A Reply To Senator Martin Mansergh

On The Case Of (President) Mary McAleese Vs. Brendan Clifford

by
Brendan Clifford

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A Reply To Senator Martin Mansergh On The Case Of (President) Mary McAleese vs B. Clifford

"Employments fall into a hierarchical gradation of reputability. Those which have to do immediately with ownership on a large scale are the most reputable… Next to these in good repute come those employments that are immediately subservient to ownership and financiering—such as banking and law. Banking employments also carry a suggestion of large ownership… The profession of the law does not imply large ownership; but since no taint of usefulness, for other than competitive purpose, attaches to the lawyer's trade, it grades high in the conventional scheme. The lawyer is exclusively occupied with details of predatory fraud, either in achieving or in checkmating chicane, and success in the profession is therefore accepted as marking a large endowment of that barbarian astuteness which has always commanded men's respect and fear."

(Veblin: The Theory Of The Leisure Class).

1. Introduction.

Senator Martin Mansergh wrote as follows in a letter to the Belfast *Irish News*, which was published on 25th September 2006:

"Clifford implies that he was always strongly anti-Trimble, notwithstanding the inspiration provided to him by the two-nations theory. If so, it is difficult to explain why in a Belfast magazine in 1987 he strongly criticised the integrity of Mary McAleese's appointment to the post of director of the Institute of Legal Studies at Queens, where the only other candidate was David Trimble; and why he joined and supported the Unionist hullabaloo over it.

"How did he respond to the threat of legal action by Mary McAleese supported by Queen's? Clifford definitely has form."

On 28th of September I sent a letter to the Irish News in which I replied as follows on this point:

"He gives the wrong title to the Institute of which Mary McAleese was appointed Director, and it makes all the difference. She had no "professional" experience of legal practice. The appointment was made in breach of Fair Employment rules. Though she had not made the appointment, she started a libel action against me over it and did not merely issue a "threat" of it. I had to conduct my own defence against her solicitors and barristers for lack of funds. A week before trial she settled without a penny in costs or damages. My criticism of her appointment was not on the grounds that Trimble should have got the job. I did not know his application had been solicited. The appointment of either would have been in breach of Fair Employment rules."

If that paragraph had been published, I would have considered the matter closed—unless McAleese, or somebody on her behalf, disputed my statement of the facts, which would have been unlikely as the facts were easily ascertainable. While the paragraph did not explain the significance of the facts stated in it, I would have let the matter rest if the bare facts which it states were published. But they were not published.

The Editor of the *Irish News*, Noel Doran, having published Senator Mansergh's false assertions did not publish my rebuttal. By failing to publish my reply, he associated himself and his paper with the Senator's allegations.

Senator Mansergh's assertion was made in a letter of about 720 words, in which many other assertions were made as well. I replied to what I took to be the most important assertions with a letter of about 900 words. My letter was cut down to about 430 words by the Editor of the *Irish News* without consulting me. By far the most important

cut was my reply to the Senator's statement about the President's libel action.

The Editor of the *Irish News* was under no obligation that I know of to publish the Senator's allegation. The Senator does not have a controlling interest in the paper. But, once the Senator's allegation was published, an impartial Editor would have felt under obligation to publish the reply to it.

Doran chose to publish the Senator's allegation. And then he chose not to publish my reply. But he published a butchered letter of mine replying to lesser points in the Senator's letter, without any indication of Editorial cuts, thus giving his readers to understand that I had been given a right of reply and that, since I had not disputed what the Senator said about the President's libel action, I accepted it as being in accordance with the facts of the matter.

It was imprudent of Mr. Doran to have raked up the President's pettish libel action against me by publishing the Senator's paragraphs. And it was stupid of him not to have closed the matter by publishing my paragraph in reply.

I learned long ago that in modern times it is a waste of time and energy to try to make honest men out of newspaper editors by force of reason. If I was wealthy and was litigiously-inclined, I might compel the *Irish News*, by libel action, to make the minimal concession to the truth of the matter that I asked for, and to pay for not having done so in the first instance. Since I am neither, I meet its libel by publishing details of the President's libel action, and giving them what circulation I can by my own resources.

I cannot see how this will be more to the President's advantage than a paragraph in a daily newspaper that would have had a butterfly existence—here today, gone tomorrow. But Senator Mansergh and Mr. Doran have determined that it must be so. It is not an option to allow oneself to be blackguarded by them.

I should explain the circumstances which led to Senator Mansergh writing rambling, ill-informed letters against me to the *Irish News*.

He has been in long-term dispute in the Letters' Column of the Irish News with Liam O Comain, a Northern Republican who is critical of the Good Friday Agreement. It seemed that the Senator set out to crush intellectual dissent from the Agreement and somehow got the idea that I was behind his failure to do so. I did not try to take part in the argument. I was blackballed by the Nationalist press back in 1970 because of the unpopular stance I took then, and I accepted that exclusion as a condition under which I would have to function. But I reported the Mansergh/O Comain argument for the *Irish Political Review*. Mansergh must have inferred from this that I was connected with O Comain, and eventually he brought me into the argument and accused O Comain of being *"inspired"* by me.

I had no connection whatever with O Comain and, if one of us had an influence on the other, it was O Comain who had an influence on me by his dogged probing of the implications of Mansergh's views—which amounted to a re-writing of the history of Fianna Fail in the Treatyite interest.

When Mansergh brought me into his argument with O Comain I sent in a reply, and I was surprised when it was published, and wondered if the leopard had changed its spots. Mansergh responded with further allegations, and my reply was published.

Mansergh then put in a third set of wild allegations, beginning *"I wish this letter to close my side of a distasteful correspondence"*—a correspondence that would never have happened if he had not provoked it—which included his allegation about McAleese's libel action. And the *Irish News* demonstrated, by censoring my reply, that it had not changed its spots.

In that censored reply I pointed out that Mansergh used the wrong title of McAleese's position. She was appointed to be Director of the Institute Of *Professional* Legal Studies. He omitted the word *"Professional"*.

Legal studies are conducted by law lecturers, of which there is a plentiful supply. The meaning of *"Professional"* in the title indicated that this was a job that should be held by a solicitor or barrister who had made a successful career in the actual practice of law in the Courts. I will explain the significance of this provision in the commentary which follows the documents.

The point about the Northern Ireland *Fair Employment* rules

(which will also be explained later) is that they prohibit employers from soliciting job applications from individuals. The rules say that jobs should be advertised in very specific terms, that only applications in response to advertisements should be considered, and that complex procedures laid down should be followed in making an appointment.

In this case, *nobody* with the specified qualifications for the job applied for it. The employer (who was a combination of Queen's University, the Government, and the legal profession, including the Judges), decided to give the job to a law lecturer, but they did not advertise the altered job specification. Law lecturers had not applied for it when it was advertised, because they understood that only successful practising lawyers qualified for it, and when the job specification was changed, they could not apply for it because it was not re-advertised in the altered terms—and in fact it was not re-advertised at all, as far as I could discover.

What Queen's and the legal profession did was the thing which was being made a crime when private employers did it. They solicited applications from people they thought would be most suitable. One was a law lecturer in another jurisdiction (the Republic of Ireland), and another was a law lecturer, not only within the Northern Ireland jurisdiction but within the Institute.

The lecturer from outside the jurisdiction was given the job. But she did no lecturing in the first year of her appointment.

The article I published was written by a trainee solicitor who attended the Institute during that first year when McAleese made no didactic appearance before the budding lawyers who were expecting her to transmit practical experience to them. The writer was not a member of the Unionist Party and was not in sympathy with the Unionist outlook.

The Institute for Professional Legal Studies was a strange body, set up to deal with a strange situation. A Northern Ireland jurisdiction was concocted in the 1920s to accompany the Partition Act (the Government of Ireland Act). But Northern Ireland was a relatively crime-free area. The region was locked into a political antagonism—a stalemate antagonism which absorbed energy while making movement impossible—and the fierce concentration on the static political conflict of the two communities seemed to have the effect of marginalising crime.

There was, of course, the IRA, whose existence was criminal. But the IRA did very little, other than exist, for close on half-a-century, and its mere existence, punctuated by a few spectacular escapades, provided little in the way of routine business for the legal profession. (Republicanism was kept in check by intimate Protestant policing of the Catholic community, rather than by prosecutions at law. That mode of policing is described in an article published in the *Capuchin Annual* in 1943 and reprinted as No. 16 of this magazine. It was both containing and aggravating. It restricted the growth of Republicanism by intimidation, while ensuring that some of the more spirited souls would respond to intimidation by becoming Republicans.)

That routine of life was broken in 1969, when the security apparatus of the local state (formal and informal) launched a wanton attack on Catholic areas of Belfast and Derry, and those areas defended themselves. This led to the formation of a new Republican Army during the Winter of 1969-70, and the declaration of war on Britain in 1970 by this Army, which was very much more representative of the Catholic community than the old, "*Official*", IRA had ever been.

The authorities decided to treat this war as a massive outbreak of criminal activity, and to prosecute it as ordinary crime. And all of a sudden there was a drastic shortage of lawyers—and a problem about increasing the supply.

Lawyers were traditionally produced by apprenticeship rather than by University courses. Law was a kind of trade that was learned by doing it under the supervision of an experienced master craftsman. But there were not enough master craftsmen to produce the great flock of new lawyers required by the phenomenal expansion of *'crime'*. (Rory McShane, a famous figure in the agitation of 1969-9 became a solicitor by the apprenticeship system and immediately set up in business very successfully, which would scarcely have been possible later.)

On the other hand, any number of people might be pushed through a University law course in a couple of years.

What it was decided to do was to attach an experienced and successful solicitor or barrister to a post-graduate academic law course with a view to somehow transmitting experience in the classroom and producing lawyers on a mass scale.

It seemed to me to be an absurd scheme—one of the many absurdities produced by *'the Northern Ireland state'*—and in the end it proved to be unworkable.

But that is what the scheme was. And law students were entitled to expect during their year at the Institute that they would be under the directorship of one of the masters of the craft. But the students who went there in the year following McAleese's appointment were fobbed off with a mere law lecturer—a lecturer in the law of another jurisdiction—who did not even show herself to them.

The situation seemed to me to warrant the critical article about McAleese's appointment written by one of those students, who went on to become a successful solicitor.

The article will be found within McAleese's Statement Of Claim, reproduced below.

The main documents in the case are McAleese's Statement Of Claim and my Reply.

These are given below. And then there is an account of how the case proceeded, which tells a lot about what Northern Ireland is.

The action went on from January 1989 to May 1990, and involved half a dozen Court appearances. Then, about a fortnight before the trial, McAleese, having incurred heavy legal expenses in keeping the action going for a year and a quarter, settled without costs or damages. And, judging by the attitude of her legal team, she was glad to get out of it on those terms.

McAleese employed the most expensive firm of solicitors in Belfast to represent her, along with two barristers about whose costs I know nothing. I could not afford to buy any legal representation and had to appear for myself.

McAleese was one of the chiefs of the legal profession in the Northern Ireland jurisdiction. I was, as I have always been, an unskilled labourer, and was on an annual income that was certainly less than her legal costs for the year 1989.

I told her lawyers, right at the start, that I did not want to win against her, but that I was not willing to let her have her way just because she could purchase law and I couldn't. She could have her trial if she wanted it, because the facts I published were true and I would stand by them, but I thought what she was doing was absurd and would damage herself rather than me.

I might have made a counter-claim against her for bringing a frivolous libel action against me. If I had nothing better to do with my life, or had been litigiously inclined, or had been drawn into the egoism of libel law, I might have had an entertaining time exploiting the advantageous position in which she had placed me against her. She had placed me in a position where I might do her damage with impunity. I had nothing to lose but my time, which was of no commercial value, and my sense of the meaningful use of language, which is not something held in high esteem nowadays.

The terms of the settlement were a tacit acknowledgment that her action was absurd and frivolous.

I did not try to get the proceedings reported in the Belfast press at the time, and she was clearly anxious that they should not be reported. And I did not subsequently put the incident on public record so that anybody who cared to might make use of it. I would have thought she would be happy to let the matter lapse into the obscurity it deserved—and it appears that she was in the first instance.

A short time after the action ended there was a passing reference in the Andersonstown News to her legal triumph against me. I drafted a reply saying that I wished all such plaintiffs should enjoy such victories, but I did not send it in. By breaking the nationalist consensus in 1969 I had given many respectable but politically ineffectual people reason to hate me — the less respectable people disagreed with me but did not hate me — and I thought I would let them take what pleasure they could from an uninformed belief that McAleese had gained some kind of victory over me and done me some damage. Respectable West Belfast was a sad place in those days, when it was trying to hold out against Sinn Fein, and it needed illusions, so I let it have this insignificant delusion.

A long silence followed, that was not broken until McAleese went South, became President of the Republic, and had biographies written about her in Dublin. Her 'victory' over

me in the High Court in Belfast began to be listed amongst her achievements—and finally Senator Martin Mansergh, adviser to Taoiseachs, joined in.

2. Statement Of Claim

Served this 10th day of February 1989 by Messrs. L'Estrange & Brett of 7 & 9 Chichester Street, Belfast Solicitors for the Plaintiff

Writ Of Summons Issued 26th January, 1989

1. The plaintiff herein is a Barrister-at-Law and the Director of the Institute of Professional Legal Studies at Queen's University, Belfast.

2. The first named defendant was at all times material to this action the Editor and Publisher of *"a Belfast Magazine"*.

…

4. In August and September 1988 the defendants and each of them falsely and maliciously wrote, printed, distributed and published, or caused to be written, printed, distributed and published in Volume 3 No. 3 of *"A Belfast Magazine"* for August and September, 1988, of and concerning the plaintiff and of and concerning the plaintiff in her professional capacity as a Barrister-at-Law and Teacher of Law, an article entitled *"The Knitting Professor"* on pages 12 and 13 of the said publication. The text of the said article was as follows:-

"The Knitting Professor

Mary McAleese has recently been appointed Director of the Institute of Professional legal Studies at Queen's. A Special Correspondent takes a look at her previous political activities.

…Observers in Dublin claim that McAleese committed political suicide in 1987…

Last September, considerable interest was aroused in legal circles in Northern Ireland with the appointment of Mary McAleese as the Director of the Institute of Professional Legal Studies at Queen's University, Belfast.

The Institute is the body which attempts to prepare students for their careers in the legal profession, and as such the Directorship is an influential position which also carries a substantial salary.

Controversy arose over McAleese's appointment because it emerged that the Professors's experience of the Northern Ireland legal system was almost non-existent, and that she had formerly been an academic at Trinity College, Dublin. However, it was the Professors' active membership of the Fianna Fail which prompted most concern and a suggestion arose that McAleese's appointment was a political move generated by the Anglo-Irish process. What might have prompted McAleese for the Directorship and can any credence might be given to the claim that the appointment was, in any way, political?

Mary McAleese, a native of the Ardoyne, graduated from Queen's in the mid-seventies and chose to go to the bar in Dublin. However contemporaries of McAleese at Queens, as well as in Dublin, suggest that her experience as a practising barrister seems to have been limited in the extreme. She soon turned in preference to an academic career and eventually became a criminal law lecturer at Trinity College. However, McAleese's interests in Dublin were not confined merely to the study of criminology. She was, and is, a passionate supporter of what can only be described as reactionary Catholic theology, devoting herself to the preservation of Ireland as a pure and untainted Catholic state.

She regularly contributes articles and book reviews on various aspects of the Church to religious publications as well as to the Irish Times. Given the role of the Catholic Church in the Irish state, it was unsurprising that she should find herself a position on the political scene. As a member of Fianna Fail, she was generally regarded as an individual whose rise would be worth watching. Her journalistic skills were expanded further when she became a presenter on RTE. Thus McAleese seemed to have guaranteed herself a high profile on several fronts in

the Republic, particularly Dublin.

However, sadly for McAleese, things started to take a turn for the worse. Her fellow journalists at RTE—angered by her blatant support of for Fianna Fail and the Catholic Church, moved against her. The trade unions at RTE passed resolutions ensuring that any member holding down a job and another full-time position would lose their union membership, thus being unable to work at RTE.

Ostensibly this move was to ensure that no union members would be deprived of the opportunity to work at RTE. However, the prime target was McAleese, who was lecturing full-time at Trinity College. As a result she was soon shunted out of RTE. Nevertheless, she still had her political career, until she herself demolished these aspirations too.

Observers in Dublin claim that McAleese committed political suicide in April 1987. She and other lawyers became concerned over what they saw as fundamental rights under the Irish Constitution being threatened by the ratification of the Single European Act. McAleese's prime concern was that the abortion laws would be liberalised. She argued that under the Supreme Court's decision in the Crotty case, the EEC would not be limited solely to influencing economic matters and that abortion, for example, would be forced on the Irish to bring them into line with their fellow European Community members. So, at a press conference, she questioned whether a united Europe was desirable if Ireland was not to retain its illiberal traditions, while reaping the economic benefits of membership.However, her claims were treated to what she herself termed as "howls of derision" from leading politicians including Alan Dukes and Des O'Malley, who both claimed that the EEC only had jurisdiction over purely economic matters. More interesting was the reaction from her fellow Fianna Fail members, who were not happy about her attempted sabotage of the Single European Act. It was alleged that after the press conference, Charles Haughey, on leaving the Dail, was asked what he thought about Mary McAleese's views. His response was "Mary who?".

If this anecdote is accurate, this was a surprising response from the Taoiseach to the views of one of his party's rising stars. If it is not, it still serves to illustrate the isolated position that McAleese found herself in. Perhaps it is not surprising that McAleese decided to move on to other things, but why she chose the QUB Legal Institute is not clear.

When the vacancy at the Institute arose, it was advertised as being suitable for someone who had good practical experience of working in either branch of the profession. it was further suggested that the position might suit someone who had recently retired. The terms of this advertisement certainly fitted the previous director, James Russell, and other staff at the Institute, who are all experienced legal practitioners. Unusually, the position was not filled at the first time, and the vacancy had to be re-advertised.

By September it became clear that McAleese had been appointed. Protests immediately arose from Unionist quarters. Cecil Walker, Clifford Forsythe and Roy Beggs attempted to get the matter debated in the House of Commons, arguing that as McAleese had no practical experience of the Northern Ireland legal system, the only reasons for her appointment must have been a political. The only response to this accusation came from professor Gordon Beveridge, the Vice-Chancellor of Queens, who rather weakly stated that McAleese was the most suitable applicant for the job. Either Beveridge had not read the job description or he had no conception of what exactly the Directorship of the Institute involved.

The other parties involved in the running of the Institute were silent about the appointment. These other parties include the Law Society, the Bar Council and the

Department of Education; the latter effectively having the whip hand, because it provides all the financing for the Institute. It was this department which last year effectively prevented the Law Society from setting up its own form of training for solicitors, as the Department would have been faced with a massive bill for their efforts. It is therefore apparent that it is the Department of Education which has the ultimate say, whether directly or indirectly, on the running of the Institute. This may well explain why McAleese, an unlikely candidate, succeeded in receiving the Directorship and the salary which accompanied it.

McAleese eventually chose to grace the Institute with her presence in January, some three months after the start of the academic year. The reason for this was that her contract with Trinity College would not expire until then. However, students at the Institute report that they have not noticed McAleese's presence anymore now than they did in October. She is said to emerge occasionally when visiting VIPs arrive at the Institute. Given that the former Director ran several courses as well as attempting to ensure that all the students leaving the Institute had employers, McAleese's attitude to her job is unusual.

Perhaps she was not being flippant when she informed the Irish Times "that all she would be taking up in Belfast would be knitting!".

5. By the said words in their natural and ordinary meaning the defendants meant and were understood to mean—

(a) That the plaintiff was unfit for her present appointment as Director of the Institute of Professional Legal Studies at Queen's University Belfast.

(b) That the plaintiff was wholly ignorant of the Northern Ireland legal system.

(c) That the plaintiff was appointed as Director not on her merits but due to political intrigues.

(d) That the plaintiff was held in low esteem by the staff and students of the Institute.

(e) That the plaintiff's religious views made her unfit for her present appointment.

(f) That the plaintiff was a bigot.

(g) That the plaintiff was a religious extremist possessed of views alien to the people of Northern Ireland.

(h) That the plaintiff was a cynical careerist.

(i) That the plaintiff only applied for her present appointment because her political career in the Republic of Ireland had foundered.

(j) That the plaintiff had and has no true interest in the teaching of law.

(k) That the plaintiff had and has no true interest in her profession as a Barrister-at-Law and Teacher of Law.

(l) That the plaintiff was late in taking up her present appointment.

(m) That the plaintiff was in breach of her contract regarding her present appointment.

(n) That the plaintiff was negligent in the performance of her duties as Director.

(o) That the plaintiff held the Institute of Professional Legal Studies in contempt.

(p) That the plaintiff was idle and lazy in the performance of her duties as Director.

(q) That the plaintiff was improperly holding two appointments simultaneously.

(r) That the plaintiff was rarely present at the Institute of which she was Director.

(s) That the plaintiff was not a fit person to be Director of the Institute of Professional Legal Studies.

(t) That the plaintiff was not a fit person to be a Barrister-at-Law.

6. By reason of the publication of the said article the plaintiff has been greatly injured in her credit, character and reputation and in the way of her chosen profession and in her standing in public life and has been brought into hatred, ridicule, odium, public scandal and contempt.

And the plaintiff claims damages.

Donnell J. Deeny.

3. A Defence In Reply To The Statement of Claim

Served this 27th day of May, 1989

by the First-named Defendant, Brendan Clifford,

acting in person.

1. The First Defendant admits and avers that the Plaintiff was called to the Bar of Northern Ireland in 1974 and to the Bar of the Republic in 1978. The Plaintiff was from 1975 until 1979 and from 1981

until 1987 the Reid Professor of Criminal Law, Criminology and Penology at Trinity College in Dublin. Between 1979 and 1981 the Plaintiff was employed by Eire Television as a journalist reporting on current and political affairs. She has been Director of the Institute of Professional Legal Studies at Queen's University, Belfast since October 1987.

