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THE JOE DOHERTY CASE

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Background

1. Doherty was convicted in Belfast in 1981 of the murder of a British Army captain and sentenced to life imprisonment. While in custody he broke out of Crumlin Road jail and arrived in the US in 1982. He was arrested in New York in 1983 on the grounds of illegal entry.
2. Since Doherty's arrest in 1983, the British authorities have sought his extradition to the United Kingdom. The request for extradition was denied by a New York Court in 1984 on the basis that Doherty's offence fell within the political offences exception to the US/UK Extradition Treaty. (The Treaty has subsequently been amended to remove the political offence exception). There were two appeals by the US Government against this decision, both of which failed.
3. In 1986 Doherty sought and was granted voluntary deportation to Ireland. The Immigration and Naturalisation Service (INS) objected to deportation to Ireland as prejudicial to the interests of the United States as it might interfere with US international efforts to combat terrorism. This objection was overruled by an immigration judge and the INS appealed to the Board of Immigration Appeals (BIA). The appeal was dismissed on 11 March 1987. The INS then asked the US Attorney General to review the BIA decision.
4. The 1988 decision of the US Attorney General, disapproved of the BIA's decision and concluded that it would be prejudicial to the interests of the United States for Doherty to be deported to Ireland and that he should be deported to the United Kingdom.

5. Parallel to the consideration of the case by the Attorney General, Doherty had filed a new motion with the BIA in December 1987 requesting an order that the entire case be remanded to an immigration judge for a new hearing. Doherty's new claim was for asylum in the US, withholding of deportation and for the redesignation of the country of deportation. The basis for his claim was that enactment of the European Convention on the Suppression of Terrorism (ECST) in Ireland had changed the facts on which he based his earlier willingness to be deported to Ireland during his prolonged legal proceedings in the US.
6. The BIA referred this claim by Doherty to the Attorney General in February 1988 on the grounds that it was unclear whether the BIA had authority to consider the new motion while the Attorney General was considering an appeal of the case. The Attorney General sent the motion back to the BIA for its decision, making clear that he expressed no opinion as to how the BIA should decide the matter.
7. The result of the Attorney General's referral was that Doherty remained in prison in the US while the BIA went on to decide that he be granted asylum in the US without deportation. However, the US Attorney General disagreed with this favourable decision refusing even a hearing on the matter. Doherty next resorted to the US Court of Appeals on the basis that, (i) he be permitted to have his plea for political asylum heard by the immigration courts, and (ii) if he is to be deported it should be to a country other than Britain. Judgement by the Court of Appeals was reserved on January 10th last and remains to be announced in due course. During his February trip to the US Cardinal O'Fiaich described Doherty's continued imprisonment over nearly seven years as "outrageous" while both Cardinal O'Connor and Governor Cuomo of New York State support Doherty's cause along with local ethnic organisations such as the AOH.

Current Position in the Joe Doherty Case

The main facts of the case may be summarised as follows: -

1. Doherty was convicted in Northern Ireland in 1981 of the murder of a British Army Officer. He escaped and entered the U.S. illegally on a false passport. He was arrested by the Immigration and Naturalisation Service (INS) in June 1983 in New York and has been held since without bail.
2. Under the terms of the US-UK Extradition Treaty, a case was tried for his extradition. In December 1984, a U.S. Federal Court ruled that Doherty should not be extradited, concluding that the political offence exception in the Treaty clearly encompassed Doherty's crimes. The U.S. Department of Justice sought to seek collateral review of the order denying extradition but failed in February, 1985, and March, 1986.
3. The INS originally sought to deport Doherty but delayed taking action until September 1986 (while attempts were made to extradite him). In September 1986 an Immigration Judge found Doherty deportable for entering the U.S by fraud and without a valid immigration visa. He ordered him deported to Ireland. The judgment was appealed and has gone through various further appeals and opinions. The authorities have stated that it would be prejudicial to the interests of the United States to deport Doherty to Ireland. An Appeal Court decided on 29 June, 1990 that Doherty should be given the right to have his deportation proceedings reopened to allow him the opportunity to apply for political asylum.
4. Doherty's application for bail, which was opposed by the authorities, was heard on 4 September, 1990. Judge Miriam

Cedarbaum emphatically rejected this application in a 23 page judgement maintaining that the risk of flight by Doherty if allowed bail was overwhelming. She mentioned, inter alia, in her judgement that "while the length of the petitioner's detention is extremely troubling his own strategic manoeuvres have caused significant delays". An appeal was also turned down by a 2-1 majority decision of the United States Court of Appeal for the Second Circuit in August, 1991.

5. On 13 December, 1990, the US Justice Department sought a writ of certiorari to quash the decision of the U.S. Court of Appeals to give him an asylum hearing. On 19 February, 1991, the Supreme Court agreed to hear the Government's petition against the Court of Appeals ruling. If Doherty loses his asylum appeal in the Supreme Court on October 16, he will have no further redress and will face immediate deportation.

6. Irish Government Position

The Government's position is that the present legal proceedings are a matter to be resolved by the US Courts and authorities generally. It would be inappropriate for the Government to comment while the matter is before the Courts. Of course, as an Irish national, Doherty is entitled to normal consular assistance in the US if he wishes to avail of it. If Doherty were to be deported to Ireland or was able to come here of his own volition he would be admitted as an Irish citizen.

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