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Justice must be seen to be done

The Irish Attorney General Mr Murray was right to refuse the extradition of Patrick Ryan (though his reason was inaccurately stated). It pains me to say that because I have always been bitterly opposed to the IRA as an undemocratic engine of tyranny. They murdered my friend Ross McWhirter when he was helping me over the organisation I set up in the early 1970s known as Freedom Under Law¹. I wrote *The Ballad of Guildford*² in anguish at the IRA bombing there, and it was sung in a commemorative television programme. These things I mention as a reminder that I am not one to condone the wicked and terrible acts of the IRA. I support Mr Murray's decision with a heavy heart, but supported it must be.

Mr Murray gives as his reason prejudicial statements made in Parliament and the media. He says the fact that these were made (and it is a fact) 'manifestly and inescapably' means that no direction by the trial judge could be effective in removing from the minds of a British jury trying Patrick Ryan the bias they have created. Here Mr Murray goes too far. No one can be certain that the judge's direction would be ineffective, and probably it would not be. But a real doubt has been created. The prejudicial statements have contravened a golden rule of British justice, of which we British lawyers are proud. This, in Lord Hewart's words, is that 'it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done'.

When the authorities are seeking the extradition of a suspect for trial in Britain, all concerned (and that includes the media) must scrupulously observe this rule. It is hard to observe when the alleged crimes are murderous and wicked, but it is in those circumstances that it is most necessary to observe it, lest such grave crimes go unpunished. As soon as it is known that extradition is being sought the case must be treated as sub judice, which did not happen with Patrick Ryan.

There is another important aspect to this matter. In a leading article you criticise Mr Murray's decision because it was 'a policy decision, and not a legal finding'. This is to misunderstand the nature of the Attorney General's unique office in common law jurisdictions. His duty is to exercise, as an independent functionary of the constitution, the prosecutive power of the state, or power to put persons on trial. This necessarily involves an element of policy, but it is prosecution policy, not governmental policy. In my view it was correctly exercised by Mr Murray in this case, much though we British may dislike admitting it. The lesson is for parliamentarians and the media to behave properly in future. The Speaker should scrupulously ensure that the sub judice rule is observed in Parliament, and the authorities should bring to justice offending media persons. Then we may at last find Anglo-Irish extradition procedures working to general satisfaction.³

¹ See [3.6.2](#).

² See [8.2.6](#).

³ *The Times*, 16 December 1988.