2. Paragraph 2 of the Statement of Claim is admitted.

3. Paragraph 3 of the Statement of Claim cannot be confirmed by the First-Named Defendant.

4. It is admitted that the First Defendant published the words set out in paragraph 4 of the Statement of Claim under the heading *"The Knitting Professor"* in the issue of the magazine *"A Belfast Magazine"* Volume 3 Number 3 August/ September 1988. The said words formed an article, the full context of which will be relied upon by the First Defendant at trial, but paragraph 4 is otherwise denied.

5. It is denied that the said words were understood to bear any meaning defamatory of the Plaintiff whether as alleged in paragraph 5 of the Statement of Claim or at all.

6. Further or alternatively, insofar as the words complained of mean that there was reason to doubt whether the Plaintiff, by reason of her limited experience in practice at the Northern Ireland Bar and by reason of her controversial political and religious views, was an appropriate choice for appointment as Director of the Institute of Professional Legal Studies at Queen's University Belfast, the words are true in substance and in fact.

PARTICULARS

(a). The Plaintiff in or about October 1987 was appointed Director of the Institute of Professional Legal Studies at Queen's University Belfast. The Institute of Professional Legal Studies has the function of filling the gap between academic qualification in knowledge of law and experience in the practice of law. The new Northern Ireland jurisdiction established in 1920 was deficient in this area. This deficiency was analysed by the Armitage Committee, which reported to the Government of Northern Ireland in 1973, and the Institute was established on the basis of the Armitage Report in 1976. And the Armitage Committee set out guidelines for the appointment of the Director of the Institute in accordance with the function of the Institute.

The deficiency in the Northern Ireland legal system, which the Institute was designed to remedy, was described in the Armitage Report as

"23. the almost complete lack of any satisfactory form of direct professional training…"

"27. The breakdown of the pupillage system is the major dissatisfaction expressed in the evidence relating to the training of barristers. There is no Chambers System in Northern Ireland. Each newly called barrister is allocated a seat in the Bar Library and may accept briefs and mark fees immediately after Call. No rule of pupillage exists but the newly called barrister normally attaches himself to an experienced junior for a period of six months… This system worked reasonably well when the newly called barrister had very little, if any, work of his own, but the greatly increased amount of work available to the very junior barrister… has led to the pupil being unable to spend sufficient time with the Master or working on his Master's papers…"

Problems peculiar to training as a solicitor were described as follows:

"31. The main problem facing the prospective apprentice is to find a suitable Master with a practice sufficiently wide and varied to provide him with the necessary experience, who has the time to devote to his apprentice's instruction."

The Armitage Report concluded

"39. It was clear to us from the evidence submitted that the successful completion of existing courses of professional training provides no guarantee as to the competence or the quality — beyond academic quality — of a candidate for either branch of the Profession. We are satisfied that the case for change is overwhelming."

The Armitage Report recommended that the deficiencies in the practical training of Solicitors and Barristers should be made good through an Institute of Professional Legal Studies which would be established

at Queen's University, and would, in close association with the legal profession, give one year vocational courses to law graduates.

Consonant with its recommendations for the Institute of Professional Legal Studies, the Armitage Report said, concerning the Director of the Institute:

> *"101. We expect the Director to be a person with wide experience in successful practice. Such person could expect to command a salary as a practitioner above the maximum Professorial Salary paid by Queen's University. We therefore recommend that the salary should be fixed at the maximum Professorial Salary of the University and we would expect this amount to be supplemented by limited private practice or other outside sources."*

The Bromley Committee, which reported to the Government of Northern Ireland in 1985, reviewed the work of the Institute, and stressed the need to strengthen its links with the legal profession. It expressed one marked difference with the Armitage Report: *"Experience has shown that training at an institute cannot replace training at the job"*. It therefore recommended that intending solicitors should serve a two-year apprenticeship, one year of which should be in a solicitor's office, sandwiched between two parts of a year at the Institute, and that a comparable arrangement be made for intending barristers.

The Bromley Committee was *"left in no doubt that for a large section of the practising profession the Institute is regarded as part of the University and therefore remote from practice"*. It considered this view to be *"profoundly misconceived"*, and recommended that it be broken down by a more active involvement of the profession in *"all aspects of the Institute's work["]*.

The Bromley Committee considered the advantage of direct control of the Institute by the profession, but did not recommend this because *"It was made clear to us that Government funding of the Institute would cease if it were to become independent; the profession left us in no doubt that it could not find the resources; consequently an independent institute would have to be funded entirely by students' fees."*

The Bromley Committee described the Institute as *"a bridge between academic study and practice and the aim is to teach intending barristers and solicitors the skills and techniques which they will require especially in the early years of practice. Unfortunately we have received evidence of a regrettable gap between the Institute and the profession for which both must share responsibility… It is therefore essential, in our opinion, that both sides should find ways of working more closely together"* (3.8).

The Bromley Committee reported the difficulty, pointed out to them by the then Director of the Institute, of attracting staff of the requisite quality from the profession to the Institute, and it agreed that salary was an inhibiting factor. It expressed the hope that this difficulty would be removed; and *"3.16. We would hope that those who teach at the Institute would continue to have experience in practice and recommend that the full-time staff of the Institute should maintain as close a contact with private practice as is practicable."*

(b). The first Director of the Institute of Professional Legal Studies was James Elliott, of the firm, Elliott, Duffy, Garrett, who was also City Coroner and a leading Solicitor. He kept up his professional practice, while teaching several courses at the Institute. The second Director, James Russell, had extensive experience as a Solicitor in a firm of Solicitors, J.W. Russell & Sons, in which he was a partner for over twenty years. He taught four courses at the Institute, as well as using his professional connections to place students with practitioners of law upon the conclusion of their course. On the retirement of James Russell, Max Feeny, a leading figure in the judiciary of many years standing, filled the post on a temporary basis. The Plaintiff, who abandoned the practice of law soon after qualifying for the Bar, could not continue in private practice, because she had no private practice. And since she was not a practising member of the legal profession, she could not transmit the practical experience of the profession to the law graduates at the Institute.

(c). The post of Director of the Institute of Professional Legal Studies was advertised in the *Belfast Telegraph* of April 9th, 1987, in the terms set out in the Official Reports described above. The text of the advertisement read:

"The Queen's University of Belfast

DIRECTOR OF INSTITUTE OF PROFESSIONAL LEGAL STUDIES

"The Institute of Professional Legal Studies was established in 1976 by the University (in co-operation with the Inn of Court and Incorporated Law Society of Northern Ireland) to provide a full-time vocational year course of professional legal training for law graduates intending to practise as solicitors or barristers in Northern Ireland. Under the guidance of the Council of Legal Education (Northern Ireland), The Director of the Institute is responsible for the planning of vocational and other courses, and for the administration of the Institute.

"Applicants for the Directorship, which will be held for a period of five years in the first instance, subject to renewal by mutual agreement, should preferably be barristers or solicitors, with experience in professional practice, but not necessarily holding qualifications to practise in Northern Ireland. Experience in law teaching would be desirable, but not essential. The salary of the Director is negotiable and will be comparable to that applicable to posts in the public service outside private practice.

"Further particulars may be obtained from the Personnel Officer, The Queen's University of Belfast, BT7 1NN, Northern Ireland. closing date: May 7, 1987 (Please quote Ref. 87/ BT).
N 130651".

The Plaintiff met the inessential requirement of experience in law teaching, but did not meet the definite requirement of "experience in professional practice".

(d). An Interview Board was set up by the Council For Legal Education, a body representative of the profession, the judiciary and of Queen's University, Belfast, to interview candidates for the position. The candidates who applied in response to the advertisement were considered unsuitable. After the advertised closing date, members of the Interview Board privately canvassed for applications from people, some of whom were not in professional law practice. This altered the job description in substance without advertising the fact, and constituted word of mouth recruitment not in accordance with fair employment procedures which all employers in Northern Ireland are publicly exhorted to observe. Three applications for the post of Director were elicited: a Solicitor in a successful private practice in Northern Ireland; an academic with long experience in the teaching of law in Northern Ireland; and the Plaintiff.

(e). The appointment of the Plaintiff caused considerable public concern, and was raised in Parliament by four Members of Parliament, representing 246,603 members of the Northern Ireland electorate, who pointed out that the Plaintiff was brought in from a foreign jurisdiction and was appointed without having the requisite experience. The House of Commons Motion they tabled read as follows:

"That this House, believing in the principles of merit, equal opportunity and fair employment, shares the concern among members of the legal profession and others regarding the appointment of Mary McAleese as Director of the Institute of Professional Legal Studies at Queen's University, Belfast; and calls for an early debate, to establish, if the post was advertised for a semi-retired or retired practitioner of several years standing, if Mary McAleese has practical legal experience, if on graduating from Queen's University, Belfast, she went to live and work in another jurisdiction, namely the Republic of Ireland, if she has ever practised in the jurisdiction of the United Kingdom, if she now spends two days per week on average in Belfast and still lectures in Dublin, the level of salary afforded to the Director of the Institute of Professional Legal Studies at Queen's University, Belfast, the number of lectures given by Mary McAleese since her appointment at Queen's University, Belfast, to date, whether there is validity in the speculation that Mary McAleese was nominated by the Premier of the Republic of Ireland, Charles Haughey, and appointed for political

reasons rather than merit, and the number of applications made for the position of the Director of the Institute of Professional and Legal Affairs at Queen's University, Belfast, and the qualifications of each applicant."

(Roy Beggs, Clifford Forsythe and A. Cecil Walker, 25th November 1987; Roy Beggs, Clifford Forsythe, A. Cecil Walker, John D. Taylor, 7th December 1987.)

(f). The Plaintiff was born in Belfast in 1951 and completed a Law Degree at Queen's University, Belfast in 1969-1973, at the age of 22. She was admitted to the Northern Ireland Bar in 1974. The Plaintiff's total experience at the Northern Ireland Bar was gained around the age of 23. The Plaintiff's name does not appear on the legal team of any cases described in the volumes for 1974 and 1975 of the officially issued *"Northern Ireland Reports"*. In 1978, while Reid Professor, the Plaintiff became a Barrister of the King's Inn, Dublin, but there is no record of her having practised in Eire. She concentrated on the academic and socio-political side of law.

(g). The Plaintiff found the Northern Ireland Bar and practical work at the Bar disappointing. She told Ces Cassidy of the *Irish Independent* in or about February 1984 that she had practised at the Bar for a short time, but found the experience disappointing. *"It was very old-fashioned and very much a man's world. There were only two women besides myself practising at the Bar then, and it was Belfast too."* She wanted out. The Plaintiff opposes traditions of Court practice. In an article published in the Sunday Tribune on 5th October 1988, the Plaintiff wrote: *"Whatever misguided notions about solemnity and formality ever lay behind the wearing of horsehair wigs and black gowns in far off days, today in 1986 they convey an element of theatrical farce, the net effect of which is the precise reverse of the effect intended. It is a ridiculous get-up at best, but worse still, it presents an image to the client and to the public of a profession steeped in obsolete etiquette, hostile to change and only grudgingly adjusting to the 20th century."* The Plaintiff left the practice of the law in Northern Ireland and took up academic law in the Republic of Eire.

(h). In 1975, at the age of 24, the Plaintiff took up the post of Reid Professor of Criminal Law, Criminology and Penology in Trinity College, Dublin. This is not a Professorship in the generally understood sense. It is a lecturing post, paid for partly from outside the University Budget by the Reid Trust. It is recruited at junior level, and does not carry a full professor's pay. The Plaintiff's professorial title derives solely from the Reid Professorship and therefore does not in itself indicate the mature experience of academic law and administration which would normally be the concomitant of the title, Professor.

(i). In 1979 the Plaintiff left Trinity College, Dublin for a change in career. At the age of 28 she became a full-time television journalist on current affairs topics. She worked as a political reporter on *Frontline* and *Today Tonight*, two programmes on Eire television, as well as on other programmes. After two years as a full-time television journalist, the Plaintiff returned to the Reid Professorship, while continuing to work part-time as a television journalist and presenter on various RTE programmes. She has stated that she left full-time television work because she found it difficult to take it seriously, but she also had some conflicts with her fellow-journalists. In or about February, 1984, the Plaintiff told Mary Raftery of the *Irish Times*, that *"I left RTE because I found it awfully hard to take television seriously."* In or about June, 1984, however, the Plaintiff told Caroline Walsh of the *Irish Times* that her involvement with RTE hadn't always been the most pleasant of experiences. Her year with the *"Today Tonight"* programme, for instance, she remembers as an awful time during which she felt that there was an abysmal ignorance on the programme about what was happening in the North: *"Joe Mulholland has admitted lately that probably during the H-Block hunger strike they were not aware of what was happening to the Catholic community in the North. I was a Northern voice and I spent a lot of time there. Every weekend I was with friends and relations trying to find out what was happening in the North but I was not listened to. Whenever I tried to explain that more and more people were being drawn into the H-Block cause because of the failure of the British Government to act they wouldn't listen to me because they felt that anyone who was bringing that message into the programme had to be a Provo supporter. It was literally pillorying the messenger for bringing the message."*

(j). The Plaintiff decided

that she was basically a lawyer and to her this was synonymous with academic life. In or about February 1984, she told Mary Raftery of the *Irish Times*: *"basically I was a lawyer, and I wanted to go back to academic life"*. The Plaintiff held the Reid Professorship at Trinity College, Dublin from 1981, until she obtained her present appointment in 1987. On her return to Trinity College, Dublin, the Plaintiff started research on a Doctoral thesis on women in prison in Ireland, and on a textbook on Irish criminal law. She also participated in a joint project, making a comparative study of child custody in Ireland, England, Scotland and Wales.

(k). The Plaintiff took a considerable interest in the practical shortcomings of the Criminal Justice system, and served on a Commission of Enquiry on the Irish Penal System, chaired by the late Sean McBride. The Plaintiff has not rebutted a statement which appeared publicly in a profile of her by Emily O'Reilly published in the *Sunday Tribune* on 8th April, 1984: *"Other people active in the area of prison reform say that her knowledge of the issues, though broad, is academic and patchy in several areas. She was reported to have been reduced to tears while listening to young men give their accounts of wasted lives spent in prison and reform schools."*

(l). Although the Plaintiff returned to academic life, she retained her connection with television journalism on a part-time basis, and developed her interest in politics. She also engaged in some newspaper journalism. In or about February, 1984, the Plaintiff told Mary Raftery of the *Irish Times* that broadcasting was her *"hobby"*. In February, 1984, also, the National Union of Journalists, in pursuance of union policy against *"double-jobbing"*, suspended the Plaintiff's union membership, thus ending her hobby of television journalism; and in February, 1986, the NUJ terminated her membership. The Plaintiff was reported, in the *Irish Times* of 10th February, 1986, as attributing the move to anti-Catholic prejudice: *"She was satisfied that anti-Catholic prejudice had influenced some members of the Dublin Broadcasting Branch of the National Union of Journalists when it decided that her membership of the union should be suspended. 'I have no doubt whatever about it…'"* The *Sunday Press*, on 9th February, 1986, reported: *"She says an element with the NUJ decided to move against her shortly after she appeared for the Irish bishops at the New Ireland Forum… she believes the union moved against her purely because of her Forum appearance."*

(m). In February 1984 the Plaintiff was invited by the Roman Catholic Bishops of Ireland to form part of their Delegation to the New Ireland Forum. The main message of the Bishops to the Forum was that Catholic moral policies on such matters as Divorce, should continue to form part of the constitutional law of the Republic. The Plaintiff told Ces Cassidy of the *Irish Independent* in or about February 1984, that she was briefed by the Bishops. She stated: *"I just heard what they had to say and found I could stand over everything they said. I share all the concerns they expressed."* The Bishops' Submission to the New Ireland Forum made it clear that they would not favour liberalisation of legal provisions on moral matters to facilitate the development of closer relations with Northern Ireland.

(n). After her return to academic life the Plaintiff became a more controversial figure in the public political life of the Republic of Eire. The Plaintiff became a member of the Fianna Fail Party in January 1985, with a view to standing for parliamentary election, and did in fact stand as a candidate in Dublin South-East in the February 1987 election. She failed to win nomination to the Fianna Fail election ticket from the local Party machine, but her name was added to the Fianna Fail ticket in this four-seat constituency by the National Executive of Fianna Fail in November 1986. It was reported in the *Irish Times* of 21st November, 1986, that *"The decision to run four candidates in the… constituency was a considerable surprise and it reflected the high regard that the Fianna Fail leader, Mr. Haughey, has for Ms McAleese, who has acted as party advisor on legislation in recent years."* The Plaintiff obtained only 2,243 first preferences on the first count (the quota was 7,655), despite her high media profile. She had been writing a regular newspaper column in the months before the election, outlining her views on political and social issues.

(o). The Plaintiff's political party, Fianna Fail, opposed the Single European Act when it was in Opposition, but supported the Act when it came into Government. When the Eire Supreme Court declared the Act unconstitutional, the Fianna Fail Government sought to legalise it by a constitutional Referendum. The Plaintiff did not campaign in support

of the new policy of her Party in the Referendum, as public representatives and aspirant public representatives of the Party were expected to do. The *Sunday Tribune* of 24th May, 1987 reported informed political opinion as being that dissidents would be severely disciplined by the Party after the Referendum. The report stated: *"Mr. Haughey himself was dismissive of the subject recently. When pressed that one prominent member of the party was clearly not following the party line his reply was rhetorical: 'Did you say prominent?', he asked the journalist who pressed him and left it at that. Ms McAleese, for her part seems willing to take on the party. She told one public meeting in Arklow recently: 'I'll stay in the shagging party, even if he throws me out.'"*

(p). The Plaintiff has been prominently associated with conservative political Catholicism in Irish public life. She was reported by the *Irish Times* of 6th April, 1984, as saying that *"the division between Northern Nationalist and Loyalist was no more bitter, no more real, than the gulf between Catholic and anti-cleric in Dublin."*

(q). The Plaintiff is opposed to Therapeutic Abortion, such as is legal in Northern Ireland. She told Ces Cassidy of the *Irish Independent* on or about February 1984: *"I'm an absolutist; I'm very strongly opposed to abortion. I felt I had to make a forceful statement about it and voting 'Yes' in the Referendum was that for me."* (The Referendum made legislation for any sort of abortion unconstitutional.) The Plaintiff told Caroline Walsh of the *Irish Times* in or about June, 1984 that she opposed opposed availability of abortion after rape or of handicapped foetuses. In or about April, 1987, the Plaintiff told the *Irish Times* that she opposed the Single European Act on the grounds that, if, in the near future, the Community decided to harmonise its abortion laws under new health regulations, no successful legal action could be taken against such a move in the Irish courts.

(r). The Plaintiff is opposed to the legal availability of Divorce for those who want it and has made a video and a cassette on that subject for the Catholic agency, Veritas (which is a subsidiary of the Catholic Communications Institute), as a contribution to the campaign to defeat the Referendum proposal of the Irish Government of Garret FitzGerald to allow legislation for limited divorce. The video tape had a documentary-style format, with several interviews conducted by the Plaintiff. A respected group of lawyers in Eire (the Labour Lawyers Group) criticised the Plaintiff's tape *"on the basis that it is bare-faced anti-divorce propaganda and below the objective standard people expect from the legal profession"*, and that the tape included *"loaded anti-divorce questions"* put by Professor McAleese to Mr. William Binchy, both of whom are lawyers. The Plaintiff's opposition to the availability of civil Divorce in the mid-1980s was reported in the *Sunday Tribune* of 1st June, 1986, as being quite different to views she had expressed in a forthright manner to the 1979 Conference of the Irish Law Society in a long paper, which opposed the idea that it was divorce in itself that was a social evil, and which objected to a semantic distinction between Church annulment and civil divorce.

(s). The Plaintiff has defended publicly in an article entitled, *"The Much Maligned Opus Dei"* in the Sunday Tribune of 7th December, 1986, the extremely conservative and active Opus Dei organisation, which is committed to a revival of 19th century Roman Catholic values, and which is regarded with reservation by many Catholics.

(t). The Plaintiff told Caroline Walsh of the *Irish Times* in or about June 1984 that she admired Mr. Charles Haughey on the grounds that the British Government feared him: *"I also have a very deep admiration for anyone whom the British Government fears and I'm very sure they fear Charlie."*

(u). Though the Plaintiff does not advocate the methods by which the Provisional IRA attempts to transfer Northern Ireland to the Republic of Eire, she has expressed sympathetic understanding of the Provisional IRA. She told Mary Raftery of the *Irish Times* in or about February 1984: *"I can understand so easily why people join the IRA. I felt that same desire for vengeance tearing at me, but deep down in my psyche I had strong Christian values. I literally chose that path. It didn't come naturally."* She told Colin Kerr of *"In Dublin"* in or about June, 1986, *"I can look at members of the IRA and I can say 'I don't like what you do, I think it's wrong, I think it's probably immoral'. At the same time I can also understand the pressures and the pushes and the things which propel people into joining the IRA, because I've experienced the same*

frustration and the same anger myself. And I can also say: there but for the grace of God go I only that circumstances were different."

(v). The Plaintiff is intensely opposed to The Workers' Party. She told Caroline Walsh of the *Irish Times* in or about June, 1984, *"I would not have talked to the Workers' Party under any circumstances and I very likely would not have addressed a meeting of Sinn Fein either"*. The Plaintiff did not comment when this curious distinction was picked up in a reader's letter in the *Irish Times* on 23rd June, 1986. The Plaintiff told Colin Kerr in or about June 1986: *"Frankly the Workers' Party have nothing worth saying on the subject of Northern Ireland and I would not even glorify the Workers' Party by entering into any analysis with them. I mean these are people who masquerade as a political party but who have strong known and proven links with terrorists and with people who believe in the use of violence. I don't regard them as a legitimate political movement in any sense of the word. I think they have been guilty of an extreme con-trick on the population both North and South"*. In the same interview the Plaintiff accused Workers' Party adherents of holding the view that *"literally any Catholic from the North had to be a Provo fellow-traveller"*. However, the Plaintiff believes in constitutional politics, and told Ces Cassidy of the *Irish Independent* in or about February 1984 that she would align herself to the outlook of the SDLP.

(w). The Plaintiff opposes many of the legal measures which are used to control the violence in Northern Ireland. At a public meeting held in Trinity College, Dublin, in 1984, the Plaintiff opposed the strip-searching of women imprisoned on terrorist charges. The Plaintiff, in an article published in the *Sunday Tribune* in November, 1986, described Northern Ireland as *"the archetypal police state"*, and said that the Divis area of Belfast was subject to *"the harrassment of its people by successive waves of British regiments"*.

