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A glimpse into the 'special relationship' in US Courts

By Dan Lawton

Did you watch the telecast of King Charles III's speech to the joint session of Congress last Tuesday night? I did. The king entered the chamber to rapturous applause. On his way to the dais, he waded through a small sea of legislators. They crowded around one another with faces wreathed in happy smiles. At the lectern, his Majesty stood basking in the long standing ovation his audience gave him before he started speaking. I remembered observing this kind of adulation for another Englishman in the long-ago. I was in the sixth grade, the Englishman was Elton John, and the worshipful fans were twelve-year-old Catholic schoolgirls whose parents had bought them the "Goodbye Yellow Brick Road" album.

The king's performance was mostly what you would expect, a love ode to the "special relationship" between the U.K. and the U.S.—a relationship, his Majesty noted, that is "priceless and eternal ... irreplaceable and unbreakable." There was a pointed reminder that our Bill of Rights and common law derive from "ideals which had an even deeper history in English common law and the Magna Carta." (*You're welcome, America!*) Behind the king sat the vice president and speaker of the house, each dressed in what looked like matching navy suits, white dress shirts and red ties, the colors matching the U.S. and British flags.

By the time Charles wrapped up and proceeded at a stately walk toward the exit, the legislators were clustering around the aisle like adoring children, jostling for position in the hope of a quick handshake or word with the Head of the Commonwealth and Defender of the Faith. The king had to get moving and stay on schedule. A sumptuous state dinner at the White House, complete with live music performed by U.S. military bands, tails and black ties for men, and a four-course dinner topped off by a beehive-shaped

chocolate gâteau dessert, awaited him.

The "special relationship" is generally understood as a unique blend of the military alliance, shared language, common legal and cultural heritage, and good feelings spawned over decades of relations between our countries. As a taxpayer and citizen, I have wondered about it from time to time. Its legal and diplomatic dimension is indeed special, but not in the way described by Charles. Let me offer a case in point, albeit one about which I don't pretend to be objective.

For eight years during the 1990s, his Majesty's government sought to extradite alleged IRA members from California to Northern Ireland, with the energetic assistance of the U.S. Department of State and the Office of the U.S. Attorney in San Francisco. *In the Matter of the Requested Extradition of Kevin John Artt*, 9th Cir. case no. 97-10386. At least one of the supposed IRA men, Kevin Barry Artt, was innocent, and proved it, with the herculean representation of renowned trial lawyer Jim Brosnahan and his team at Morrison & Foerster, who worked pro bono. In 2000, prompted by the 9th Circuit to show cause why the extradition cases shouldn't be dismissed in light of the Good Friday Agreement of 1998, the British dropped the cases at last.

That wasn't the end of it, as far as I was concerned.

Discovery in the *Artt* case had revealed some ugly facts about the British government's treatment of Artt in Northern Ireland during the 1970s and 1980s. Among them was an attempted assassination of Artt by masked gunmen on Sept. 27, 1979, at his home in Belfast, where he rented a flat from Peter and Anne Heathwood, a young married couple who lived on the ground floor. The gunmen had broken into the house and fired several shots, hitting Peter Heathwood instead of Artt, before fleeing. They were never arrested and their identities remain unknown.

Peter Heathwood remains alive



Photo courtesy of Dan Lawton

Peter Heathwood, 2019.

today. His injuries permanently consigned him to a wheelchair. In 2019, while researching a book I wrote about the *Artt* case, I visited Peter in his home in Killough, Northern Ireland. Peter had built the house with the proceeds of a \$900,000 litigation settlement he had struck with the British government, then the largest-ever paid by the Crown to a victim of Troubles-related violence. The terms of the settlement relieved the British of ever having to reveal the identities of the gunmen and who had ordered them to do what they did.

During pretrial discovery during the *Artt* case, Brosnahan demanded the British produce records of the police investigation of the shooting. The answer was no. Judge Charles Legge ordered them to produce the records anyway, which they grudgingly did, on the condition the records be filed under seal and that Artt's legal team not be allowed to

compromise the safety of individuals named therein. The material is of a type that law enforcement agencies generally seek to protect.

In a footnote, Patrick added that his office was appearing "representing the United States in fulfilling its treaty obligations to the United Kingdom."

That's all Judge James Donato, Judge Legge's successor, needed to hear. He denied my motion, writing: "Principles of international comity weigh against access." His Honor didn't deign to adorn this pronouncement with any authority. Donato denied my request to let Peter Heathwood watch the hearing remotely from his home, then, two days before the hearing, scrubbed it. Like Charles himself, Donato has life tenure.

The 47-year-old records of the investigation done by British police into the shooting of Peter Heathwood remain sealed, on that shelf in the courthouse at Golden Gate Avenue, today.

All of it is of a piece with the British government's longstanding practice of taking strenuous measures to deny to victims any data which might prove embarrassing or inconvenient to it. It has much to be embarrassed about in the first place, not least the well-documented collusion between its security forces and Loyalist paramilitary thugs in Northern Ireland during the Troubles. J.D. Vance's and Mike Johnson's red-white-and-blue attire brought to mind an Irish Republican nickname for the British flag, the Bloody Apron.

To me, the episode offers a glimpse into the legal dimension of the "special relationship" between our two countries' executive and judicial branches. His Majesty's government wishes to keep secret data which might result in liability and embarrassment. When that wish requires the cooperation of our State Department and U.S. Attorneys, they cheerfully provide it, acting in the role of docile handmaidens. And our judiciary, in the person of James Donato in this instance, enables them. The result is that an elderly man living alone in a wheelchair in Killough may go to his grave never learning why

what happened to him that night in September 1979, happened.

Watching Charles wow the U.S. Congress last Tuesday night, it was hard not to free-associate things millions of Americans have long enjoyed—"Downton Abbey," "Upstairs, Downstairs," the changing of the guard at Buckingham Palace, tea sandwiches, the Rolling Stones, Merchant-Ivory films. All that seems far removed from what I describe above.

Our government and citizens have zero interest in continuing to conceal what the Heathwood investigation files may contain. The British government has a large interest in continuing to keep them sealed. But that interest has nothing to do with freedom, truth, the rule of law, the rights of citizens, or any of the other sacred values which Charles III extolled in pious tones last Tuesday night on the floor of the House of Representatives.

My late mother, an Anglophile, forgave me a lot of things. Today I hope she would forgive me for not celebrating the "special relationship" as others do. Our courts and prosecutors owe our people, and victims like Peter Heathwood, more than they gave in the *Artt* case, and without fear or favor.

Dan Lawton specializes in appellate and intellectual property litigation and is a partner at Klinedinst PC. He is also the author of "Above the Ground: A True Story of the Troubles in Northern Ireland." (WildBlue Press).

