-G) [2002] 3 S.C.R.269, para [27]

[36] It is also submitted for the USA that this Court is being asked to interrogate a treaty partner state about its intelligence activities which might be seen as touching upon sensitive issues of capacity and technique and some hesitation from the treaty partner state might be expected. It is also submitted that such an order requires a person who is able to state a pan-government position and the greater that person's breadth of authority, the less likely it will be that they will have direct knowledge of the subject matter.

[37] In the Supreme Court of New Zealand decision of *Siemer v The Solicitor General* [2013] 4 NZLR 441 at paragraphs [113] and [114] the Supreme Court said:

> *The inherent powers of the New Zealand courts*
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> [113] All courts in New Zealand have inherent powers. While these powers have in the past sometimes been described as part of the "inherent jurisdiction" of the courts, we think that the term "inherent powers" more aptly describes them. "Jurisdiction" and "power" are two distinct concepts. The jurisdiction of a court is its substantive authority to hear and determine a matter. Jurisdiction may be inherent in a particular court or it may be conferred by statute. But every court has inherent powers which are incidental to or ancillary to its jurisdiction, whether that jurisdiction is inherent or statutory.
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> [114] In *Mafart v Television New Zealand*, which did not involve contempt of court, the majority judgment of this Court referred to the ancillary powers of the courts as:
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>> ... the authority of the judiciary to uphold, to protect, and to fulfil the judicial function of administering justice according to law in a regular orderly and effective manner.
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> The courts' inherent powers include all, but only, such powers as are necessary to enable a court to act effectively and uphold the administration of justice within its jurisdiction. Their scope extends to preventing abuse of the courts' processes and protecting the fair trial rights of an accused. The inherent powers of a court do not, however, extend to furthering the general public interest beyond that concerned with the due administration of justice. Examples of the inherent powers which are necessary to enable a court to act effectively within its jurisdiction include powers to dismiss or stay proceedings, to control barristers and solicitors and to issue orders to preserve evidence.

[38] The Supreme Court has noted the distinction between the concepts of "jurisdiction" and "power". This application is made on the basis that this Court should exercise its inherent power to prevent a possible abuse of the Court's processes. This must include preserving the integrity of this Court and its ability to

conduct a fair and just hearing of any matter before the court. If it were the case that one party to a proceeding before this Court was conducting covert surveillance activities on the other party and listening in to and recording the private conversations and in particular privileged client/lawyer communications where legal advice and instructions are being given and sought that would amount to an unacceptable invasion of the other party's rights and may justify an intervention of this court in an appropriate manner. In those circumstances it may well be appropriate to make the order as sought in this application.

[39] The fact that the USA, a party to these proceedings, is a foreign and independent state would not prevent such an order being made if the Court deemed that to be appropriate. In the Extradition (United States of America) Order 1970 in it is recorded as follows:

> Article IV
>
> Extradition shall be granted only if the evidence be found sufficient, according to the laws of the place where the person sought shall be found, either to justify his committal for trial if the offence of which he is accused had been committed in that place or to prove that he is the person convicted by the courts of the requesting Party.

[40] Article IV makes it clear that "the laws of the place", in this case New Zealand, shall apply to the conduct of the extradition hearing.

[41] The order being sought by Mr Dotcom relates to the fairness and justice of the extradition hearing to be held and the status of the other party to the proceedings as a foreign and sovereign country does not affect the inherent power of the court to ensure a fair and just hearing. If grounds for granting such an order were to be established, then notwithstanding that the Court could not enforce that order against another state; a failure to comply with such an order could be a fact or taken into account by this court during subsequent proceedings.

[42] An analysis of the evidence relating to any possible surveillance of Mr Dotcom or his family and for interceptions of communications indicate that there have been difficulties with telephonic reception at his Coatsville property and interference with his telephone conversations which are presently inexplicable unless

it is accepted that some form of external interference has occurred. Expert evidence from Mr Thackray and Dr Milner indicate that there are devices not commonly available that can be used to intercept and record what would otherwise be private telephone conversations. On the evidence before this Court it would appear likely that some form of surveillance and/or interference with telephone communications has happened. The evidence does not establish that it is certain that surveillance has occurred.

[43] The application by Mr Dotcom is based upon his very strong suspicion that the USA may be conducting such surveillance activities upon him, the extradition proceedings against him are being pursued very vigorously by the USA, and there is a lot at stake. He is supported in his view by the evidence supplied by expert witnesses that the United States does have access to such technology and is a known user of such technology.

[44] For Mr Dotcom, it is also submitted that recent events show that the USA has been exposed for spying on other governments and the heads of state, along with an extraordinary number of people throughout the world. Effectively, he is saying:

(a) The USA have the technology, equipment and people to conduct interception/surveillance activities;

(b) They are known to use these facilities to conduct surveillance upon very important persons, organisations, and a large number of other people.

(c) The USA have the most to gain by conducting interception/surveillance activity against him or his family.

(d) These factors indicate that it must be the USA who are responsible for these type of activities against him.

[45] Against the application it is noted that:

(a) There is not a scintilla of evidence that directly connects the USA or its agencies or agents to any interception/surveillance activity with respect to Mr Dotcom or his family's telephone communications.

(b) Mr Dotcom's own expert witness acknowledges that such equipment and technology is used all around the world by other governments as well as the USA, and by terrorists' organisations and "Phreakers".

(c) Present court proceedings in the United Kingdom have made public widespread use of interception/surveillance activities by the news media and Mr Dotcom has had a high media exposure and appears to remain a person of interest to the news media. Interest in Mr Dotcom's activities is not limited just to the USA.

[46] This Court must come to a decision upon this Application based upon the law and the evidence before it, and not upon any party's suspicion or speculation. Mr Dotcom would need to produce evidence that directly connects the USA to the alleged interception/surveillance activity, or at the least exclude all other reasonable possibilities before this Application could succeed. He has not done so.

[47] In conclusion it can only be shown that interception/surveillance activities concerning Mr Dotcom and his family are likely to have occurred but there is no direct evidence that the USA, its agencies or agents are involved. There is no evidence that Mr Dotcom and his fellow respondents will not therefore be afforded a fair and just extradition hearing. This does not amount to a case whereby this Court should exercise its power to grant this application and the application is declined.

[48] The costs of and incidental to this application is reserved.

NR Dawson
District Court Judge