(x). On 30th November, 1986, the Plaintiff wrote in the *Sunday Tribune* against the Diplock Courts which function in Northern Ireland, stating that, *"None of the research on the Diplock courts to date provides cogent evidence of judicial bias or prejudice, though comments from individual members of the judiciary have managed to turn such painstaking analysis on its head. It is the voice of the headstrong, bigoted judge which sticks in the mind — not of the statistician."* The Plaintiff objected to the rules of evidence and the admissibility of confession statements which operate in those Courts: *"Whether the Diplock courts have one judge or three, whether those judges are from Northern Ireland or Timbuctoo, the court will still operate the same rules of evidence and of admissibility of confession statements, which in reality are the things which most truly mark the Diplock courts off from the 'ordinary courts'."* The Plaintiff said that the ordinary common law is very cautious about admitting in evidence statements allegedly made by the accused confessing to the crime: *"Good old Lord Diplock did away with that because quite simply it was making life too tough for the prosecution. So in the Diplock courts it is the accused person who must establish that the statement was forced out of him."*

(y). The Plaintiff opposes extradition from the Republic on the grounds that there is no justice to be had in the United Kingdom for people who are Irish and Catholic. In an article in the *Sunday Tribune* on 14th December 1986, the Plaintiff wrote: *"The Taoiseach has indicated that implementation of the Extradition Act may be delayed until changes are made in policing and administration of justice in Northern Ireland. He ought to be reminded that among the issues which jaundice Northern Nationalist attitudes to British justice are the spectres of Giuseppe Conlon who died in prison for something he did not do, Annie Maguire, her family, the Guildford Four, the Birmingham Six — all jailed for being Irish, Catholic and in Britain at the wrong time. Somebody ought to point out to An Taoiseach, that if this Extradition Bill had been in place in 1974 and had the Maguires fled to Ireland out of genuine fear that they would not get a fair trial, we would not have offered them refuge. We would have extradited them back to Britain to stand trial. Just imagine that we had done so — how would we feel today to have played such a squalid role in such a disgraceful affair? The new bill, if passed by the Dail, will bring many such dilemmas to our own doorsteps. Without having to offer the slightest shred of evidence against a person, the British can demand their extradition — to a jurisdiction which is clearly incapable of filtering hysterical racist prejudice out of its police, its*

juries or its judges."

(z). The Plaintiff believes that Northern Ireland should be incorporated into the sovereign state of a 32 County Ireland. In or about June, 1986, she told Colin Kerr of *In Dublin* that she was committed to the idea of a thirty-two county republic. On 2nd November, 1986, the Plaintiff wrote in the *Sunday Tribune* of the Anglo-Irish Agreement that *"reconcilliation between the two ambitions of full membership of Great Britain and a sovereign united Ireland is simply impossible. They are, as Unionists keep telling us, mutually exclusive. If that is so, and if our politicians still believe as they purport to, that Ireland's future is best secured within the framework of a sovereign independent state, then why participate in a violent and ineffective charade which still postpones indefinitely the search for a full and final settlement of the Northern crisis?"*

(aa). The Plaintiff has a vision of a sovereign United Ireland in the de Valera mould. In the Irish Times of 14th May, 1984, the Plaintiff was reported as saying at the Fianna Fail National Women's Conference, that Eamon de Valera was Ireland's *"greatest visionary"*.

(bb). The Plaintiff told Colin Kerr of *In Dublin* in or about June 1986 that: *"I think there are Northern unionists who use the Rome rule jibe too easily and too maliciously and when the finger is pointed at the Republic of Ireland as a sectarian state. Let me tell you something, I have lived in both states and for a confessional state and a sectarian state there is nothing on the map to beat Northern Ireland in Western Europe. There are politicians who are ministers, ministers who are politicians and the influence of religious rhetoric in politics in Northern Ireland is infinitely stronger than anything in the Republic. I wouldn't deny that you would also find that rhetoric in the Republic, it is hardly surprising that you would in a country with an overwhelmingly Catholic population. But to accept that jibe from people who deliberately created a Protestant state for a Protestant people and who make no secret of the fact that they want to get back to that situation, I simply refuse to enter into debate with them, I refuse to justify the credentials of this state, whose credentials are accepted worldwide, against the cheap allegations from people whose past history in terms of sectarian politics, speaks for itself."*

(cc). The Plaintiff has described Northern Ireland as being colonial and has advocated self-determination by Ireland as a whole to overrule the Northern Ireland majority and establish a state across the present boundaries. The Plaintiff in April, 1986, chaired the opening session of a Dublin Pearse Seminar entitled *"Scoil an Phiarsaigh"*. She stated on that occasion: *"We desire to be a nation, a nation state. We believe that given the abject failure of the colonial model and the devolved government model in Northern Ireland, that the model of self determination, not selfish determination, or sectarian determination, but self-determination, could secure the future of our children and of their inheritors…"* Ireland, the Plaintiff added, would be a nation-state *"when boundaries of nation and state coincide."*

(dd) The Plaintiff did not teach any courses during her first year as Director of the Institute of Professional Legal Studies.

(ee) The courses for the Plaintiff's first academic year were already planned and in a position to function when the Plaintiff took up her appointment.

(ff) The Plaintiff did not have the same degree of contact, academic, professional or practical, with students at the Institute in her first year as Director as her predecessors, Mr. Elliott and Mr. Russell had had.

7. Further or alternatively, the said words are fair comment on a matter of public interest, namely, the appointment of the Plaintiff to the Directorship of the Institute of Professional Legal Studies.

PARTICULARS

Sub-paragraphs a to z and aa to ff inclusive under paragraph 6 above are repeated.

8. If and insofar as may be necessary, the First Defendant will rely upon the provisions of sections 5 and 6 of the Defamation (Northern Ireland) Act, 1955.

9. Paragraph 6 of the Statement of Claim is denied. It is denied that the Plaintiff is entitled to the claimed or any relief and denied that the Plaintiff suffered the alleged or any injury or loss either in the manner alleged or at all.

10. Further the First Defendant will if necessary rely in mitigation of damages upon the publication in a prominent position in the final

issue of *"A Belfast Magazine"*, Volume Three, Number Five (December 1988) of an apology to the Plaintiff, to the precise terms and effects of which the First Defendant will refer at trial.

4. Some Commentary

McAleese's libel writ was issued on 26th January 1989. I had received a letter from her solicitors a few months earlier, in the Autumn of 1988, indicating that her failure to appear before students at the Institute during the first year of her appointment was provided for in her contract of employment.

The action was settled before I could get documentary evidence of this in Discovery, but once it was said I saw that it was very likely to be case. Her employers must have known very well when giving her the job that she was unfit to do it straight off. It made sense that she should have been given time on the job to learn the job.

Which is nice work if you can get it. Though you can't always get it if you try. But it was not even the case that she got it by trying. It came to her as a gift from on high. She had not applied for the job when it was advertised. I presume that she knew as well as anybody else that she was not an experienced solicitor or barrister, and that the thought of applying for the job did not cross her mind any more than it crossed David Trimble's mind.

But then the employer (perhaps in the form of an influential judge) asked her to apply for it. And Trimble too was asked to apply for it. And it was hardly the business of either of them to act more responsibly than the employer by refusing to apply for it.

The employer behaved improperly, breaking what was by then a virtual law. But the employer was the law, and therefore considered himself to be above the law. And he had got himself into a bind with this misconceived Institute that nobody, with the requisite experience to be its Director, wanted to direct. So he changed the nature of the job, solicited applications for it, and gave it to somebody along with a year's grace to find out what it was.

But there was perhaps a suggestion in the article that McAleese's failure to appear before the students in order to communicate experience to them was an act of negligence on her part, when in fact it was a provision of her contract, put there in recognition of the fact that nobody who was qualified for the job would take it.

That was the only semblance of a mistake in the article. It was an entirely understandable mistake, as nobody—neither McAleese nor her employer—had explained to the students that the new Director had a year's exemption from appearing before them, and that they were in effect without a Director for that year. Nevertheless, it was possibly a kind of mistake. And I offered to publish an apology for it.

When, after a period of weeks, I heard nothing more from McAleese, I brought out what I intended to be a final issue of the magazine, with an apology. Then, supposing that the matter was closed, I went to London with the intention of starting on a book on Canon Sheehan which I had long been intending to write.

I had been in Belfast for twenty years. What I had attempted to do there had come to nothing, and by this time I was certain that it would come to nothing. So I went to London, and the Reading Room of the British Museum, to do something else. In the event, what I produced was two books called *Derry And The Boyne* and *Belfast In The French Revolution*. And while I was engaged on these I received the libel writ from McAleese.

I had given my London address to her solicitors, and the writ was sent to me there. I later found that the High Court in Belfast was curious about how a libel writ had been served on me outside the jurisdiction. When I said it was sent by post, there was a muted expression of surprise on the part of the Court.

What are you supposed to do when you receive a libel writ? You're supposed to purchase law with which to counter the law purchased by the person who issues the writ. Law is a commodity. All law is a commodity to some extent, and libel law is nothing but a commodity.

But what if you lack the wherewithal to purchase this commodity called law?

At a certain point I went to the High Court in Belfast, said I was being prosecuted for libel by an important functionary in the legal profession over a matter concerning the legal profession, that I had not the money to hire a lawyer, so what arrangements had the legal profession, in its wisdom, made for somebody who found himself in my position?

The answer, of course, was damn all. But it was not an answer that anybody liked giving.

And they were still less inclined to give the explanation why no provision had been made for such a situation—that it was assumed that such a situation would not arise, since the purpose of engaging in libel action against somebody was to make money out of him. So what would be the point of prosecuting where there is no money?

Confronting the High Court in that way about the maverick behaviour of the person who was training its solicitors and barristers was a piece of self-indulgence on my part. I already knew what the situation was.

A London Solicitor

When I received the libel writ in London I looked up the Law Society in the phone-book—there were still phone-books attached to public phones in those times—rang up, and asked if they could recommend a firm of solicitors that would act for me on legal aid in defence of a libel action. I was given two or three names and phone numbers. The names meant nothing to me. I discovered later that the reason they meant nothing to me was that I was not a reader of *Private Eye*.

I rang the first of the numbers and was plugged through to a solicitor who happened to be free at that moment. I asked if his firm would do a libel defence on legal aid. He said legal aid was not granted for libel cases. I said I understood that it was not granted for prosecuting a libel action, but surely it was available for the defence in cases where the defendant could not afford to be represented by lawyers.

He assured me that it was absolutely not available in libel actions under any circumstances. I said sorry for wasting his time, and was about to put the phone down. He said to hold on and give him some idea of what it was all about. Who on earth would be taking a libel action against somebody who couldn't even pay for legal representation? One of the chiefs of the legal profession in Northern Ireland, I said.

I was speaking from a pay-phone on the street. He took the number and rang me back, and took me through the first things I had to do if I wanted to contest the action.

The first thing I had to do was *'enter an appearance'*. All that required was putting a tick in a box in a document accompanying the Writ and sending it back to the Court. I looked the document over but could find nothing of the kind he described in it or with it. He said in that case Northern Ireland must be operating a procedure that was obsolete in England, and that I would need to get a particular form from the Court in Belfast, fill it in, and present it.

This was the first example I came across of the backwardness of British law in the Northern Ireland jurisdiction, and the way it is arranged to make work for lawyers.

I rang up the High Court in Belfast and asked for an Appearance Form to be sent to me so that I might contest the action. The Court refused to do this. Appearance Forms had to be collected in person, and returned in person. And, if I failed to enter an Appearance on time I would lose the action.

I managed to *"make an appearance"* within the seven days allowed by being impersonated by a friend.

The London solicitor suggested that I write a summary of what the case was about and send it to him, and then call in a couple of days later to discuss it.

I had never heard of this firm of solicitors, but I found that they were very famous, and horrendously expensive.

The solicitor dealing with me was in the top third of a very long list of the solicitors attached to the firm. I had a couple of meetings with him and additional meetings with a junior solicitor attached to him.

He gave me a crash course in libel law and showed me what a Defence should look like. He said that in his opinion it was probable that the action could be struck out in an English Court on legal grounds, but that would require technical legal argument and I should not attempt legalisms.

He advised me not to bother with a counter-action, which would only complicate things for me, with little prospect of reward since my time was of such little commercial value. And he said that, instead of keeping cards close to my chest, I should put everything I had into the Defence. And this accorded with my own inclinations.

I returned to Belfast, drew up the Defence, and sent him a

copy. He rang me in Belfast to go over the Defence, and spent about two hours on the phone going over it, and trying to give me a grasp on some very slippery legal distinctions.

I made some enquiries about the cost of employing that firm and I gathered that their rate (seventeen years ago) was £300 an hour.

This solicitor, whose market value was a multiple of the market value of any Belfast solicitor, did not seem to feel he was doing anything extraordinary in helping me to construct a Defence. His manner was that of a skilled craftsman doing his job. And his motivation for doing it without pay seemed to be that his profession was being brought into disrepute by another member of it, and that it just would not do. In other words, he was actuated by a kind of professional conscience. I never noticed the existence of such a thing in Belfast.

(Eventually I got some informal help from a solicitor in Northern Ireland—though not from Belfast or North Down, and not from a lawyer who had experience in libel law. I also had considerable help, though not from legal people, in accumulating the material which I put in the Defence. I will not name any of the people who helped me, because there is no knowing when the fact might be used against them. And I will not name the firm of London solicitors that helped me, though it is far beyond the reach of the Plaintiff, or anybody connected with her, because the prurient curiosity in the matter that was observable at the Bar and on the Bench is not something that should be satisfied.)

Response To The Reply

McAleese's solicitors were very off-hand with me in a patronising sort of way at our initial contacts. But there was a startling change in their attitude after I gave them my Defence. It was obvious that the whole thing came as a revelation to them—not only the details of their client's career prior to her appointment at the Institute, and her contempt for the Northern Ireland legal system, but even the facts about the Institute, the reasons why only a lawyer in successful practice should be Director of it, and the gross breach of Fair Employment rules by the Employer in changing the job specification without advertising the change, and in privately soliciting applications from particular individuals.

From this point on, what I encountered was a kind of desperation to settle the action, but a problem of doing so in a way that did not give the game away entirely.

I told the opposing solicitors from the start that all I wanted was to stop having my time wasted. I had no wish to exploit the advantageous position in which McAleese had put me.

They knew as well as I did that I could act with impunity. If the action went to trial and I lost, I would lose nothing except a few weeks of time and effort. Win or lose, she would have to bear the costs of the action, since she could not get costs or damages from an unskilled labourer, nearing the end of his working life, who was unemployed as often as not. Whatever the verdict, I would remain as secure financially as I had ever been. If you've got nothing, you can't lose it. If she lost, her career would be wrecked. And, even if she won, it would probably be severely damaged by having attention focussed on it.

I wanted to save the time that would be required to prepare for cross-examining her at a trial, and the energy that would go into cross-examination. But it was her business, not mine, and it was up to her to devise a way of stopping the action.

The solicitors quickly came up with a paragraph that would stop the action if I signed it. I sent it to my very expensive solicitors in London. They said it meant that I had won, and that I should sign it. Libel actions were about money and about nothing else, they said. I was making no counter-claim against McAleese and therefore I had nothing to gain by refusing to settle after she had given up her claim for damages and costs. I said the language of the paragraph given to me for signing was extravagant and ridiculous and I didn't feel like putting my name to it. They said that's just the language of the law. Pay no heed to it. The essential thing is that she's given up her claim for money and undertaken her own costs.

Well, I didn't sign. And the action rumbled on.

I told the opposing solicitors that there was one possible mistake in the article, having to do with her failure to lecture at the Institute during her first year on the job. That made it possible for me to make a concession which would otherwise not be warranted. But I would sign nothing that was not expressed in ordinary

meaningful language, or that implied that the appointment had been made in accordance with the official rules governing Fair Employment.

The solicitors indicated to me at this point that they were having trouble with their client. She was being stubborn.

I was naturally inclined to dismiss remarks like that. It was their business to string me along in the interest of their client. But, on the other hand, their client's business was not only their client's business. It had become very much her employer's business too. And her employer was the University, the Bench, the Bar, the Law Society, and a Department of the State.

Senator Mansergh now reveals that McAleese's libel action was *"fully backed by Queen's"*. And I assume that this advisor of Taoiseachs, and the party colleague of McAleese when she was a party member, has grounds for knowing.

It would be surprising if McAleese had not been *"backed"* by her employer in various ways. If her action had gone to trial, the substance of the Defence would have been about what the employer did, rather than about the employee. It would have been about the breach of Fair Employment rules by the employer, and about the fact that the Court itself was a constituent part of the employer.

I doubt that the employee was encouraged to launch the action by the employer. Perhaps she was by the Queen's element of the collective employer, but hardly by the Law Society, the Bar, and the Bench. And, once it was made clear what the line of the Defence was, it became evident that the employer wanted the action stopped. It was therefore credible that Charles Brett was trying to get the action stopped, but was having some trouble with the client, who had got stuck in a rut of stubborn subjectivism.

At any rate, that was how they depicted her to me.

While the action was going on I had a meeting with Dr. Boyd Black, a Queen's University economics lecturer of long standing, at the Queen's Students' Union. I made an appointment to discuss something with him which had nothing to do with McAleese or with the Institute.

In the course of preparing reprints of writings by Northern United Irishmen I had got to know quite a bit about the academic life of Presbyterian Ulster in the 18th century and the early 19th. The 18th century Presbyterian clergy and gentry had been educated at Glasgow College/University. They stopped going there when the Academical Institution was opened in the early 19th century. The intention was that the Academical Institution should be Belfast University, and it was so in the first instance as the qualifications it awarded were taken to be sufficient for a Presbyterian clergyman. But the Academical Institution did not in the long run fill the place of a University in Belfast—nor did Belfast Royal Academy. It seemed to me that the Act of Union exercised a disabling influence on the rounded self-reliance which characterised Presbyterian Ulster in the 18th century. And, when Belfast finally got a University in the 1840s, it came as an external construction: the product of an Act of Parliament, and it was a University more in legal form than in internal substance.

As I had had to return to Belfast in order to tend to the libel action, I used the opportunity to discuss higher education, historical and contemporary, with a number of people. Finlay Holmes was one. Dr. Black too had had a superior Ulster education, so I asked him to meet and talk about it. But what Dr. Black wanted to talk about was the McAleese case. He wanted to know why I was persecuting the poor woman, who had got the job because she was the best person for it. I explained about the Fair Employment aspect of the matter—a thing which in another connection he was familiar with. But he didn't want to know. This instance of it was too close to home for his comfort.

He told me that the University authorities had warned him that he was doing himself no good by associating with me.

He had been associated with me in politics at an earlier time but had gone his own separate way before this. I had published a pamphlet against Queen's in 1986, when he was associated with me. I suppose that connection stuck in the minds of the University authorities, and they failed to notice his subsequent dissociation, and therefore warned him off me in 1990 because of McAleese's libel action.

That warning suggests that Queen's had a guilty conscience about McAleese's appointment, knowing

that it had broken the Fair Employment rules by taking part in it, and it dealt with its guilt by the application of authority.

(I can assure the University that Dr. Black was a good boy, and heeded their warning, and has never since exchanged a word with me.)

I was at that time demanding Third Party Discovery from the University. A Judge in the High Court (acting for the Plaintiff while on the Bench) told me I was not entitled to get Discovery from the University. Nevertheless I got it. Which shows how brittle the Establishment position was.

Swearing

Before going on to describe the sequence of the action, I will mention a curious discovery I made about Swearing.

I had reason to produce quite a few Affidavits. Most of them were produced in Belfast. I drew them up and they were processed by solicitors for a standard fee. (On one occasion I chanced to go to a Catholic firm and the solicitor, intrigued by the nature of the case, wouldn't take any money.)

An Affidavit includes the formula *"I swear"*. I wrote this down, thinking nothing of it. Books of model documents are published for the legal profession, and I produced a typed copy of the appropriate form and filled in the relevant particulars. And so these Affidavits were produced and signed and submitted, and that was that.

But on one occasion I had reason to produce an Affidavit in London. I was well used to the procedure by this time, and it all went like clockwork, until the end. The Affidavit was there on the desk as good as any of the others I had done. But as I was about to pay, and pick it up and leave, the solicitor reached into a drawer and pulled out a Bible and held it out towards me. When I expressed surprise, he pointed out that *"I swear"* means doing it with a Bible. But, if I had definite objections to that, the Affidavit would have to be re-phrased in different terms.

I knew that the Bible was part of the national religion of Britain, in which hardly anybody believed very much, or at all. It was a kind of fetish. I approved of national religions of that kind. And God was not a subject with which I bothered my head. If it was acceptable to swear in that spirit, I would swear. He thought that would be fine, so I did.

If this had happened in Belfast I would not have sworn. In Belfast there was no established routine of national culture in which these things are contained and rendered meaningless. And least of all is there a religion which is part of a national culture, on which the individual may touch lightly on occasion, if he finds it expedient, without becoming enmeshed in theology. In Belfast, religion is religion. And that presumably is why the swearing is done by typewriters in solicitors' offices in Belfast.

Further on the matter of Affidavits: While in London I went to the High Court there to see a libel trial. George Carman QC was appearing for the Defence, on behalf of a newspaper, which was being sued by a couple of famous West Indian athletes. The wife of one of the Plaintiffs gave evidence for the Defence on the subject of the state of their marriage. She was confronted in the witness box with a series of Affidavits sworn some years before, which contradicted the evidence she gave in Court. I assume she had been prepared for this by Carman. In superb style she brushed aside what was said in her Affidavits as wild exaggeration, which she had sworn to because the solicitor had advised her that it was pointless producing Affidavits if you merely told the modest truth in them.

I could be almost grateful to McAleese for wasting my time and energy because it led me to seeing the marvellous performance of Mr. Motivator's estranged wife in the witness box, nudged along by Carman.

