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ROINN AN TAOISIGH

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To: Taoiseach

From: M. Mansergh

The Extradition of Mr. Dominic McGlinchey

The letters across concern Mr. McGlinchey, whom the Supreme Court ordered to be extradited to Northern Ireland two days ago for the murder of Mrs. Hester McMullan, an elderly widow. Mr. McGlinchey however is not in custody. The letter (written before the Supreme Court judgement, but anticipating it) urges that the Government intervene to prevent his extradition and to activate the Criminal Law Jurisdiction Act.

I have discussed the facts of the case and the implications of the judgement with the Attorney General and the Secretary of the Department of Justice. A Supreme Court judgement is of course final. While there may be a Ministerial power under Article 50 paragraph 4 of the Extradition Act of 1965 allowing him to stop an extradition, where the offence is a political one or connected to a political offence, it has been the policy of successive Governments never to exercise the power. It is questionable in any case whether that power could be exercised after the Supreme

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Court had pronounced to the contrary. Quite apart from the legal considerations the political repercussions of intervening would be enormous. In any case, because McGlinchley is not in custody, this particular judgement cannot at the moment be carried out.

There is no doubt, however, that the judgement has farreaching implications. While further judgements may be required to clarify the Court's position, given that the plaintiff in this case was not pleading that it was a political offence, the probability is that extradition will now take place for terrorist crimes. In this the Supreme Court would be following a trend in European jurisprudence.

The judgement has been warmly welcomed by Mr. Peter Sutherland, former Fine Gael Attorney General. The Supreme Court may effectively have taken away the political responsibility for making moves in this direction.

The judgement has however very considerable potential consequences.

1) I do not believe it will have more than a

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momentary impact on British and Unionist attitudes. Articles 2 and 3 will probably now come more directly into the line of fire.

- 2) On the negative side ^{de} it may hasten the development of All-Ireland terrorism, and make representatives and institutions of the Law subject to attack. Cases may arise in future where the evidence is dubious, and where extradition to Britain or the North ^{of} particular people may become politically very controversial. The opening up of extradition is fraught with consequences for domestic peace and indeed for North-South and Anglo-Irish relations. Will the British and Northern authorities continue to use the Criminal Law jurisdiction Act at all, will they show sensitivity in demanding extradition?
- 3) Most other countries are reluctant to extradite their own nationals. It could be argued that extraditing ^{ng} one's own nationals at the behest of foreign authorities is difficult to reconcile with national sovereignty. The German Constitution (Art 16.2) actually forbids it. It would be for consideration as to whether we

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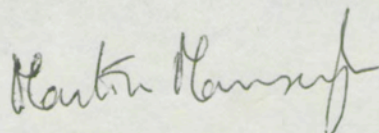
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should allow extradition of our own citizens
(one would have to consider the effects of
any change in the law on this on the rights
of Irish citizens in Britain).

This may be a policy issue, which deserves long
and careful consideration.



9 December 1982.