And not quite on the subject of Affidavits: There was then, near the University, and alongside the Moravian Church, a set of offices which purported to be in the business of giving legal advice to citizens. I went along and asked what legal assistance they could give me, a lone citizen, without means, being sued for libel by one of the chiefs of their profession. So what was the case about? Well I just happened to have my Defence with me: would they care to see it? They would indeed. So they went to an inner office to look it over, and returned a short while later (having done some photocopying I presumed) to say, Sorry, but there was nothing they could do for me.

Law In Belfast

After I had submitted my Defence, I went back to the High Court and said I wanted to be informed about the procedures leading to the Trial, and on a few occasions Masters made themselves available to discuss this. (Masters are minor judges who deal with some of the hearings, preliminary to trial.)

"And the action is being brought by—ah, yes—Professor McAleese!"—with sarcasm. It was notorious in the Court that the 'Professor' was a mere lecturer.

And where might I get a manual of Court procedure?

Well, there was a loose-leaf folder, wasn't there? Or was there? Certainly there was. There must be!

Where could I get it?

At HMSO [Her Majesty's Stationery Office] in Chichester St. Where else?

But HMSO had never heard of it.

Well it must be somewhere. They were sure it existed. The Library of the Law Society must have it. Or the barristers' Law Library.

But I was not a solicitor, so the Law Society would not admit me. And I was not a barrister, so I was excluded from the Law Library. And yet one of the chiefs of the legal profession had put me in the position where I had to act as both barrister and solicitor without any published manual of court procedure, or any guide to what law applied to libel in the Northern Ireland jurisdiction.

Was law in Northern Ireland English law, or Scottish law, or Irish law, or something distinct in itself, or something indeterminate?

I could get no definite answer to this question in Belfast, but the best bet seemed to go on the assumption that it was English law. So I got a copy of the English *White Book* and figured out the phases of a Court action from it—only to discover at an early stage that a phrase listed in the *White Book* did not apply in Northern Ireland.

When I complained about this to a Master, he sympathised of course, but told me I was fortunate that my case had not happened a few years earlier. It used to be the case that there were hardly any objectively laid down procedures which could be handled bureaucratically by means of forms. Before the administrative reforms recently introduced, certain things could only be done by barristers meeting Judges on their way back to their chambers on Thursday afternoons—or was it Fridays?—and making arrangements with them.

I then proceeded on the assumption that English law did not apply in Northern Ireland. But a time came when a Discovery award was made to me by a Master and McAleese appealed it to a Judge. And what did the Judge do? He asked the usher to bring him *Gatley On Libel* from the library, and he read it on the point, and over-ruled the award made by the Master.

Gatley On Libel is the basic book on libel in English law. I had begun reading it, but had left off after my experience with the *White Book*.

I then concluded that Northern Ireland law was indeterminate, was largely informal, and was made up as it went along. In other words, it was backward, it was law for lawyers, and it was loaded against a defendant-in-person: or at least it was in my case.

Much was said to me about the Court making allowances for the difficulties faced by somebody who had to appear for himself. It would bend over backwards in an attempt to equalise the conditions of conflict between the professional lawyer and the Defendant-in-person. (And, as this is being produced, I hear Turlough O'Donnell SC assert on *Prime Time* that judges strain to equalise conditions between professional lawyers and unrepresented litigants.)

That might possibly be the case in an action where the Court itself is a detached forum in which the action takes place, and does not have a vested interest in the outcome. But, in my case, the Court was a party to the action, being a component part of the employer who broke Fair Employment rules when appointing McAleese.

Take for example that appeal against the Discovery award made by the Master. It was an appeal on a legal technicality. I knew nothing of the grounds of the appeal until the hearing started. The Judge made reference to a *Book Of Appeal*, and I noticed that he took it for granted that McAleese had given me a copy of this document. I let him know that she hadn't, and that I knew nothing of the ground of the appeal until after the hearing

had begun. But the Judge just let the matter pass.

Was it reasonable to expect a Defendant-in-person to cope with a legal technicality prepared in advance by the Plaintiff and sprung on him in Court?

I imagine that, if I had made a song-and-dance about it, the hearing would have been adjourned to give me an opportunity to prepare a defence—and that, if the Court had not a vested interest in the case, the Judge would have suggested this off his own bat as a matter of equity. But he let it pass. And so did I.

I have an unfortunate tendency in situations like that which inhibits me from fighting my corner—a curiosity to find out how things work.

Shortly after I went to London from North Cork in the late 1950s, I was picked up on the street by two plain-clothes policemen, taken to a Police-box (a thing which no longer exists outside *Dr. Who*), and beaten up. The policemen then took some implements out of their pockets and asked me what I was doing with them. I decided that odd behaviour was my best bet for avoiding a criminal conviction, and I did it well enough to cause them to decide to let me go and find somebody else instead. I then found out whose authority they came under, went to his station, wrote out an account of what happened, and was interviewed by the Superintendent. It was obvious that he did not doubt that what I said was true, but the truth or falsehood of it was not his concern. He wanted to find out if I had any friends or relations with sufficient influence to make trouble. I gave him the answers he wanted. I was a feckless Irish labourer who counted for nothing in the scheme of things that concerned him. So he said he would look into it. Of course he didn't. And I knew he wouldn't.

I went away and did something more useful than pursuing justice, having acquired hard knowledge of how Justice worked at the mass level of English society. It was very rough justice indeed. It worked to a considerable degree by frame-ups and thuggery and perjury on the part of authority, with the complicity of all concerned on the side of justice and authority. And, but for that experience, I might never have been quite sure.

And what I got from that appeal hearing in the Belfast High Court was the definite knowledge that the Judge knew that he was a party to the action he was hearing.

And I got that knowledge cheap. I was denied an element of Discovery, but it remained open to me to get it by amending the Defence—which I set about doing.

McAleese was represented by the Bench and the Bar. I do not suggest that they wanted to win for her. And if the action had gone to trial before a jury the Bench would have had to be very careful indeed about the favours bestowed. The trial would have been a very different thing from these hot-house legalistic affairs in which Bench and Bar might communicate sotto voce with one another as if I wasn't there.

At another hearing before a Judge (the same Judge) the Bench and the Bar put on a very cute double-act about whether somebody might have helped me with my Defence. Might it be a solicitor in this place or a barrister in that place? North Down perhaps. I encouraged them to indulge themselves.

At a further hearing, to fix a date for the trial, the Judge—a Lord Justice this time—arranged a date with McAleese's lawyers without reference to me. This was at a general setting of dates for impending cases. It was held in a large, crowded room. I was standing by one wall and McAleese's lawyers were across the room at the other side. I objected to the date set, as being too near in view of the fact that McAleese had not met her obligations in the Discovery phase in the time allocated, but had dragged it out for months beyond the set date, and I had been unable to begin preparation for the next phase while Discovery was still going on.

Lord Justice McDermott then had some discussion sotto voce with McAleese's lawyers on the other side of the room, which I could not hear, and which he could not have expected me to hear. And he also agreed the time to be allocated for the trial with them without consulting me.

After this I asked for a meeting with a Master and put it to him that it was entirely unreasonable to expect a Defendent-in-person, without any manuals of Court procedure, or books of precedent for the Northern Ireland jurisdiction, to guide him, and faced with a battery of solicitors and barristers employed by the Plaintiff, who was herself one of the chiefs of the legal profession, to have made preparations for trial

while the Plaintiff was dragging out the Discovery proceedings. And I also set out the additional difficulties that followed from my being an unskilled, and at present unemployed, building labourer. He conceded that I had a very strong case for delaying the trial, and undertook to inquire into the matter.

A few days later I came back to him. Looking sheepish, he said he thought it was best that the trial should go ahead as planned. He was a distinguished-looking, elderly Protestant gentleman with old-world manners—but he looked sheepish. It was obvious that he had been given orders by the Judge, or the Lord Justice.

The case I put to him was true in all its details. But from the details he would have inferred a context that was not true at all. Life in Catholic Ireland is not graded by division-of-labour as it is in English society, and Protestant society in the North was English in that regard though not in others. The subjective reality of Catholic persons is therefore not indicated by status within the division-of-labour, and is therefore not comprehensible to Protestant understanding. And it was in Slieve Luacra and West Belfast that the most extreme absence of determination of subjective life by the division-of-labour prevailed. And I had come from the one to the other. And for twenty years I had been engaged in a political enterprise which was properly the business of the middle class intelligentsia of the Protestant community—or its middle class intellectual, because there was only one that I ever saw—and of Constitutionalist Catholics, of whom there were said to be many.

I imagine that it was put to that well-intentioned Master that I was not what I appeared to be, and he was bewildered.

At the outset of the proceedings he had put it to me that, if I approached the Unionist Party, it would probably supply me with lawyers. It was an obvious point, and yet it showed how far he had been left behind by the times.

The Judge/barrister double-act was convinced that I was a Unionist front, and that behind me was Robert McCartney QC. But, if such had been the case, I would not have been willing to settle, and would have contested every point instead of indulging my curiosity.

At a late stage in the proceedings the helpful Northern Ireland solicitor I have mentioned asked if he could inquire whether a certain barrister would take the case (not McCartney). It was his opinion that no run of the mill barrister would dare to take the case, even for pay, and that I was perhaps better off without a barrister anyway, given the circumstances of the case. However, this particular barrister might take it, being semi-retired. I agreed that he might satisfy his curiosity by asking. And the answer was, No.

The Northern Ireland jurisdiction is very small, and the influence of Judges in it is proportionately large—the influence of Judges on the careers of barristers, that is.

It was evident from the terms of my Defence that conduct of the case would require that the conduct of the Bench (as a component of the collective employer) in soliciting an application from a Dublin law lecturer without experience in the practice of law, and giving her the appointment, should be questioned. And that a certain Lord Justice should be subpoenaed and put on the spot. And no barrister with a career to make in this small, largely informal, jurisdiction, was going to do that.

And then there was the question of whether a fair trial could be held within the jurisdiction at all. If the action had gone to trial, I intended to challenge the legitimacy of holding the trial within a jurisdiction which was directly concerned in the action, and was therefore prejudiced.

As well as the obvious facts, I had a letter in response to an inquiry to the Bar Council saying it could not deal with the matter as one of its members would be trying the case. I don't know if that letter was intended to be a hint about how I should proceed.

So much in the way of general observations.

Sequence Of The Action

The sequence of events in the action were the issuing of the Writ; the entering of an Appearance by the defendant; the entering of a Reply by the defendant within a specific period; the Discovery phase in which, if the rules are observed, each gives the other all documents relevant to the case; and the trial. (In English procedure there is an intermediate phase between Discovery and Trial for the

purpose of tidying up, but not in Northern Ireland.)

If Discovery rules were strictly enforced by the Courts, I imagine that much of the nonsense would be cut out of libel actions. And I know that McAleese's action would have fallen in the Discovery phase if they had been enforced at all.

In mid-October I gave her lawyers a Discovery List of 61 items, covered by Affidavit, and made the documents available for copying.

And a week later they proposed that the action should be settled by me signing a paragraph drawn up by them, with no damages or costs; and they told me they had great difficulty persuading her to agree to this. And I replied in early November that I would not respond to the proposal until I got Discovery from her.

The final date laid down for giving a Discovery List covered by Affidavit was reached in mid-October, and I had not received a single item of Discovery from McAleese, or any communication from her regarding Discovery. So I applied to the Court for her action to be struck out for failure to give Discovery.

As I was waiting in the Courtroom for the case to come up, one of her barristers came up to me and tried to stuff a piece of paper into my hand. I refused to take it. (This was at a Master's Court, where a number of cases were taken in sequence.)

When the case came up, McAleese's lawyers could not deny my assertion that she had failed absolutely to meet her Discovery date. I demanded therefore that her action be struck out. It wasn't struck out, but I was awarded costs for that particular incident. It wasn't explained to me on what formal grounds the failure of a professionally-represented Plaintiff to make even a pretence of meeting her Discovery obligations was held to be insufficient for ending her action. (The actual grounds were clear enough of course.)

I put in a bill for my costs, but it wasn't paid. I then discovered that it was standard practice not to comply with such awards. If I wanted it paid, I would have to summon McAleese to appear before a Taxing Master on the issue. As I did not do this, I cannot say with certainty whether payment would automatically follow on a decision by the Taxing Master, but my guess is that it wouldn't.

Some months later I was asked by McAleese's lawyers to distinguish between fact and opinion in my Defence. I asked the London solicitor how I should reply to this. He said it was not something that was done in English law. He suggested a formula for my reply and said I should write to McAleese's solicitors asking if it would meet their requirements. I did so, but got no answer. But, a couple of weeks later, I learned that McAleese's lawyers had gone to Court on the issue, and the Court found that I had gone over time in the matter, and had awarded the costs of it against me.

I had not been informed, either by McAleese's lawyers or by the Court, that the matter was coming up in Court. The first I heard of it was the award of costs against me.

Charles Brett had obviously not replied to my inquiry so that I would run out of time and he could get an award of costs against me to counter the earlier award of costs against McAleese.

The solicitors had on many occasions expressed sympathy with my difficulties as a Defendant-in-person in coping with Court procedures and the professionals acting against me, saying that if I had any problems about procedure I had only to ask and they would help. As I wasn't born yesterday, and as I knew something about Charles Brett, I was thoroughly sceptical of the offer. I let the London solicitor know of my scepticism. But he assured me that there were things that solicitors just did not do.

He had to revise his opinion when Charlie Brett did them.

But, back to Discovery.

The piece of paper stuck into my hand in the Courtroom when McAleese had run over time had nothing in it relevant to her action.

I therefore summoned her to Court to get an order for Discovery against her. It was a Master's Court again. One of her barristers was there bright and early, seated at the front desk with a stack of law books before him.

When the case came up, I said what I had been given by way of Discovery had no bearing on the action taken against me. Her attitude appeared to be that I was somehow not entitled to Discovery, though the rules said that I was, and that I wanted more.

The barrister said that the Discovery requirement had been complied with in

accordance with the rules.

The Master said to me that I had raised obstacles against further Discovery by demanding Discovery covered by Affidavit in the first instance. I said that the only books on the matter available to me as a guide said that I should do what I did. He then explained that, by getting Discovery with Affidavit, even though I got next to nothing by it, in demanding more I was raising the matter of perjury. If I had accepted Discovery without Affidavit, I could have come back again and again for more, and more might be given without any suggestion that the Plaintiff, in giving me next to nothing, had sworn a false Oath. But the Plaintiff had sworn that she had no other documents that were relevant to her action against me, and in demanding more I was suggesting perjury.

I said that it was entirely obvious that there was much more. And, if I had made it impossible to get it because I followed the rules, the situation was ridiculous. I had no wish to be arguing law in Court with a Plaintiff whose job was to train barristers and lawyers, and with the lawyers that she hired, but I had no alternative. If the situation was as described, I thought there should be a new rule that people who could not afford professional help to defend a libel action should be found guilty as a matter of course by virtue of that fact. It would be more sensible than the present carry-on.

The Master then turned to the barrister with the stack of law-books in front of him and said it was obvious that there must be other documents in the Plaintiff's possession that were relevant to her action. He mentioned some of them and said they should be made available to me.

I did not understand how, in the light of his explanation to me about the Affidavit, he put the barrister under serious obligation to give further Discovery. What went on between them sounded to me much more like a serious, though informal, telling-off by the Master than the handing down of a legal decision.

I imagine what the Master was concerned about was how things would look at the trial, if I concentrated on the Discovery conduct of the person who was paid a very large salary to show law students how to practice law.

The barrister tried to retaliate by saying that I also had withheld Discovery. I had not given material from the office files of *A Belfast Magazine* relevant to the article in question. (That I hadn't revealed my source, I suppose—which I would have been obliged to do under the rules if there were documents which revealed them, but not otherwise. The Plaintiff seemed anxious to discover the name of the author, perhaps with a view to a further libel action, if not worse.)

I explained that the Magazine never had an office. That such files as it ever had were thrown in the waste-basket as each issue produced. (It was produced entirely by voluntary effort, from the writing to the printing.)

I also said that the Magazine no longer existed, as the Plaintiff had stopped its circulation by threatening action against newsagents who had stocked it, unless they gave her an undertaking that they would never sell it again, ever. As far as I knew there was not a scrap of paper relevant to it anywhere, except the paper it was printed on.

McAleese's barrister could not dispute this. He had to accept that further Discovery must be given from his side. And he stalked out of the Courtroom, fuming.

One of the obvious documents McAleese should have given me was her Contract of Employment.

I was interested to see how the year's exemption, from appearing at the Institute to communicate experience of legal practice to the students, was formulated.

She appealed this item to a Judge, arguing that I was somehow not entitled to it because of the way my Defence was formulated. That was the hearing at which the Judge had *Gatley On Libel* brought from the Library, read it on the Bench, and decided for the Plaintiff.

I then began to amend my Defence so as to cover that loophole and entitle me to get the Contract of Employment in Discovery. Unfortunately, on the day the hearing to amend was held, the Plaintiff decided to settle on the terms I had put to Charles Brett's junior about eight months earlier—a rewriting into ordinary language of the paragraph proposed in October, with no implication that Fair Employment procedures had been followed in the making of the appointment.

I don't think it would have mattered much whether I got the Defence amended in this

particular or not. I was getting the hang of the law. I saw that, for all the good-looking rules, Discovery goes on right up to the trial, and during it. I couldn't see how questions about how she got the job, and why she was so retiring during her first year in it, could possibly be ruled out of order at the trial. But the trial was quite close at this time, and I thought it was as well to get used to judges.

(Judge Nicholson, who seemed to have made the case his own, was a pompous figure, given to attitudinising. On my first appearance before him, he ran off at the mouth about what a nuisance it was when people insisted on appearing for themselves instead of being professionally represented. I said I was not insisting on appearing for myself. It came as a surprise to me, when one of his professional colleagues brought an action against me, that the legal system had made no provision for professional representation of defendants who could not afford to buy it. But I had been assured that such was the case. However, if it was his opinion that this was not the case, and if he would point me to where solicitors and barristers were available to act for me even though I could not pay them, then I would go to them and accept their services.

Judge Nicholson did not dispute the matter with me. But neither did he tell me where barristers were available, outside the market system of law, for defendants who could not pay them. He tacitly accepted that what I said was true. And I was convinced that he did not know, until I told him so, that legal aid was not available to impecunious defenders of libel actions. I assume that, when that hearing ended, he inquired into the matter. He never brought it up again—except to insinuate at a later hearing, in a double-act with the barrister, that I was perhaps being briefed by a barrister in North Down.)

Judge Or Jury?

The next thing was to prepare for the selection of a Jury by getting the Jury List and finding out personal details about people on it so that I might raise objections to potential Jurors whose outlook would probably be biased against me. So I was told by a Master. I got the Jury List for the High Court from the Crumlin Road Courthouse, across a tunnel from the Jail—but only as a matter of curiosity, because I decided that I would not play on the inherent *'sectarianism'* of the Belfast populace any more than I had ever done.

But if I had to go in for Jury selection, who would I have tried to select? Protestants? Catholics? Others?—meaning disguised variants of the first two.

The position I had held in Belfast politics for twenty years did not fit in with either component of the established system of community politics. I thought I could make sense of my Defence to either Unionists or Nationalists, and that the most difficult element to reason with was the disguised fringes of each who constituted the Alliance Party.

But I had to do something else before the question of whether to engage in the Jury selection game arose—I had to secure trial by Jury.

President McAleese, the law reformer, got the action put down for trial by a Judge, and I had to get it altered. And, for a Defendant-in-person, who had never had the slightest inclination to be a lawyer, to do even the simplest thing at law was difficult. It was like fighting one's way through a jungle. Nothing was routine.

The charitable explanation of why President McAleese put the action down for trial by a Judge is that she wanted to wear me down by adding to the force of attrition which I had to overcome in the course of getting to the trial.

Her professed concern for the reform of Northern Ireland law—professed when she was a strong Catholic-nationalist in Dublin, straddling law, journalism, and politics, and flirting with Republicanism—fell away when she became the Plaintiff in an action against an unrepresented defendant in Northern Ireland. It then became her concern to take advantage of the backwardness of the system which she had criticised until she became an important functionary within it, and to take advantage of the difficulties face by an unrepresented defendant. One might even say that it became her moral obligation as an egoist.

Her lawyers repeatedly told me how eager they were to help me. Naturally I took no heed of this. She was not paying them to help me—assuming that it wash she who was paying them. She was paying them to win. And their conduct on the only occasion when I asked them anything did not suggest that either they or President McAleese were restrained by scruples.

And yet I thought it was outrageous that she should have put down the action for trial by a Judge.

This was not only on the grounds that the Jury system needed propping up in Northern Ireland, but because the Judges had been a component part of the appointing body that solicited her application and gave her the job, and they had therefore a vested interest in finding that the appointment had been properly made.

Anyhow I got the trial taken away from the Judges and allocated to a Jury.

Action Abandoned

My final appearance in Court was for the purpose of amending my Defence in order to get Discovery of President McAleese's Contract of Employment, under which she was excused from appearing before her law students at the Institute for a year.

This was about a fortnight before the trial. I had arranged to spend a long weekend with a barrister away down in rebel Cork going over the case, and working out lines of approach for the cross-examination. The case would have occupied all of my time during those weeks. It had not done so until then. It had been an irritant. It had probably lost me one book in addition to the two I had written and produced.

If I had gone through those two weeks of intensive preparation, I would have refused a settlement of any kind, and would have insisted on the week or two of trial, or else capitulation by President McAleese. I thought it would probably be the latter, but would have made it as difficult as possible.

I did not want to win. I had better things to do than winning, and it would have put me in the wrong place politically. But, beyond that point, my purpose would have been to inflict the greatest possible damage on McAleese in cross-examination—supposing that the jurisdiction rejected my argument that it was an unfit forum in which to try the action, because it was itself a party to the action.

The Cork barrister knew that I did not want to win, as did McAleese's solicitors. At least the solicitors knew that I said that I didn't want to win, and the barrister believed it, but because he was a barrister he did not approve. But, accepting that I did not want to win, or to inflict severe damage on McAleese in the course of losing (because Juries are fickle and unaccountable, though infinitely better than Judges with vested interests), he suggested that I should tell McAleese that this was the point of no return, and give her twenty-four hours to make a settlement in accordance with the terms I had put to her all along.

I delivered this ultimatum to Charlie Brett's offices in Chichester Street (a few hundred yards from Athol Street: Belfast is a small, neighbourly place) in the late afternoon. Within minutes a solicitor dashed out of the offices and hared off to the High Court a couple of hundred yards away. The following morning I appeared in Court to get my Defence amended. McAleese's barrister objected to my application being heard, because, he said, the possibility of a settlement had suddenly arisen and a dispute over amendment might spoil the atmosphere. I said I wanted the amendment application dealt with because the Plaintiff had been doing nothing but wasting my time for six months and this was probably another ploy to the same purpose. Nothing new had come up. And, if my application wasn't heard, and the Plaintiff did not accept the terms that had always been available to her, I would have to start again with the application. The Master (and I assumed that by this time they were all in it together) said that, if the morning passed without the matter being settled, I could come straight back and have the amendment application dealt with.

All that was new was the ultimatum, putting a 24-hour time limit on the possibility of settlement.

When we left the Master's Court, the barrister pulled a piece of paper from his pocket that would have settled the matter at any time during the preceding year and a quarter.

I said I also wanted a specific statement that the claim for damages was withdrawn and that McAleese would bear her own costs—or that, whoever had been paying them would bear them. The barrister went into the Bar Library to draft this, or possibly to ask permission for it. He came out to ask me something and I said all that was needed was a couple of plain sentences. I drafted them and he signed them.

I left for Dublin that afternoon to give a talk on Canon Sheehan's politics. It was attended by Michael McDowell,

who did not profit from it.

But for the settlement, I would have been on the way to Cork City to work out cross-examination approaches. As it was, I went to Slieve Luacra instead

Fair Employment

President McAleese's action against me was interwoven with politics on my side. If it had not been, I doubt that I would have taken any interest in it, as I was beyond her reach financially—you can't get blood out of a stone—and such reputation as I had was beyond the power of the likes of her to damage.

The live issue in what passes for politics in Northern Ireland in 1990—leaving aside the attritional conflict of the two communities which is always with us and within which everything else happens—was the establishment of the Fair Employment rules for employers. They had been presented first as guidelines but were in the process of being made into law.

Behind Fair Employment law was the assumption that the ongoing conflict of the two communities resulted from discrimination by Protestant employers against Catholics, and the belief that, if Catholics and Protestants could be got into all workplace in numbers proportionate to the general population balance, the conflict of communities would ease off.

My view was that the easing of community tensions in Britain was a product of participation in the democratic party politics of the state, and that it was exclusion from the politics of the state that preserved communal conflict in prime condition in Northern Ireland. And I reasoned that forcing members of both communities together in proportionate numbers in all workplaces would either aggravate the communal conflict or leave it unaffected. And the process of forcing the issue was already aggravating the situation.

I argued the matter on a number of occasions with Bob Cooper, one-time leader of the Alliance Party, who was Chairman of the Fair Employment Commission. The Alliance rejected the view that exclusion from the politics of the state had anything to do with the ongoing *'sectarian'* conflict. It insisted that Northern Ireland was a functional Constitutional entity, that it was democratic in form, and that it could be made democratic in substance through moral exhortation, provided employment discrimination was ended.

I think enough time has passed to enable me to say that the experiment of social engineering through the enforcement of Fair Employment was a total failure insofar as displacing the politics of communal attrition was concerned. In a political matter there is no substitute for politics. And the segregation of the communities outside the workplace has increased steadily throughout the period of operation of Fair Employment Law.

Fair Employment means a quota system in effect. But an employer who simply applies a quota system will be in breach of Fair Employment law. An employer who is short of the Catholic quota cannot advertise for Catholics, and cannot solicit Catholic applicants through Catholics already working for him. He must go through an elaborate employment procedure, in which there is no hint of a quota system, employ people strictly on merit, and yet end up with the same balance in the workforce as if he had applied a quota system. In other words, he must operate a heavily disguised quota system.

If an overt quota system had been established, there could have been no objection on Fair Employment grounds to the appointment of McAleese as Director of the Institute. It would have been the turn of a Catholic.

But it was officially denied that the Fair Employment system was a quota system, and other employers were being made to jump through hoops in their procedures in order to divert attention from he fact that it was. And then a Director of the Institute of Professional Legal Studies is appointed in breach of all the rules.

It might be that she was the best person for the job, in the ordinary sense of those words. But that had nothing to do with it. The words *'appointment on merit'* had been deprived of their ordinary meaning in the bizarre world of Northern Ireland politics.

Consider this situation: An employer without the required proportion of Catholics in his workforce was held, by virtue of that fact, to have practised discrimination: but if he sought Catholics to employ that too would be held to be discrimination.

The ideology of Fair

Employment said that a capitalist who genuinely sought the best people to do the jobs that he wanted done would end up with a perfectly balanced workforce of Protestants and Catholics. This was applied historically. And it was a breathtaking contradiction of reality.

I knew from my own experience that it was a gross misrepresentation of things. Catholics and Protestants did not have the same economic preoccupations and ambitions, or the same inclinations about what constituted a congenial society or a satisfying life. Protestants were bred to a tightly-structured vision of how life should be led, and they moulded themselves to that vision. The serving of a long apprenticeship did not appear to be burdensome to young Protestants of the working class, because in their view of life, which determined their inclinations, all life was apprenticeship. The Catholic way of living was much freer, looser, more open-ended. The feeling of bondage was not ingrained in it as it was in Calvinist culture. And, given the choice between embarking on a long apprenticeship and becoming a free labourer on the instant, a substantial proportion of Catholics would have been predisposed towards the latter on the basis of inclination.

The two cultures tended to generate different aspirations in individuals, giving rise to different kinds of contentment and of discontent. They did not aspire to be the same thing, and therefore the fact that they were not the same could not in the main be attributed to discrimination by one against the other.

When I became familiar with the Shankill Road in 1969-70 what struck me most about it was the thrifty and systematic adaptation to poverty that was in evidence there. Life was narrow there, but its narrowness was not a resentful adaptation to imposed circumstances. It had its own spirit and its own sense of fitness. *"Strait is the gate"* etc.

Catholics might have that same spirit preached to them in sermons at Sunday Mass, but they were not bred to it. The essence of the Mass was something quite different from the essence of the Protestant service. The latter seemed to be nothing but a sermon—or a series of moral reflections and exhortations interspersed with hymns that were sung by the congregation. The Mass, on the other hand, was a kind of performance at which the congregation had the character of an audience. A mystery was performed. Presence at the performance conferred grace on the audience by transcendental means. The sermon was something extraneous. There were many Sunday Masses without sermons. And, where there was a sermon, it was likely to be brief and perfunctory. And then the rest of the Sabbath was for pleasure. (I refer to the Latin Mass. I know nothing about later variations. But the Latin Mass is what is relevant to the formation of the two communities as they confronted each other in the late 1960s.)

The difference might be summed up by saying that for Catholics the Mass said on Sunday was obligatory and sacred, while for Protestants the day itself was sacred. And this difference—exemplifying the different spirit fostered by the two religions—had direct political consequences in a situation from which the political activity of governing the state was excluded. The Catholic and Protestant Sundays were both public affairs, and they were entirely incompatible with each other.

The Presbyterian Sunday was still in full operation in Belfast when I went to live there—though Catholics had their own Sunday in areas sufficiently remote from Protestant centres. In mixed areas it was problematical.

A public representative of the Northern Ireland Labour Party came in for much ridicule from certain quarters for voting against the opening of a children's playground on Sundays. Given the community he represented, he could scarcely have done otherwise without losing his representative capacity.

The question of whether Sunday is to be a day of profane delight for children, or a day of restraint and piety, is not without significance for the history of the world.

(Perhaps *'restraint and piety'* is the wrong way of putting it, and the piety is not experienced as restraint, but that is unimaginable to me.)

I suppose that, with the total collapse of Christianity in the last quarter century, these things have become incomprehensible. But, as late as the 1960s, the Protestant Sunday prevailed to a considerable degree, even in London. Cinemas could not open until the late afternoon. Theatres could not open at all. And there was much agonising over whether competitive cricket might be allowed—football being simply out of the

question. A special Sunday cricket league (limited overs) was allowed on the condition that there was no admission fee, though programmes might be sold. That concession was the breach through which the great escape from Christianity was made. Stoical endurance of the Sabbath, which I suppose was a kind of virtue in itself, lost its feeling of virtue when something else became possible. The breach in Sabbath Observance was progressively widened until Sunday shopping was added to Sunday games and the Supermarket took the place of the Cathedral.

The different general aspirations and preoccupations that were prevalent in the two communities, it seemed to me, must have had considerable influence in determining the employment imbalance in various branches of the workforce. It was not only in Northern Ireland that the basic labour force in the building industry was predominantly Irish Catholic. The post-war (post 1945) English housing estates and motorways were built by a mainly Irish Catholic labour force. I was for a time part of that English labour force. I had no inclination to raise myself above it, and that made me normal. Life was for living, and not for *'improving'* oneself into an alien social structure in which conviviality and conversational liveliness would give way to stilted posturing and inarticulacy.

Camden Town in North London around 1960 was an Irish working class area. Irish labourers were picked up by contractors' lorries in the morning, taken off for a day's work, and brought back in the evening. There was easy money to be made by feeding them morning and evening, with a simple menu. But there was not a single Irish cafe in the area. It was left to Italians to feed us. And, since they could not bring themselves to go over completely to Irish cuisine—and possibly could not believe that all that was required was bacon, cabbage, potatoes and turnips (swedes)—I acquired a taste for spaghetti.

Now that state of affairs did not result from discrimination against Catholics, or against the Irish. There was undoubtedly an anti-Irish sentiment amongst the English in Camden Town. It showed itself chiefly in Rooms To Let notices put up by lower middle class English landladies. But it was only a marginal inconvenience, and, if the Irish Catholics had been entrepreneurial, then it would have been totally irrelevant.

The absence of Irish enterprise in Camden Town (in everything except the provision of dance halls) was obviously due to something within Irish culture rather than to external obstacles. And I could not see that things were entirely different in Northern Ireland.

There was a fashionable sociological theory in those days that capitalism was a product of Calvinism and that Catholicism was anti-economic. It was given expression with regard to Ireland about a century ago by M.J.F. McCarthy of Middleton, Co. Cork, in a book called *Priests And People In Ireland*. I produced a selection of McCarthy's writings in which I rejected this view and argued that it was the Gaelic heritage of Catholic Ireland that gave it its anti-entrepreneurial bias. And Hugh Trevor-Roper, in a lecture delivered to an audience of priests and nuns at Galway University about forty years ago, showed that capitalism originated in Catholic Europe—in the Rhineland and Northern Italy—and that its development was rather inhibited in societies which became thoroughly Calvinist.

But, however it was to be explained, it was a plainly observable fact that the Catholic community had very different preoccupations from the Protestant community. And I put it to Bob Cooper that the low level of entrepreneurship could not be attributed to discrimination by Protestant employers, even though the small numbers of Catholics employed by Protestants might.

This puzzled him for a while, but the ingenious academics employed by his Commission eventually came up with an answer to it: At a critical point in the early 19th century the banks, which were owned by Protestants, stifled Catholic enterprise by refusing loans to would-be Catholic entrepreneurs.

I did not bother going into that. It was too remote from the present for practical purposes. But it showed how far Cooper's idea of discrimination was removed from the ordinary meaning of the word.

The term *"unconscious discrimination"* was thought up and was applied to the outcome of a long historical development.

An employer in the present, whose only concern was to make a profit through business, and who employed a workforce strictly with that end in view, and who

demonstrated the fitness of his judgment by actually making a profit, would be judged to have discriminated against Catholics, if his employees were more than two-thirds Protestant, even if he could show that he had in every instance employed the applicant best able to do the job. He would have engaged in *"unconscious discrimination"* because he accepted as given a situation brought about by active discrimination by his ancestors six or seven generations back.

And if he pleaded that only Protestants had applied for a job, he would be held guilty of discrimination because he had not advertised in a way that would bring Catholic applicants.

And, if he succeeded in getting Catholics to apply, but all the Catholic applicants lacked some technical ability necessary to the doing of the job, and he rejected their applications on those grounds in favour of a Protestant with the technical ability, he would be enforcing the consequences of a system of discrimination put in place by his remote ancestors.

He should ask himself why the Catholic lacked the technical competence to do the job, and he should have made amends for the discrimination practised by his ancestors by giving the Catholic the job and then training him to do it, instead of employing the Protestant who was ready-made for the job.

It is, I think, a widespread habit of employers to get workers by recommendation as far as possible, including recommendation by a diligent worker already in their employ. But Bob Cooper made that the great cardinal sin of discrimination. The employer must not solicit applications for a job in any way, direct or indirect, because that reinforced the existing situation. The procedure of getting a worker to do a job had to be made completely impersonal. It had to be bureaucratised under a set of rules and the employer had to keep a record showing how it was done.

It was a basic rule that the employer must never solicit an application from a particular person, but must advertise the job universally, specifying clearly what the job was.

That rule was broken outrageously in appointing a Director of the Institute of Professional Legal Studies. I pointed out to Bob Cooper that it had been broken. But it was evident that he would do nothing about it. For all his pretensions, he knew his place. And it was not his place to challenge the authority under which he acted—the phantom Government of Northern Ireland, as operated by Whitehall while we waited for Humpty Dumpty to be put together again. (I am not suggesting that there was no religious discrimination in the ordinary sense. There was. But that is not what the Fair Employment rules were about.)

The gross procedural breach in Fair Rules made when appointing a Director of the Institute brings us to David Trimble. But, before going into that in detail, something should be said about the condition of Unionist Ulster.

Malone Interlude

In 1991 I attended a week-end Conference on Robert Lynd at the Ulster People's College in the Malone Road, hoping to discover why Lynd, a British war-propagandist in the Great War, was the author of an Introduction to post-1916 reprints of James Connolly's Labour In Irish History, Connolly having been on the other side in that war. I got no enlightenment on the matter. But, during the Conference, a man sitting in front of me turned around during an interval and began talking to me as if resuming a conversation that had been interrupted. I had never seen him before and I asked him who he was. He was Joe Deighan. This was a name that I knew. He had been one of Desmond Greaves' lieutenants in the Connolly Association, which was a front organisation of the Communist Party. I was persona non grata to the Connolly Association, and was even excluded from a showing of *The Dawn*, which it had put on and advertised publicly. The reason was that I was held to have betrayed the nation and diverted the course of Irish history from its proper channel by arguing in 1969 that the Ulster Protestants should be negotiated with as a distinct nationality, instead of being subjected to futile denunciation for being part of an Irish nation and failing to act in accordance with what it was.

Twenty years later Deighan's attitude had changed. He seemed eager to talk to me, and I had never refused to talk to anybody, so we talked.

I put it to him that the Connolly Association had put across a very successful

confidence trick with regard to Ulster Unionist patronage. It had convinced the world that the Unionists exercised a tight control, by means of law and patronage, over intellectual life in Northern Ireland. But, when I came to live in Belfast, I saw that there was no Unionist patronage at all in intellectual matters. The purposeful operation of a patronage system did not begin until direct government by Whitehall was introduced, and then it operated to the advantage of the Catholic community.

Deighan did not deny any of this. Nor did he deny that the Communist Party was looked on with favour by the Direct Rule Government, and had received very large subsidies by various means.

They had depicted me as an Orange/Imperialist stooge, but I had never received a penny by way of Unionist patronage, or any other, and I was living from hand to mouth on a labourer's wage, while they were all sitting pretty. *"Ah, yes"*, he said with a kind of resigned philosophical acceptance of the way things were, *"but you write pamphlets"*.

The implication being: So what do you need money for? And perhaps: Much good the money did us in politics.

Protestants, North And South

Catholics had already become dominant in the intellectual life of Northern Ireland when things went into flux in 1969, and their dominance increased thereafter. This was chiefly because their general outlook made them better fitted to take advantage of the routine opportunities of the welfare state. And then the fact that there were no democratic political outlets open to them gave them a purpose in *'accessing'* the patronage system that was lacking in the Protestant community.

Protestants were in the main content with the 1921 set-up. They had not sought it but they were content with it. They had no ideals to realise, except to become even more like they were. It did not disturb them that they were cut out of the political life of the state. Their history over two centuries had made them profoundly self-sufficient and apolitical. In the University, as outside it, their preoccupations were with technology, science and administration. These preoccupations might be described as practical, but it is a kind of practicality that has little to do with politics, and that becomes impractical when it carries over into a political crisis. And, when Ulster Unionism was plunged into political crisis in 1969, it had nothing useful to say and (leaving aside Brian Faulkner) it was unable to think.

That was why what I said at the time caused such profound resentment. The resentment then did not surprise me, but Senator Mansergh's extravagant expression of it 36 years later does:

> *"I am proud of my father and of his contribution to Irish historical scholarship… Nobody but Clifford has ever described him as "thoroughly British"… Sean Mac Bride told me that my father was "a marvelous man"…*
>
> *"While he corresponded with a small liberal wing of unionism, his book on the government of Northern Ireland… did not provide the lifeline that some two-nations ideologists supplied to Unionism at its most intellectually belligerent as articulated by David Trimble… Trimble's biography records his debt to them…*
>
> *"Some two-nations theorists exhibit extraordinary hostility to non-unionist persons and institutions with an Anglo-Irish and/or Protestant background and identified with Ireland, looking out for opportunities to denounce them as irredeemably English/ British.*
>
> *"It has even been suggested that to call writers like Swift, Berkeley, Goldsmith, Wilde and Shaw anything but English is to 'contaminate' the notion of an Irish national literature." (Irish News)*

Senator Mansergh is able to read and therefore I must take it that he has not misunderstood what I have written about dealing with the Ulster Protestants as a distinct nationality, but has wilfully misrepresented it. The *'two-nations'* argument referred exclusively to the Ulster Protestants, and could not have been taken as including the Ascendancy Protestants of the South. Indeed, in 1969-70 many Southern Protestants indulged in exhibitionist rejection of any sense of affinity with the Ulster Protestants, and rightly so. They were different peoples, and they always had been. And I recall one of those

Southern aristocrats—Lord Killanin I believe his name was—burning his British passport in disgust at the turn of events in the North.

The Ascendancy residue that did not follow its state to England established a comfortable niche for itself in the Free State, and those who did not become active participants in the new state tended to their economic affairs within it by forms of discreet collective action through the Freemasons and various financial institutions. If they are looked at as a distinct community, they are seen to have remained disproportionately wealthy. And, for the most part, they lived their separate lives quietly, without political ambition. The aggressive Southern Unionist revival which has been fostered by the *Irish Times* in recent years was undreamt of then.

I never gave a thought to the Southern Protestants when writing the *'two-nations'* articles back in 1969. If they had been raised with me, I would have placed them with the Catholics. They exercised some influence on the Catholics who surrounded them, and themselves came under some Catholic influence. But—leaving aside the desperate moment in the late 1790s when they enlisted the Orange Order in the attempt to sustain their Irish Parliament—what sense of affinity had there ever been between them and the Ulster Protestants?

Senator Mansergh sets out the usual list: *"writers like Swift, Berkeley, Goldsmith, Wilde and Shaw"*. He might have extended the list greatly with writers whose fame has not endured, though it had once been considerable. But, unless he made a special effort to search in obscure corners, would one Ulster Protestant writer ever appear on the list? Perhaps Forrest Reid at a pinch. I think he is still a name, but who reads him? Shan Bullock? Who he? He never tickled the fancy of the English and is known only to eccentrics. And the author of *My Lady Of The Chimney Corner*? Forget it. Even I have forgotten his name.

Swift etc. were participants in, and contributors to, English culture. And they all established their reputations in England.

And Burke, what was he? Not Anglo-Irish. Irish who became English, and who most likely would never have been heard of if he had not gone to England and got an English patron.

Had any of them, including Burke, the slightest affinity with the Ulster Protestants?

Swift was, I think, the only one on the list who had seen them close to. He had a job as clergyman at Islandmagee for a while. It might be of course that he averted his eyes and held in his nose in their presence (as Geraldine Kennedy, the current Editor of the *Irish Times*, does in the presence of the Irish people), but he knew them well enough to hate them. They were vulgar, but were stubborn in their vulgarity, and were unfit subjects for the compassionate contempt with which he regarded the Irish Catholics.

And was the subsequent history of Ireland not a kind of working out of Swift's attitude?

The Ulster Protestant is inarticulate in English terms, while the Anglo-Irish are the most articulate of the English. But in the end Anglo-Irish articulacy ended up in the unrestrained verbosity of G.B. Shaw, the Court Jester of the Liberal Imperialist era. (When the new British Library began building thirty years ago, the building site was adorned with two big pictures: Shakespeare and Shaw. Shakespeare was in place there—and all the more so if he was in fact a fraud perpetrated by Bacon for reasons of state. But Shaw! I took it for a sign that England had lost its marbles. But he was soon taken down.)

Protestant Ulster did not contribute to the Anglo-Irish literature of England, and it was therefore not a participant in what is now represented as Irish literature by Senator Mansergh as well as by the revisionists.

David Trimble And Others

Back around 1970 I remember saying in reply to Tomas MacGiolla or Eoghan Harris that the common culture of Ireland, to which they appealed in refutation of the *'two nations'*, was British culture, and was entirely without effect in relations between nationalists and Unionists. And it was not a culture which would have brought about the formation of a separate state in Ireland.

The kind of thing I began writing in September 1969 was readable by Protestants without being unreadable by Catholics. It was, I think, unique in that respect. I imagine it was read to some extent by David Trimble, with

whom I had a brief discussion in 1970 or 1971 when he was a student. I did not meet him again for twenty years. Thirty years after that first meeting he was interviewed for the Irish Independent by Mary Kenny and apparently told her that he had been influenced by an eccentric Marxist, who was me. I sent in a short letter, which was published:

"22.1.2000

Mary Kenny's report (Feb 19) that I am an unorthodox Marxist historian who has influenced David Trimble is groundless. I am not a Marxist historian, orthodox or otherwise. Mr. Trimble's views on history and politics are entirely contrary to mine. I urged Ulster Unionism a quarter of a century ago to dissolve itself into the party-politics of Britain and discard its absurd conviction of a separate destiny. I have invariably held that a stable settlement is not possible in the Northern Ireland framework, only in a British or an Irish framework, and that the Unionist rejection of the former necessarily turned things in the direction of the latter. Mr. Trimble, now as ever, is committed to the Utopia of a Protestant victory in the arena of 6 County communal attrition. Such influence as I had with fringe elements of Unionism ended with his election to the leadership. My 'acquaintance' with him consisted of two brief meetings 20 years apart. The first was while he was still a student. The second was while he was still a law lecturer discriminated against by the authorities. It concerned a legal action in which he might have given evidence and not a word about history or policy was exchanged between us."

Trimble was by then a sort of world celebrity—the winner of a Nobel Peace Prize—and I suppose he wanted to show that there was some breadth to his horizon, and that he could say something nice about somebody called Brendan. (In Belfast, after I had caught the ear of a fair number of Protestants, I wished I had been given my brother's name. 'Brendan' wasn't bad, but it would have been a really uplifting experience for them to have been in communication with a Tadg—the notorious *"Brother Teague"* of *Lillibulero*, and still a generic name for Papists who don't know their place.)

That Trimble was not influenced by me should have been evident to anybody who knows anything about our respective political positions.

A short time after my brief meeting with him in 1970-71 he became an activist in William Craig's Ulster nationalist *'Vanguard'* movement. And Vanguard is the only political movement I have seen that I described as Fascist.

I am not given to hysterical use of language, as Senator Mansergh appears to be. I use the word Fascist descriptively, and not as a mere term of condemnation. The fringe movements called Fascist that come and go in England I never saw as being of any consequence. The Fascist movements of Italy, Germany, France and Spain were movements within the social mainstream which grappled with real problems of state in a certain way. In Britain the problems which might produce a Fascist movement were all taken in hand by the major parties, leaving no space in mainstream politics for a Fascist Party. (Oswald Mosley's pre-War Fascist movement was closed off when Labour Prime Minister Ramsay MacDonald formed a National Government with the elites of the Tory and Liberal Parties. Post-War Fascism, whether led by Colin Jordan or Mosley himself, was a kind of caricature of itself.)

A Dublin Government to which Mansergh was political adviser made an Agreement with Ulster Unionism as led by David Trimble in 1998. I did not support it. It was strictly based on the *'sectarianism'* of the Northern situation. But I thought it might have been able to work better than it did if Dublin had a degree of understanding of Ulster Unionism (which was impossible without a degree of sympathy) and of Northern Ireland as a political entity. But the approach of the Government could be summed up as bending over backwards to Save Dave. Mansergh's bilious outburst against Trimble for being a Unionist, now that Trimble was of no political account, suggests that the post-1998 bonhomie was entirely false, and therefore naturally led Trimble to chill it. What lies just below the surface of calculating politeness is always visible in the North. It is what people have been perfectly attuned to by generations of practice.

Something very different from bending over backwards to Save Dave was required from Dublin for the working

of the Agreement. But, in the absence of insight or sympathy, that is all that was possible.

McAleese said she had cleared herself of everything but her knitting when she took up the job at the Institute. Is such a thing possible?

She demonstrated that it was not actual with her *'Nazi'* outburst as President. Mere good behaviour is always vulnerable. The spirit counts for something.

William Craig's *'Vanguard'* was a mainstream movement dealing with a real problem for the Protestant community, and doing so in a way that I thought it reasonable to describe as Fascist.

(And it had its *'Brownshirt'* aspect, known in the preliminary phase as the Tartan Gangs. At that time I edited a weekly publication, and was in the habit of writing editorials in a Black And White cafe across the street from what is now the Europa Hotel and was then the Central Railway Station. A waitress, taking for granted that I was a Catholic since I was writing, used to warn me when the Tartan Gangs were nearby so that I could resume the bland demeanour of an ordinary decent citizen.)

The Vanguard movement was in serious contention to dominate Unionist affairs for a short while. But Brian Faulkner held out against it, with the support of the Orange Order led by Jim Molyneux and the Rev. Martin Smyth—a very different kind of leadership to that given a quarter of a century later when Ruth Dudley Edwards discovered within herself a sense of affinity with it.

Brian Faulkner went on to make the best attempt at functional power-sharing devolution there has been, only to have it subverted by the SDLP and by Conor Cruise O'Brien as Northern spokesman of a Fine Gael/ Labour Coalition in Dublin. Faulkner's Unionist Party was wrecked as a consequence, and Unionist Parliamentary representation fell to the Treble UC—the UUUC, which was a tripartite Unionist alliance that included the remnant of Craig's movement.

I don't recall who told me that the powers-that-be solicited an application from David Trimble for the job of Director of the Institute.

I asked Trimble for a meeting. He agreed. And he confirmed that an application had been solicited from him, and that he had applied.

We went over the case for about an hour in a cafe attached to a Car Park near Chichester St. We did not discuss politics. We discussed nothing but law. Nevertheless I got the impression that his world view remained much as it had been in the 1970s.

He agreed to give evidence at the Trial, both with regard to the solicited application and to the functioning of the Institute, in which he had not only lectured but had been Acting Director when the Director was incapacitated.

A short time later he gained the Unionist nomination for the safe Unionist seat of Upper Bann. That made it possible for me to make a settlement with McAleese. But for it, I would have felt obliged to see the matter through to the Courtroom. Trimble, the passed-over law lecturer, obviously discriminated against on political grounds, was one thing. Trimble the Unionist MP was something else.

The fact that Trimble was willing to give evidence in a trial regarding misconduct by the administration, in a situation where the administration was politically biassed against his community, and in which his own career had been stalled, might seem to be no great matter, and in any normal political set-up it would not be. But Northern Ireland was never a normal political set-up, and by 1990 its Unionist community was heavily demoralised.

A number of Unionist MPs had put down an Early Day Motion about the McAleese appointment. I contacted them about giving evidence as to why the appointment was a matter of public concern. One of them John Taylor, would have nothing to do with it—or perhaps with me. I had a meeting with another, Roy Beggs, at Unionist Party headquarters, which was then around the corner from Athol Steet. He knew very well that he ought to be eager to give evidence, but he said he would not do so.

A barrister specialising in commercial law, whom I did not contact, rang me up. We had a long discussion on the phone, and later I went to his offices. He agreed that the facts were as I stated them. He considered that the appointment was disgraceful. But he would not agree to give evidence.

A defeated state of mind appeared to have set in amongst the Unionist middle class. All of those I discussed the matter with felt affronted by

the appointment, and I would say that some of them felt it as a slap in the face. But their instinct was to whinge but do nothing. What they had learned from experience was that, if they tried to do anything, they would be the worse for it. The Northern Ireland Office had fearsome powers of patronage, and few *'respectable'* people were entirely beyond the possibility of punishment.

A former Director of the Institute came down to Athol St. to talk to me—a lawyer in successful practice who had given it up under a sense of public duty in the hope of transmitting experience through the classroom at the Institute. He was a Protestant gentleman of the kind that now seems to be obsolete—or that only survives in seclusion.

He came to Athol Street in response to a simple inquiry. He came under his own steam, and sat there amidst the squalor, limp and dignified, to be questioned. He agreed with me in general about the Institute. He agreed that the new appointment was indefensible. He agreed that something should be done about it. So what was he going to do about it?

The obvious thing was that he should be my expert witness. Nobody was more familiar with the whole set-up than he was. And he would risk nothing in career terms. He was retired and therefore had nothing to lose. So, what was he going to do—apart from sit there looking helpless and pathetic? (Of course I didn't put it quite like that. But the situation spoke for itself.)

He had too much dignity to say in so many words: *"Make me do it. Subpoena me, and then I will say as much as you oblige me to say. And I hope you oblige me to say a lot"*. But that is what I understood him to convey.

It was against that background of Unionist middle-class demoralisation that Trimble's willingness to give evidence both about the workings of the Institute, and about how the authorities solicited from him an application for a post whose advertised specifications he did not meet, struck me as spirited.

I did not ask Trimble why he had not taken the manner of the appointment to the Fair Employment Tribunal. In the course of our conversation that question seemed to ask itself. Trimble indicated that he had let it pass at the time on grounds of prudence. Authority would not be forgiving in such a matter. But he was now willing to take a stand on the issue, and I must say that I found that impressive in the circumstances.

(It might be that he was at the time virtually certain of the nomination for Parliament, but I have no grounds for supposing that he was.)

Robert McCartney QC was written to and asked if he would give evidence about concern in the legal profession over the McAleese appointment. I was not surprised when he did not reply.

The sequence of events that led to the libel action had begun at a meeting of the Campaign For Equal Citizenship, which I had addressed on the subject of the withdrawal of the Unionist middle class from the affairs of civil society. The story of the CEC will be told in another issue of this magazine. It was based on a series of pamphlets on the general theme of Parliamentary Sovereignty and Northern Ireland, which I had published during the months following the signing of the Anglo-Irish Agreement of 1985. For a couple of years it developed as a cross-community movement and was a strong presence in the media, and McCartney came close to winning a Westminster seat on its programme. After his failure to win the seat, he reverted to a more Unionist position and Catholic support fell away.

I had kept my distance from it up to this point, but then I accepted an invitation to address its AGM, knowing that it would be almost exclusively Protestant middle-class and lower-middle-class. I told the meeting that Catholic predominance in many spheres of public life was not the result of conspiracy against Protestants, but came about through the withdrawal of Protestants from public activity. My message to them was that they should blame themselves, and not the state or the Catholics, for the situation they complained about.

My audience was taken aback by this and did not know how to respond, until McCartney stood up and indicated approval. And he cited the recent appointment of McAleese as Director of the Institute as a case in point.

He was supported by a solicitor, who I think was Neil Farris, who spoke about the need for law reform and the difficulty of achieving it.

That meeting inspired a solicitor, who was at the Institute during McAleese's first year, to write an article about the appointment, which I

published.

McCartney reverted to communal Unionism soon after that and I had no further contract with him. He preferred Conor Cruise O'Brien's approach to mine, and he seemed to resent the influence I had on him for a number of years.

I got ready a batch of subpoenas in preparation for the Trial. One of them was for McCartney. If, as Judge Whatsisname speculated, McCartney had been priming me for the case, or even if he had been a willing witness, I doubt that I would have agreed to a settlement. But those who in their own interest should have been trying to bind me to the action, and inhibiting me from settling, all did the contrary.

A day or two before I gave McAleese the 24 hour ultimatum, I heard on the radio that McCartney had won damages in yet another libel action. I believe that was on the day I interviewed Neil Faris about giving evidence. The combined effect of those two things made me inclined not only to settle the action, but even to agree to an equivocal formulation about the terms of settlement if McAleese had the wit to suggest it. But it seems that neither she nor her lawyers were able to read the situation. The law appears to engender a stilted and stereotypical mentality, as Edmund Burke observed with regard to the French Revolution. (He made an exception of advocates who somehow develop the ability to reason politically, but I've never met any of those.)

When I got the first letter from Charles Brett regarding the Knitting Professor article, I was in the middle of a big plastering job, which was taking up all my time and energy as I was not a plasterer by trade but an unskilled labourer. Somebody suggested asking Neil Faris to deal with the letter. I did not know him, but I was told that he was an active member of the CEC. I agreed that he should be asked to deal with the matter in whatever way he saw fit, on the basis that I had no wish to stand over any inaccuracy. The word came back that he could not act for me because McAleese had asked him to act for her and he had refused on the grounds that he was my solicitor. I don't know if that makes sense in terms of legal protocol, but it is the message that came back to me. And I was told that he also advised the publication of a *"fulsome"* apology.

I assume that he meant *"fulsome"* in its original sense, rather than in the meaning of *"full"* which it was beginning to take on. And fulsome language in the original sense is, of course, the language of the law, in which wild extravagance is the norm.

If Faris had undertaken to arrange a settlement, I'm sure I would have gone along with it, even if *'fulsome'* language had been used. It would have been his language not mine, and fulsomeness characterised the language of his trade. But when I had to deal with the matter myself fulsomeness was out.

I had for twenty years not only survived, but made headway, in the political minefield of Belfast by means of careful and precise use of words. I had taken care in saying things not to set off conditioned reflexes on either side, and in that way some ideas which were not part of established repartee got through to both sides. And I was not going to debase language merely because Mary McAleese had a fancy to sue me for libel. If meaningful language of human communication wasn't good enough for her then she could have her week in Court.

(I had ceased to have anything to do with the CEC by that time. Some time later Faris took it in hand and he discovered that what appeared simple and obvious when it was being done by others was neither simple nor obvious.)

About a year and a half after Faris had refused to try to arrange a settlement for me, I interviewed him about giving evidence for me regarding the Institute. He said that he was now doing a lot of lecturing there and that he thought McAleese was doing a good job as Director. And, regarding the mode of the appointment, he said the terms had been changed. I did not waste time arguing with him. He was saying in effect that his evidence would be in favour of McAleese.

If the action had gone to trial I would probably have put him in the witness-box anyway and questioned him about the appointment in terms of the Fair Employment rules, just to see how he had made his way to the other side of the argument. Such things interest me.

Anyhow it was immediately after that interview that I heard in a radio news headline that Robert McCartney QC had won yet another libel action for damages. And it was close to that time that David Trimble got the nomination for Upper Bann. I felt that I was free of

all entanglements in the case and gave McAleese 24 hours to make me an offer that did not include *'fulsome'* language in praise of her.

(I assume that, when Faris said he thought McAleese was doing a good job as Director of the Institute, he knew that was not to the point. He would have had to be a very quick forgetter not to know. The point was that the procedure of the appointment was in gross breach of the Fair Employment rules which the state was imposing on employers in general for a deluded political purpose.

As I write this the Secretary of State (Peter Hain) has been brought to Court for the mode in which he appointed a Victims' Commissioner. He seemed not to understand how he had broken the Fair Employment law—which is like nothing that exists in Britain or the Free State. He pleaded that the Commissioner he appointed was doing a good job . Nobody denied it, because it was irrelevant.

The crucial difference between this case and the appointment of a Director of the Institute lies in the community from which the appointee came. The interim Victims' Commissioner is a Protestant, and the Catholic community is not the timid thing that the Protestant community was in such matters in 1990. (The Protestant community has been much less so since the rise of the DUP.)

McAleese Biographies

I considered writing up the libel episode, not because of McAleese, whom I forgot as soon as she called off the action, but because it was interconnected with something else that should have been written up. But then she came back into the news, giving up her mission to reform the law in Northern Ireland in order to become Fianna Fail candidate in the Free State Presidential election. The response to her nomination by certain circles in the Free State was such that, for much the same reason that I did not want to win against her in Belfast, I decided to publish nothing that might be usable against her in Dublin.

A few years after she became President there was a strong reaction of feeling in her favour by the Dublin 4 circles which had been so hostile to her at the start. The event which precipitated this change of feeling seemed to be her disgraceful comments about the response by Palestinians to the World Trade Centre bombing. Anyhow she suddenly became the darling of Dublin 4.

A biography of her was published. The author was Justine McCarthy, female namesake of the author of *The History Of My Own Times*. One of Justine's remarkable contributions to the history of her time is her revelation that Bishop Comiskey (the Vatican 2, hail-fellow-well-met, man-of-the-people Bishop of Ferns) offered to rape her when he was drunk.

I have not read this biography, but I have been told it is not authorised, and is somewhat hostile. Somebody sent me a photocopy of a paragraph in which I am mentioned: it said that the case was settled *"on undisclosed terms"*.

I sent Justine a letter, C/O her publisher:

"16th February, 2000

Dear Justine McCarthy,

It has been brought to my attention that, in a biography of Mary McAleese you say that a libel action which she brought against me was "settled on undisclosed terms". I don't know what you based this statement on. It suggests that she either got something for the trouble and considerable expense of suing me, or that there was a settlement on terms which made this appear to be the case.

In fact she settled the action, after five Court appearances, without a penny in damages, without a penny towards her costs, without a published apology, and without any agreement by me that the terms of settlement would be kept confidential.

I was a litigant-in-person as I could not afford to hire a solicitor and barrister. And, as I was by occupation an unskilled labourer, at the bottom of the earnings scale, this meant that, under the rules of the game, it was not worth my while to claim costs.

British libel law presumes that a person who is not wealthy has no reputation to damage. That is the self-evident reason why there is no provision for bringing libel actions on legal aid. But I found that the converse

was hardly known at all, even within the legal profession — that there is no provision for legal aid in the defence of a libel action. When I inquired into this, it was explained to me by one of the most expert libel solicitors in London that libel actions had to do exclusively with money, and that the presumption was that somebody who could not afford legal representation would not be sued for libel. (This was before the McDonalds libel action, but that case bears very little substantial resemblance to Mrs. McAleese's action against me.)

Mrs. McAleese knew before issuing the Writ that I would be a defendant-in-person. All I had to lose by seeing the matter through was my time. If I lost I would only be bankrupted, which would have been a matter of no consequence to me and would have cost Mrs. McAleese still more money. It was evident from the manner of her solicitors at first that they expected to be given a walkover, because if I had nothing to lose I also had nothing to gain. After I entered my defence their manner changed. They gave me to understand that they were trying to persuade her to end the action, but that she was proving to be a difficult person to get to see reason. It took a further six months of legal manoeuvring over Discovery etc. before she agreed to settle for nothing.

I found that there was one inaccuracy in the published article she complained of. It was written by a student/ solicitor at the Institute during Mrs. McAleese's first year as its President, and she took the fact that Mrs. McAleese never once appeared in the classroom in that year to indicate a neglect of duty. But then it appeared that this was in accordance with Mrs. McAleese's contract of employment, and that any blame there may have been attached to her employers (the University, the Bar Council and the Judiciary). That inaccuracy enabled me to agree to a settlement.

If Mrs. McAleese had agreed to call off the action after I entered my defence, I would have been happy to agree an "undisclosed terms" formula. It was not an action I wanted to win, because fighting it would have wasted two weeks of my time at trial, and winning it would have placed me where I did not want to be. I did my best to get her solicitors to understand this. I think they did understand it. And I believe them when they indicated to me that they were finding it difficult to get her to act rationally.

I think there are a couple of inaccuracies in your account of her appointment to the Institute. I could not find that the job was re-advertised when no suitable applicant responded to the first advertisement.

The reason there was no suitable applicant was that no barrister or solicitor in successful practice would waste his time on the position.

The job specification was therefore altered so that a law lecturer could hold it. And applications for the job as amended were solicited.

The intensive Fair Employment propaganda of those times stressed that every job should be advertised, and that the soliciting of applications by an employer was malpractice.

The soliciting of applications for a job that had not been advertised was about the greatest offence that could be committed against Fair Employment practice. And, unless it was advertised that the job of President of the Institute might now be held by a law lecturer who had never practised, then the job as given to Mrs. McAleese was never advertised.

Discounting all of that—and it is a pretty large discount—Mrs. McAleese probably was the best person for the job as amended (though not as advertised) among those whose applications for it had been solicited. Our present First Minister [David Trimble] was more experienced, but since the Institute was misconceived, our President was probably more suitable for the job as it actually existed, since she was less of

a lawyer and more of a chancer.

I gathered that a third application had been solicited from a solicitor in practice, in order to take the raw look off the thing, but she denied it."

I don't know if she received it, or whether she read it if she did, or whether she gave it a second thought if she read it. I have a realistic view of the attention span, the range of interests, and the dedication to factual accuracy of contemporary Irish journalism. I did what I thought was required of me on the supposition that she wanted her book to be as accurate as possible. But I did not expect to hear from her or her publisher. And I didn't.

A few years later somebody sent me photocopies of a few pages of another biography of McAleese, and I commented on them as follows in the February 2005 issue of *Irish Political Review*:

"According to a recent biography of President McAleese she brought a libel action against the Sunday Independent in 1988:

"Mary's legal team endorsed Neil Faris's original opinion that they would never get as far as the courtroom".

At the moment of trial:

"an agreement was reached… An apology, dictated by Mary, would appear in a prominent position on the front page of the next issue…, accompanied by a photograph of Mary, chosen by herself. In an apology, the editor accepted that the allegations… were without foundation, and that they had caused Mary Mc Aleese considerable distress. Costs were awarded to the plaintiff. Mary accepted the prohibition not to reveal the amount of the damages, but it was enough to buy all the Leneghans a present each and to give her parents, her aunts and uncles and their spouses a weekend at a fine hotel in Dublin. Some money went to Concern and some to charities for the deaf, and there was enough left to put a sizeable deposit on an apartment in Ballsbridge in Dublin 4. Shortly after the apartment was bought, one of the Leneghans christened it "Independent House".

"Brendan Clifford, the publisher and editor of Belfast Magazine must have been paying scant attention, if any, to the proceedings of the libel case in Dublin. He published a libellous article about Mary in the August/September 1988 edition of his magazine. The two-page spread, entitled "The Knitting Professor", was remarkably similar to the offending article in the Sunday Independent, and Mary dealt with A Belfast Magazine exactly as she had dealt with the Dublin newspaper… Donal Deeney, the well known QC who would later become chairman of the Arts Council of N. Ireland represented Mary and cited nineteen grounds of defamation… No apology was ever published because, although the damages were reported to be small, they were enough to put the cheaply produced magazine out of business" (Ray Mac Mánais, The Road From Ardoyne: The Making Of A President p245).

Alas, it was not so. There is no Clifford Apartment in the McAleese property portfolio. And, rather than stopping the Belfast Magazine, her frivolous libel action kept it in being.

If she paid her own costs—I am not saying that she did—then she was heavily out of pocket against me. After four or five preliminary Court hearings (at which two barristers and the most expensive firm of solicitors in Belfast acted for her and nobody acted for me), she called off the action without either damages or costs about a fortnight before the trial. That is why I call the action frivolous. Libel actions are about money. Libel as a popular pastime was introduced in the early 19th century as a substitute for duelling. When wounding through the body was being banned, wounding through the bankbook was facilitated.

McAleese placed herself in the position of taking action against somebody who couldn't lose, because he lived on the income of a labourer, had no bankbook, and was propertyless. On the

other hand, she herself could lose heavily if the matter went to trial, and not just through the costs of the action. It seemed to me that her lawyers appreciated this, but they indicated to me that they had difficulty in getting her to appreciate it. And, when I offered them a way out, which would only cost her her legal fees to date, they went for it like a greyhound out of a trap.

At that point I was so fed up with what I had seen of the Unionist establishment at close quarters that I would have agreed to some tricky face-saving formulation (for her) about undisclosed damages. But the other side was so desperate to end the matter without further loss, that they did not even notice a hint of this that I gave.

I made it clear from the start that I did not want to win this action and I did not launch a counter-action. If I had entered into the egoistic spirit of these things, I might have had a fine old time with impunity. (If you haven't got a bank, you can't be bankrupted.) But I had other things to do, which I thought were valuable even though they did not involve large quantities of money—a thing which is possibly difficult to understand in Dublin 4.

McAleese's appointment as head of the Institute of Professional Legal Studies, Belfast, in a way that breached the Fair Employment rules would, if put to trial, have been a high-profile political case. The Fair Employment rules were broken in a number of ways, and David Trimble was involved as a better-qualified applicant according to the rules and whose application for the job had been improperly solicited and then passed over. I didn't want to be where winning would have put me. On the other hand, people like McAleese had to understand that trampling on me with money was not easy. And so it went.

The Belfast Magazine was launched for a purpose which did not work out. Some of the people associated with it thought it could be made commercially viable. I am a kind of anti-commercial being and I was about to hand it over to them when McAleese issued her writ. And so the Belfast Magazine was saved—because I am sure the commercial venture would not have succeeded.

There was a bookshop in Belfast which stocked publications that were not distributed wholesale. McAleese threatened them with libel action if they did not undertake that they would not stock the Belfast Magazine again, never, for ever and ever, Amen. (And small booksellers are timid souls—though no more timid than large ones in Ulster.) Nevertheless, it continues, and henceforth it will acknowledge its debt to McAleese for putting it beyond the reach of the likes of her.

Her Holocaust faux pas had something in common with her libel action, in that it lacked a sense of proportion. Leaving aside the matter that the Holocaust is officially held to be unique, comparable to nothing and therefore with lessons for nothing else, and taking it to be a normal genocide, so to speak, the comparison of the Nazi attitude to Jews with the Protestant attitude to Catholics is outrageous—though not, I think, as outrageous as her denunciation of the Palestinians on the day of the destruction of the World Trade Centre. And her amendment only made it worse, i.e. that the conditioning to hatred was mutual. I never before heard it suggested that the Jews hated the Germans before the event, and I know that some of them did not find it easy to cease to be German even after the event."

A Belfast Magazine was launched to service the political movement that was called The Campaign For Equal Citizenship, whose purpose was to democratise Northern Ireland into the British state. It was not a commercial venture. Commerce has never interested me. I am an anti-commercial sort of person.

It came to my knowledge about 30 years ago that Paul Johnson, one-time Editor of the *New Statesman*, instructed his son that he should never write a word unless it was for money. The value of writing was established by the money that gave rise to it. But I have never been able to see writing for money as anything but

one of the less savoury forms of prostitution. In 40 years I think I have got about £100 in total for writing—a couple of articles for the *Times* and the *Daily Telegraph*, for which payment was routine. I was offered a column in one of the major London magazines, but rejected the offer as inappropriate politically, with a sense of relief that I had a respectable reason for refusing to become a Fleet Street writer.

I understand that my attitude to commerce is indefensible in this new Ireland which has become ashamed of its past. I can only explain myself as a product of the culture of Slieve Luacra, where I lived into my twenties—a culture which was literate, intellectually active, and conversational, but in which the profit motive was confined to commodity transactions in material goods.

The purpose for which I began the Magazine ceased to be operative in 1989. Some people who had taken part in its production wanted to try to continue it on a commercial basis as a general magazine. I agreed that they might take it in hand. I did not think there was any real prospect of commercial success but, since the political context of the Magazine had fallen apart, I saw no good reason not to let them have a go.

David Young became the Editor in fact. He was described as *"Executive Editor"* and did all the work of putting it together. I let my name go on as a general Editor so that it would not be thought that there had been some kind of rupture. I read the McAleese article before publication and thought it was accurate. After another issue or two, I would have had nothing further to do with the Magazine. But, when McAleese started libel proceedings, I took responsibility for the publication because I was the person with nothing to lose.

Then, assuming that the matter would be cleared up without great fuss and bother, I published what I intended to be the final issue.

Ray Mac Manais's assertion that *"although the damages were reported to be small, they were enough to put the cheaply produced magazine out of business"* is entirely inaccurate—and, I suppose, defamatory. McAleese did not get a penny in costs or damages from me. She did not even get an agreement for some equivocal formulation about *'undisclosed'* terms, although I tried to indicate that it was available.

The Magazine did not go *'out of business'* because of payment of damages. And, in fact, it went '*out of business'* more than a year before the action was settled. Mac Manais has taken little care with his facts.

And that would probably have been the end of the *Belfast Magazine*, and probably of my political connection with Belfast if McAleese had not wasted a considerable part of my time by pursuing a frivolous libel action for a further year—and if, many years after the action was proved to be frivolous by the way it was ended, McAleese as President and Mansergh as Senator had not tried to put a misleading account of it on the record.

Charles Brett

I should say a word about McAleese's solicitor, Charles Brett, with whom I had an interesting relationship over the decades, even though I never exchanged a word with him in person.

Initially I was treated with a kind of off-hand contempt by him—or by his firm, because personal contact was always with a junior; but the manner of the junior was obviously determined by his instructions. And the manner changed drastically after Brett received my Defence.

At the appropriate time I went along to the Great Hall of the High Court with my mound of Discovery items. I met the solicitor there and suggested to him that he should come along with me to a photo-copy shop, to ensure that I copied it all for him.

But he wouldn't hear of it. They were most anxious to help me in every way they could—of course they were!—and wouldn't dream of putting me to the expense and inconvenience of doing what I suggested. Why didn't I bring it along to their offices, where it could be done in comfort. Fair enough, I said, lead me to your photocopier. But, when we got to the offices, they wouldn't hear of me labouring over a smelly photocopier myself. They had a person for doing these menial tasks, they had, so why didn't I let her get on with it and drink a cup of coffee while I waited. So I said OK.

I was not left alone with my coffee. I was helped to pass the time with convivial conversation, all apparently free and casual. The copying took a very long time. The coffee was fine. But the conversation was curious. Disparaging remarks were

made about their client, though not by me. And—me being a socialist you see—I was told that Charlie Brett was a socialist.

I was not told that Charlie Brett did not allow Trade Union organisation in his firm, and I did not spoil the atmosphere by letting it be known that I knew. (But I did notice that his company kindly supplied his employees with clothes—or was that a livery?)

Many convivial conversations followed that first one. And I adopted the practice of speaking of The Law as a commodity which I did not have the wherewithal to purchase, because I could see that it was irritating. Equality before the Law is a pleasant illusion.

This McAleese affair was in fact the second matter on which I had something to do with Charlie Brett as a lawyer. The first happened a little earlier and may have had some bearing on the second. The Linenhall Library sold the microfilm rights of some publications of which I was the publisher. It was as clear a breach of copyright—i.e. of theft—as you could imagine. All I required as a remedy was that the Linenhall should publish an acknowledgement of the breach in a magazine and should deal with the matter with regard to the microfilm company.

The Linen Hall was in those days a very pleasant place, redolent of the Ulster past, not yet having been spring-cleaned by the Socialist Workers' Party. It had a newspaper-room in which I used to read the papers and journals, surrounded by shelves of the Greek and Latin classics. But those classics, and many others, were sold off for a song when revolutionary Marxism took the institution in hand. (But that action was trumped by Queen's University, which dumped its classics in a skip and set fire to them!)

The library proper had narrow canyons of bookshelves in which one could see the successive layers of literary fashion since the early 19th century.

The whole was a kind of living museum—much more interesting to my taste than museums of dead things.

There was a major act of cultural vandalism in the early 1970s when the Smithfield Market was set on fire. The revolutionary modernising of the Linenhall was an event of the same kind.

The library is now spaciously arranged. And the newspaper room has been remade into a restaurant. But I learn that, although there are still some books in the library, and they are close to the restaurant, one is not allowed to read them in the restaurant.

The Linenhall I knew was different. And I liked it. But I did not think I could just ignore its sale of copyrights which did not belong to it.

To add insult to injury the Library suggested it was doing me a favour by giving wider circulation to publications I had published.

The matter might have been settled very simply and at no cost to the Library if Charlie Brett had not been its solicitor and had not advised it to make no admission. That put me in the position of having to prosecute for breach of copyright if the matter was to be remedied. I decided that I had better things to do with my time and I let the matter drop, only refusing to supply the Linenhall with material that I published, and that it had difficulty in acquiring since very little of it circulated through the bookshops. (I sometimes relented at the request of the staff, whose attitude was very different from that of the administration, and made covert deliveries in brown paper wrappers.)

So it might be said that Charlie Brett's advice to the Linenhall to make no admission of breach of copyright worked, since I did not prosecute. And it is possible that, on the basis of that experience, he concluded that I was a pushover, and advised McAleese accordingly.

I had a number of other connections, at a distance, with Charlie Brett. He had been Chairman of the Northern Ireland Labour Party in easier times, and had been its leading (perhaps its only) intellectual. But in 1969, when times got harder, he gave up politics.

In the early 1970s he published an autobiography. I forget the exact title, but the words *Long Shadows Before* figured in it. The book, as I remember it, was an account of the Platonic form, Charles Brett, over many generations. The story of the present incarnation of that eternal form was in it, but the subject of it was the bourgeois dynasty of Brett over the centuries.

It so happened that the Charles Brett incarnation of the 1790s had come to my notice as I was writing a book on *Belfast In The French Revolution* (which I published

in the course of the libel action), so I made my own little contribution to the history of the bourgeois dynasty of Brett in that book. Here is what I wrote of the Brett of the 1790s:

"The bourgeois gentleman also makes his appearance in Belfast at this time.

"Two remarkable adverts appeared regularly in the Northern Star in 1793 and 1794: one by Joseph Cuthbert, the other by Charles Brett.

"Cuthbert advertised from Carrickfergus Gaol. He was an honest man imprisoned by a corrupt administration which treated his demand for honest and representative government as seditious. An honest man who lives by the Book cannot be disgraced by being put in prison—indeed it points up his honesty to be imprisoned by rogues…

"Charles Brett was a much more careful person than Joseph Cuthbert. He was not in gaol, and it is doubtful whether his morale would have survived imprisonment, just or unjust. He sold liquor, narrowed his vision down to his family, and aspired to gentility. He is noteworthy only because of his pretentious liquor advert…: "Charles Brett is not in the habit of frequently advertising ; but…"

"The best sense I can make of the difference between the two Belfast newspapers of the 1790s is that the News Letter was for people like Charles Brett and the Northern Star was for people like Joseph Cuthbert. They represented different temperaments, rather than different policies.

"The Charles Bretts were in retreat from policy, because policy was unprofitable. But the only counter to the political vigour of the Joseph Cuthberts was inertia, and withdrawal into private concerns. Forceful disagreement would have been as imprudent as active support. So they read their News Letters and bided their time" (Belfast In The French Revolution, Athol Books, 1989, p14).

"The Joseph Cuthberts were willing to take on the world in thought and action: the Charles Bretts made mental reservations, tended to their business, and cultivated private refinements.

"Now mental reservations, beyond a very limited point, are not a form of thought. They are a stultification of thought in the minds which hold them. And when minds which are eager to think encounter all around them nothing but the cotton wool of mental reservations and private refinements they too are thwarted" (p138).

"Imagination is indispensable to progressive politics… It is not possible without it to do things which were never done before… In the politics of England during the past three centuries one encounters a power of imagination certainly not less than went into the production of English fiction…

"By contrast, the public affairs of Belfast have in recent centuries been characterised by an entirely 'practical' turn of mind. And this practicality—the practicality of the Charles Brett syndrome—has, of course, been altogether impractical in its social consequences.

"Practicality is politically adequate only in a stable and stationary condition of things, which runs by routine. When a situation is made unstable by an unresolved problem, the practicality of routine only perpetuates the problem…

"Belfast, having for five years been extravagantly articulate, is suddenly reduced to incoherent silence. Circumstances are perfect for the growth amongst thinking people of the Charles Brett syndrome—tending to one's business and one's family, cultivating a private refinement, having a few banal maxims to fill the place of politics, and keeping one's head down on the great issues. This syndrome is a virus which attacks those who should be the civilised leaders of society—a function to which imagination is essential. Those who are unaffected by it are those who live in fundamentalist religion, and therefore in a different imaginative sphere" (pp138-141).

My Charlie Brett, though a bit of a cosmopolitan, came from the same mould as that Charlie Brett. (That's the meaning of dynasty, isn't it?) There was a faint tinge of the Bohemian about him as he described himself. He had lived in Paris and in Italy for a while after the War (i.e. the second British World War of the 20th century), before coming home to inherit the family business. I don't know if the faintly Bohemian phase left any lasting impression on his appearance because I never saw him but once, and that only for an instant—on the internal stairs of the Linenhall Library, which he was coming down as I was going up.

As an intellectual bourgeois who had lived in Paris after the War, he was of course a bit of a socialist and a bit of a republican and a bit of an anti-clerical, so it was in the course of nature that he did a stint in the Northern Ireland Labour Party, which was a bit socialist, a bit republican, and a bit anti-clerical.

Northern Ireland before its Fall was an idyllic place of those whose predispositions had been shaped for it—the discreet Presbyterian middle class, which had habits rather than beliefs, and which felt that politics was an unsavoury business. (And the strange way in which Northern Ireland was connected to the British state meant that it was excluded from the democratic political conflict in Britain, and had no politics of its own as it was not a state.)

I know this because I have known people who experienced it as an idyll, and who did not deny that experience when looking back on it after the Fall.

The late Harold McCusker entered political life in the era of Paradise Lost, hoping to restore something of the quality of life as he had experienced it before 1969. He knew in his head that he ought not to have experienced the Northern Ireland of his youth as a kind of perfection of life, but that is how he experienced it, and even looking back on it after it had gone, he could not and would not reinvent his feelings, or deny them.

That is one of the things I found admirable about Ulster Protestants. They did not *'reinvent'* themselves to order. And they did not in retrospect invent a false experience and project it into a past in which they had experienced something quite different—as began to be done in Dublin around 1980 by Catholics.

I was, in a sense, an outsider in both situations. From about the age of 13 I was out of joint with the culture of nationalist Ireland on a single point, that of modernising Catholicism, which began to intrude into my remote part of rural Ireland after the War. I stayed there for a further 8 years because, leaving religion aside, life was interesting there, and a couple of brief acquaintances with city life did not attract me to it.

It became the custom in the 1980s to describe life in Catholic Ireland as having been claustrophobic. I know that that is not how it was actually experienced in rural Ireland in the 1950s, and that it is not how it was experienced in Dublin in the 1960s. But people who wrote about it in the 1980s began to imagine from their new viewpoint the feelings they thought they ought to have felt in the old order of things, and to persuade themselves that what they had actually felt was claustrophobia.

Very little of this went on amongst Ulster Protestants. They had continuity of subjective existence. They were what they were, and that was it. And one of the things they were, unfortunately, was profoundly apolitical. But this is not the place to go into that.

Charlie Brett, having been a bit of a Bohemian on the Continent, was a bit of an outsider in Northern Ireland—not much, just a bit.

He thought about the politics of the situation just enough to know that things were not perfect. There was a fly in the ointment—a very big fly.

What to do about it?
He joined the NILP, and contributed something of his broader outlook on the world to this very narrowly-based Trade Union party, which was more in the nature of a retreat from *'the Northern Ireland state'* than a participant in it.

And then, in 1969, he retired from political life at the moment when it became intensely problematical.

Because he had a broader outlook on affairs than was general in his community, and because he was free of the passions lurking in the undergrowth, and because he was a bit of a socialist and a bit of a republican in the Continental sense, and because he was public-spirited, his virtuous act after 1969 was to retire to private life.

That is what I gathered from the blurb on the dust-jacket of his dynastic autobiography.

If he had published it in 1970

I would have been puzzled by it. How could a person who had some talent for politics, and who was not submerged in the communal passions of the situation, not only withdraw to private life when the whole semblance of order broke down into communal conflict, but present that withdrawal as a virtuous act? A matter for pride rather than shame?

By the time the book was published, I had found out through experience what the pretensions of the old Protestant middle class amounted to. I understood why those who saw themselves as the most civilised and progressive elements of that class responded to the severe crisis that had overtaken their community by withdrawing from public life. Their superior culture was entirely unrelated to their situation. It was the culture of another situation. But I was still surprised that Brett should proclaim his withdrawal so publicly, and with a good conscience. Withdrawal to private life by a public figure in a political crisis would be best done privately and modestly.

Charlie Brett practised law and wrote about old houses, leaving the political affairs of his community in the hands of Ian Paisley. Paisley did not degrade public life. The public life of Paisley's community and Brett's (because it was the same community, even though the latter disdained the outlook of the former) was abandoned by Brett to Paisley.

Many years later Charlie Brett made an approach to me, not knowing it was me.

In the mid-1970s I had helped to launch a magazine called *Church & State*, and a campaign associated with it to make a distinction between Church and State in the Republic in a way that had not been done previously and to agitate for a separation of the two in particular areas where they had merged.

At a certain point Charlie Brett noticed this campaign. And it seemed to him to be the very kind of thing that he had wished to develop in the North before 1969, combining the French republican spirit and French anti-clericalism in a medium of reasonable socialism. So he wrote to Dublin expressing approval and asking if the campaign had a branch in Belfast with which he could co-operate.

And he was referred to Athol Street.

He did not approach Athol Street to find out what it was. He did not need to. Athol Street was notorious amongst the polite circles in Protestant Ulster which should have been doing what it was doing.

So he wrote to Dublin again, more or less asking if his previous letter could be withdrawn, by way of not being mentioned. It was pathetic.

The Campaign was under no obligation to keep the matter confidential, but it did so. I mention it now as being to the point of what I am describing.

It was also conveyed to me that Brett understood that the Campaign For Labour Representation, which sought democratisation through the parties of state, and rejected Northern Ireland as a possible arena of democratic political development, had a potential that was lacking in the NILP.

But of course he could not be associated with it. Why? Because it was Athol Street.

And what was Athol Street? It was in 1970 a small street in the centre of Belfast. Today it consists of a single house and a famous chip shop. Ever since 1970 it has been one of the two centres of initiative against the Whitehall concoction called Northern Ireland, the other being Provisional Republicanism. Athol Street was entirely Constitutional in its approach and Sinn Fein entirely unConstitutional until recently. But Athol Street's Constitutional approach was entirely unacceptable to Whitehall, because it insisted that the instability of Northern Ireland arose from the fact that it was governed outside the Constitutional structure of the state, and that *'internal'* settlements must necessarily fail.

To take that stand was to pit oneself against the authority of the state, which had a use for Northern Ireland, and which in its government of Northern Ireland was not subject to democratic pressure. And this undemocratic regime commands enormous powers of patronage, by means of which it marginalises the use of reason. And so Charlie Brett, though he understood certain things notionally, was as disabled in practice as if he understood nothing.

And so, at our only meeting, as we passed each other on the stairs of the Linenhall Library, he hesitated, looked for a moment as if he would speak, but the prudence of the bourgeois dynast restrained him. No words came from him. Thought was stifled. And he passed on to safety.

P S : The Presidential Biography

In writing what appears here about Mary McAleese I had available to me only a photocopy of a few pages from the biography by Ray Mac Manais. I have now picked up a remaindered copy of it, and I find it includes what appears to be a reply to the case made in my Defence against her Statement Of Claim. But it confirms my Defence, rather than refuting it, by describing how she was actually recruited for the job at the Institute although she was unqualified for it:

"…an old friend of Mary's rang her and said he would like to pay her a visit. The caller was Des Greer, professor of law, in Queen's University Belfast, the sympathetic counsellor to whom she had brought her worries when she was a student. Former lecturer and former student had met many times over the years as Professor Greer was external examiner for Mary's students in the School of Law in Trinity College. He told Mary that a new director was being sought for the Institute of Professional Legal Studies attached to Queen's University. Mary had read the advertisement for the position beforehand and had presumed the post was filled. Mainly because she was happy where she was, in Trinity, but also because the advertisement had mentioned that the successful applicant would be a practising lawyer, she had not considered applying.

"Des Greer explained that the selection board had not appointed any of the applicants; that they were not putting together a list of suitable candidates and that they were reserving the right to change the advertised criteria. In other words, in the process of headhunting they might decide to choose an academic lawyer for the position. When he asked her if he could to [sic] put her name forward, she replied that she would like to think about it… Since returning to Trinity from RTE, she had been… more content in herself; but in the light of the move to Rostrevor, they decided that applying for the directorship would be, at least, another option. Mary rang Des Greer and said she was prepared to let her name go forward.

"She then set about finding out as much as she could about the Institute and the post of director. She met the staff and the influential members of both professional legal bodies: the Law Society of Northern Ireland and the Honourable Society of the Inns of Court of Northern Ireland. After meeting the two solicitors representing the Law Society, she felt that they had set their faces against the appointment of any academic lawyer. She argued her case: that she had read all the reports on legal education; that her area of expertise, pedagogy, was a significant element of the job; that the Institute was a teaching institution and that her forte was teaching the law. She spoke of course construction, of management, of dealing with students, but afterwards she felt that all her talking was to no avail.

"The interview panel was chaired by Turlough O'Donnell, lord justice of appeal and chairman of the Council for Legal Education. The selection committee comprised twelve members, and among them were the two solicitors, representatives of the Inn of Court and of the University… They questioned her on every aspect of the qualifications and aptitude she would bring to the job… By the time she was finished she was exhausted…

"She was at home in Rostrevor that evening when Turlough O'Donnell rang to offer her the job. She was delighted, of course, and said as much on the phone. She also said she could only accept the job in principle because she had to give notice to Trinity College… Trinity wanted three months to find a suitable replacement… she informed the board of the Institute that she would not be able to work full-time until after Christmas… The members of the board were happy with the arrangement…

"…When the selection committee had refused to appoint any of the original applicants for the position, they had asked a senior

law lecturer from Queen's University to fill the post in a temporary capacity until a permanent director was appointed. This caretaker director was a man who had taught land law to Mary in Queen's, a man by the name of David Trimble. Trimble was not happy when he learned of Mary's appointment, particularly as he had also been a candidate… He was not alone in his disappointment. In the unionist community there was widespread anger and frustration that a Catholic had been appointed to one of the most prestigious positions in the academic life of Northern Ireland.

"David Trimble's life revolved around Queen's University, the Orange Order and unionism. He had been a lecturer at Queen's since he graduated there in 1968… His rise through the unionist ranks was by way of the Vanguard Unionist Party… His political pragmatism allowed him to be at one time an advocate an advocate of UDI and at another a staunch upholder of the union with Britain. Before he became known for his moderate views and before he became a winner… of the Nobel Peace Prize, David Trimble was considered a hardline unionist. His militant reputation was greatly enhanced in 1995 when he and Ian Paisley walked shoulder to shoulder down the nationalist Garvaghy Road… His "not an inch" stance on that occasion probably won him the leadership of the Ulster Unionist Party…

"At the time of Mary's appointment, Trimble was chairman of the Lagan Valley Unionist Association, an influential member of the Ulster Unionist Party, and the candidate of choice of many members of that same party for the job as director of the Institute… There was speculation that the appointment of Mary McAleese was a political choice designed to pacify the Irish government. Unionists drew attention to the stipulation in the original advertisement that the successful candidate would be a practising lawyer, pointing out that Mary McAleese had practised for only one year in the North and never in the South, and neglecting to mention that David Trimble had never practised at all. The campaign at Mary's appointment culminated in the tabling of a motion for debate in the… Commons".

[The text of the *"early day motion"* is given at this point. It suggests that McAleese was Charles Haughey's nominee. Early Day Motions are usually damp squibs, as this one was.]

"…Professor Gordon Beveridge, who was vice-chancellor of Queen's University, defended the appointment in a statement which effectively put an end to the public criticism. He said that in the opinion of the selection committee, a group representing various legal bodies and eminent institutions, she was the most suitable candidate for the post, and that their decision was final.

"Mary has this to say about the whole commotion: "There is a certain type of unionist who cannot bear the thought of any Catholic getting anywhere on their own merits, who cannot abide the idea of any Catholic breaking out of the mould in which they had been kept for years. This was the case with my appointment as director of the Institute. Some of those unionists were choking themselves with bitterness"."

[In the absence of any reference for this statement, and the formulation *"has this to say"*, I take it to be a statement made by McAleese to the author for inclusion in the Presidential biography, which continues:]

"At this time, Mary made no public utterance about her detractors' attempts to rescind her appointment, but an incident happened in August 1995 which forced her to break her silence on the subject. A UTV production called If I Should Die was being filmed. In the series the subjects… were to imagine themselves dead, and guests on the show were given the opportunity to speak of them in obituary form. The presenter, the Revd. John Dunlop, former moderator of the Presbyterian Church in Ireland, invited Mary to be one of the subjects, and he invited David Trimble to speak about her life and work. Trimble's political

antennae must have been suffering a bout of insensitivity that day. He raised the question of her appointment as director of the Institute, saying that she should never have got the job as her qualifications were not good enough and repeating the allegation that her appointment was due to political pressure from Dublin.

"Mary's response was as succinct as it was incisive: "There were two candidates shortlisted for the Institute. I was one and he was the other. I leave it to people to make up their own minds."

"The pro-unionist newspapers in the North were not the only ones that were causing trouble for the new director…" (She then goes into incidents in Dublin; The Road From Ardoyne: The Making Of A President, 2004, pp237-242).

Her response may have been succinct, but it was not incisive because it was entirely beside the point. The point was that she was given the job without meeting its advertised qualifications.

And, while there were two candidates, is it accurate to say that they were *"shortlisted"*? Two applications were solicited from people who did not meet the specified qualifications. My information was that there there were no other applications beyond those two solicited ones. So, if there was a *"shortlist"* it was not made from a list of applicants, but from a list made up by Professor Greer and Lord Justice Turlough O'Donnell of people who should be solicited to apply for a job for which they did not qualify.

Reference to *"the original advertisement"* suggests that there was a second advertisement in which the job specification was altered. I searched the three Belfast dailies but could find no second advertisement at all. If in fact the job was re-advertised as being available to law lecturers, McAleese need only have pointed it out to me to puncture my Defence. (While a negative is impossible to prove, it is effectively proved in this instance by the failure of the law lecturer who got the job to show it was advertised as a job suitable for law lecturers.)

The biography comments that the Unionist Early Day Motion, while drawing attention to McAleese's minimal practical experience, neglected to mention that *"Trimble had never practised at all"*.

I can't see the relevance of that comment. Trimble didn't get the job, and he isn't mentioned in the motion.

Trimble, as I recall, told me that he conducted one case as a barrister. He did not make much of it, his point being that his practical experience, like McAleese's, was negligible, and therefore he had not applied for the job of Director in the first instance, though he had been Acting Director.

On the strength of the information now supplied by McAleese, I would say that the Professor and the Lord Justice asked her to apply in order to give her the job; and that they asked the Acting Director to apply in order to deny him the job. A point was being made.

But that the competition was rigged only made things worse. It would have been better simply to appoint McAleese, rather than pretend there had been legitimate applications.

But it seems that this bogus procedure had to be gone through because the various parts of the collective employer were not in agreement in the matter.

McAleese presents herself (or her biographer presents her) as arguing with the Law Society about altering the nature of the job, rather than simply showing that she met the altered specifications.

If there was widespread anger and frustration at her appointment because she was a Catholic, I failed to notice it. The Protestant community had many things to be angry and frustrated about, and this came low on their priority list. And, insofar as I was aware of discontent, it was within a very narrow sphere, and it was not because *"a Catholic had been appointed"*, but because an unqualified person, from another jurisdiction, and that a hostile one, who was herself on record as expressing contempt of the Northern Ireland legal system, had been given the job.

Of course I cannot say that this was not dissimulation, and that what really cheesed them off was the fact that she was a Catholic. But that is not what I heard said. And, even if she could somehow know that they were really dissimulating a raw religious hatred of her—dissimulation and civilisation are twins, and what is dissimulated tends to become the reality.

The issue was all but dead

when she stirred it up with her libel action. And after that little furore had all but died again she and Senator Mansergh stirred it up a second time. (I learn from her biography that Mansergh, *"the party guru himself"*, chose her to be Fianna Fail's Presidential candidate.)

As to Fianna Fail influence in her appointment to the Institute, I can say nothing. I took little interest in internal Dublin politics in those days, and was not aware of her as a *"Haughey babe"*. But Dublin had a recognised role in Northern affairs under the 1985 Agreement.

I think there can be little doubt that she got the job because she was a Catholic, among other things. Although Queen's broke Fair Employment procedures outrageously in making the appointment, it had become acutely aware of the Fair Employment issue, in that it knew it was short of Catholics in its higher echelons and it needed to find some.

She was also suitable in another way. It had become clear to some people in authority that the Institute was misconceived and that somebody whose skills were not narrowly legal was needed to make changes. I have no doubt that the Professor and the Lord Justice had reason to *'headhunt'* her. But headhunting was the greatest of all sins under Fair Employment rules.

I had for a number of years been making an issue of the duplicitous nature of Fair Employment rules when the McAleese appointment came along as a breach of them by the very authority whose business it was to enforce them. With her capricious libel action she obliged me to draw up a comprehensive case against her appointment. To the best of my knowledge nothing whatever had been published about it but the article in this magazine—such was the *"campaign"* against her by angry and resentful Unionists—and that piece was forgotten by the time she issued her Writ. But the comprehensive case made in my Defence was widely read within the legal profession. It lay in the High Court to be read, and I took it around to various bodies on the pretext of seeking assistance, knowing that it would be copied. And I'm sure that the Defence made an impression on the minds of those who read it that was far more lasting than the passing feeling at the time of her appointment that something wrong had been done.

I don't know how close Government control over the President is supposed to be. Does an authorised biography come under it? Did Mansergh in his capacity as *"party guru"* approve it? If so, I think it was very foolish.

McAleese displays a fundamentalist sectarian resentment that is grossly inappropriate to her pretensions as President to be a bridge-builder: She was a Catholic who made good in the North (by being headhunted from the South) and all who made an issue of the appointment did so because she was a Catholic (and not because she was headhunted from the South and lacked the requisite qualifications).

Almost forty years ago I proposed that what was evidently an antagonism of nationalities within the North should be relieved by a frank recognition of this fact by nationalist Ireland as a preliminary to negotiation. That approach was rejected in favour of continuing to assert a de jure right of national sovereignty by the Free State over the North. The way the preferred approach worked out in practice was through communal attrition—the ever-intensifying conflict between the two communities, and their relentless segregation from each other, whether in war or peace. McAleese's appointment to the Institute was an incident within the conflict of communities.

She was elected to the Presidency in 1997. Her election too was an incident within that system of communal attrition—which is why Dublin 4, having become largely Unionist in sympathy, if only as a way of being anti-national, opposed her. And I suppose she was under *"Constitutional imperative"* (as the Courts had said the Government was) to contribute to the advancement of the sovereignty claim against the Northern Protestants.

But the Constitution was altered in 1998. And the authorised biography, published six years later, is still shot through with the story of the triumph of an oppressed Catholic over Protestant bigotry. And I cannot see the sense in that.

The President is a purely formal head of state, without Executive authority, and debarred from politics. I could never see what use it had in the functioning of the state. I thought Mary Robinson was wasted in it—as she must have realised when she refused a second term. But

it gave her illusions, and she wasted more of her life in the hope of doing things as a UN Commissioner which she would have known she would not be allowed to do if she had read the UN Charter on realistic assumptions. I think the Phoenix Park is best occupied by people with a political career behind them. The Presidency is not itself a political career. It is a facade on the state. And it is unreasonable to expect an ambitious Northern Catholic, skilled at securing advancement, to become a mere facade while in her prime and full of beans. But that's what she wanted to be. And that's what she got with the help of Senator Mansergh, the guru. And therefore that is what she should be required to act as.

Perhaps the problem is that the guru failed to realise what it was that he took part in doing in 1998. He recently condemned me in a Belfast paper for saving Unionism in 1969 by proposing that the Ulster Protestant community should be recognised as a nationality. But he does not explain how what he helped to do 29 years later retains for nationalist Ireland, or for the Northern Catholic community, anything they would have lost if the Protestant community had been recognised as a nationality when the *'Northern Ireland state'* blew apart in 1969.

Having aggravated the Protestants from 1969 to 1998, the Dublin establishment then gave Northern Ireland a de jure veto on Irish unity. The Six Counties was recognised as a legitimate part of a foreign state, and perhaps even as itself a foreign state, and no longer claimed as part of the Irish nation. This leaves us with a foreign-born President whose relations with her country of origin (whether the UK or Northern Ireland) should be in accordance with the norms of diplomatic relations with foreign states.

The Presidential biography refers to *"the inequality that was of the very essence of the Northern state"*. And it asserts that:

> *"The state of Northern Ireland was established to put a Protestant-unionist government in power and to ensure that it would stay in power. Ironically, the Northern Irish unionists wanted… the very form of government they had long opposed" (p57).*

In historical fact there was never a Northern Ireland state. The Ulster Unionists in 1914 threatened to set one up under German protection but it never happened. They went to war against Germany instead. What was done in 1920 was not done at the behest of the Ulster Unionists. It was an arrangement made by the Imperial Parliament for Imperial purposes, without Ulster Unionist support.

Northern Ireland was never anything but a region of the UK state. The regional variation in its mode of government was made by Westminster, and was not made in response to Unionist demands for Home Rule. The Unionists within this strange system had to win every election, not simply to remain in power in Stormont, still less for the pleasure of oppressing Catholics, but in order to remain connected to Britain.

I have been describing the situation in these terms for thirty years. If it is a false description, it has never been shown to be so. The issue is evaded, as far as I can see, because it leads to fundamental criticism of Britain, and that is something of which the Irish state is no longer capable.

Somebody who helped me to compile the record of McAleese's doings for the Defence described her as an over-achiever. I don't think that description quite catches her. In the way I understand the word, it would apply to her if in a particular occupation she had been promoted beyond the reach of her particular talent. But I cannot see that she had any settled occupation or profession. She flitted about between occupations, and between states, being this or that as the occasion required. She had a chameleon quality in a high degree. And what could be more advantageous in Free State Ireland today, which is always *'re-inventing'* itself, and has little sense of continuity?

The criticism of her as President with relation to the newly foreign country of her birth is that she has not been enough of a chameleon. But perhaps that is because the guru has failed to adapt to the state of affairs he helped to bring about in 1998, and has therefore failed to devise a role for her with regard to what he now holds to be a legitimate part of Britain.

The Presidential biography tells us that, at her inauguration, surrounded by the panoply of state, *"she is still the slip of a girl from Ardoyne"*. And her mind is a hundred miles up the road *"where all things Irish belonged to the ghetto"* (p13). Which was

perhaps OK in 1997. But not after 1998.

(And what does Senator Mansergh, who still asserts that the Ulster Protestants are part of the Irish nation, think of this statement that north of Dundalk only the *"ghetto"* is Irish?)

We are told that she was always a *"constitutional nationalist"*, and a supporter of the SDLP from the start, and perhaps a republican in the exotic sense—the Charles Brett sense—that has little bearing on real life in the North. I suppose that's why she has difficulty in adapting to the new situation. She is on good behaviour. But good behaviour is always in danger of lapsing since it does not follow from understanding.

After listening to Dublin politicians or constitutional nationalists it is always a pleasure to hear somebody like Gerry Kelly, who has helped to bring about the present situation by thoroughly unconstitutional methods, and who acts out of a substantial understanding when dealing with it. He is at ease, and not on good behaviour.

It was good behaviour sustained over historical resentment which led to that great Presidential lapse of comparing the Unionists to the Nazis. (And it is curious that Fr. Alec Reid, who helped to make her President, had a similar lapse not so long afterwards, though in more excusable circumstances.)

But the Unionists can take it, and retaliate in kind.

What struck me most was her spontaneous television interview on the day the Pentagon and the World Trade Centre were bombed in which she denounced the jubilation of the Palestinians. Here was a people being tormented and ethnically cleansed by a regime of conquest. The most powerful state in the world, which armed and sustained the force that was tormenting them, was hit in its homeland for the first time ever—and they celebrated. Perhaps it was unstatesmanlike. But what's the use of statesmanship in Palestine, where being obedient only makes you easier prey.

Then three years later the Presidential biography talks of ghettoes in the North.

The affair of the Institute is briefly dealt with in Trimble's biography. It relates how he was authoritatively informed of a political block on promotion for him—a thing which was plainly obvious at the time. He failed to get two professorships, but was in line to become Dean of the Law Faculty when authority raised up a candidate against him, lobbied for her, and he lost on the postal vote. And then:

> *"…once again a presentable younger woman entered the field. Her name was Mary McAleese, a Belfast-born Catholic, the 36 year old Reid Professor… at Trinity College Dublin, Her publications portfolio may have been less voluminous compared to that of Trimble, but she had two skills which he conspicuously lacked: she marketed herself superbly and she was immensely adept with people. The 10 strong interview panel was chaired by Lord Justice O'Donnell, who led the questioning. He was assisted by Lord Justice Kelly, who as Basil Kelly had been a Unionist M.P. for Mid-Down at Stormont and was the last Attorney General of Northern Ireland under the ancien regime. Trimble performed poorly, while McAleese dealt with the questions adeptly and she was duly appointed" (David Trimble And The Ordeal Of Unionism by Dean Godson, 2004, p94).*

Of course it wasn't quite like that. But, in a delicate political situation, where the stirring up of old resentments on marginal issues is hardly to the point, it is a way of presenting it. The Presidential biography of McAleese would have been well-advised to treat the matter as lightly.

The fact that this is the authorised biography almost escaped my notice. It is not mentioned in the title page, the blurb, or the Foreword, but on page 381. The Foreword tells us about the Plantation, when the Irish were driven into the bogs and hills by Chichester *"to ensure that Britain would have no more trouble with the north-east corner of Ireland. Over 350 years later, another Chichester of the same stock, Major James Chichester Clark, was still trying to achieve that objective"* (p7).

I did not follow McAleese's brief career in the North, between her appointment to the Institute and her nomination to the Presidency in the Free State, and I did not know that she quickly became a member of many Boards of Directors, including Channel 4 television and Northern Ireland Electricity, as well as Pro-Vice-Chancellor

of Queen's. We are told that she was an active member of the Board of NIE and enjoyed the process of privatisation. And:

> *"In her work with NIE, Mary was regularly reminded of the old days of the Ulster Workers' Council strike, when loyalists gained access to the grid, stopped the generation of electricity in North Ireland and forced the British government to bring an end to the power-sharing government in Stormont. Under the new dispensation, the grid was no longer vulnerable to such a takeover because electricity generation was taken out of the hands of NIE. Private companies now operated the power stations" (p285).*

It seems that I must take issue with the President in another issue of this magazine that she suppressed, because that is an utter travesty of what happened in 1974. The guru is asleep on the job.

Epilogue

[The final issue of *A Belfast Magazine* in its old format came to hand unexpectedly after the foregoing had been written. The pages relevant to the libel action are reproduced below.]

Editorial In Conclusion

This is the last issue of *A Belfast Magazine*—meaning that there won't be any more.

The Magazine is being wound up because of a libel suit against it by Mrs. Mary M'Aleese, the Fianna Fail politician who was appointed Director of the Institute of Professional Legal Studies at Queen's University last year. The correspondence which follows will make it as clear to the reader as it is to the Editor what the substance of the libel is alleged to be.

The outcome of the libel suit is an irrelevance as far as the existence of this Magazine is concerned. Mrs. M'Aleese did not in the first instance approach the publisher of the alleged libel, specifying what she held to be untrue and asking that it be remedied. If she had done so, there would have been no difficulty on my part about putting right whatever was wrong.

She approached the distributors of the Magazine with an offer not to prosecute them for libel if they undertook not to sell the Magazine in future. But, interestingly, she made no formal move during the period of sale (August-September) of the Magazine to which she took offence, preferring to wait until the following (October-November) issue was on sale.

Two things then happened. They would have surprised me if twenty years' experience of life in Belfast had not caused me to expect them to happen: Gardner's Bookshop in Botanic Avenue took the September/October issue off its shelves; and a Solicitor on whom I depended, and who knew my circumstances, refused to act for me against the Director of the Institute for Professional Legal Studies.

The moral courage of the commercial and professional middle class of Belfast in public affairs is a quality which I know very well both from direct experience and from an acquaintance with the past. Its natural history would be an appropriate theme for a farewell book on Belfast.

(Last year Gardner's Bookshop refused to stock a periodical called Irish Political Review, on the ground that it offended its customers (or a special category of them), by having *"Irish"* in its title and being published in Dublin.)

Mrs. M'Aleese has put an end to the *Belfast Magazine* with a couple of solicitor's letters. It remains for her to prove that I published a libel on her. I offered to put right and apologise for any inaccuracies in the article that were made known to me. Since that is not acceptable to her, a jury will have to decide whether I libelled her. But this Magazine will not exist either to admit the error of its ways or to rejoine in being vindicated.

Since I cannot see how I have libelled Mrs. M'Aleese, I naturally assume that the jury will find in my favour. But I am not sorry that the Magazine will not exist to celebrate this particular victory. Through I cannot agree to be branded as a publisher of a libel until a libel is demonstrated to me, I take the view that whatever the outcome of the trial Mrs. M'Aleese has done me an inestimable service. She has pricked a bubble of illusion, which I knew to be a bubble of illusion. And she has saved me from frittering away the rest of my life in attempting to make good the historical default of the Unionist middle class, as I have frittered away the past twenty years.

It is on the face of it absurd

that a rich and powerful person like Mrs. M'Aleese should sue an impoverished magazine with a circulation of a few hundred. It could happen nowhere else. But neither could it happen anywhere else that a magazine which the Director of a powerful public institution saw fit to take notice of would be utterly defenceless. The fabric of public life in Belfst may not be rich, but it is bizarre.

The *Belfast Magazine* is written, typed, printed, and put together free of charge. Its cost to the public is the cost of its materials. Not only do the people who produce it get nothing for producing it, but it actually costs them money. None of those who made its existence possible is wealthy. A couple have reasonable salaries. Others live on or below the official poverty line.

The *Belfast Magazine* is a case of the poor subsidising the rich. And that is an arrangement, which so far as I am responsible for it, will not continue.

There is a widespread acknowledgement in the middle class that this Magazine is a good thing. But it is received as a good thing with about as much understanding of, or interest in, its means of production as the Jews showed about the Manna they found outside their tents every morning. Well, what you hold in your hands is positively the last allocation of this Manna.

I discovered the public character of the Belfast middle class in the early seventies. It is entirely absorbed in private interest in a way that is socially inconceivable in Britain or the Republic. It is a lviing refutation of Macaulay's conception of the role of the middle class in history.

Since 1921 it has had the comparatively simple task of making Northern Ireland governable under the Government of Ireland Act or demonstrating to political opinion in Britain that it is ungovernable in that framework and should be incorporated into the political life of the state. For forty years, Craigavon and Brookeborough mesmerised the middle class and acted half sensibly of their own volition. They kept the devolved government going by minimising its functions and its activity, and by securing integration of the province into the social welfare system of the state. Representative middle class activity took over the governing of the pseudo-state in 1964, and chaos set in four years later.

The establishment of Stormont provided the opportunity for substantial middle class withdrawal from public life. And democratic politics with any semblance of meaning or purpose ceased to exist. The Protestant community had to return a Unionist majority at Stormont every few years in order to keep the province in the UK, but development was incapable of occurring in provincial politics cut off from the politics of the state.

The social virtue of Ulster Presbyterianism was essentially apolitical even in the great days of the Volunteers and the United Irish. It became modestly political under the stimulus of British politics in the 19th century. And during the Home Rule conflict Carson and the Salisbury connection in English Toryism conspired to overlay Ulster Unionism with an appearance of politics.

In 1920 Ulster Unionism was cut off from British politics and given a pseudo-state to govern. Once Craigavon had won parity with Great Britain in social welfare provision, *"politics"* consisted of turning out the Protestant vote. Stormont provided a two-fold illusion for the Protestant middle class: the illusion that it was governing a state, and the illusion that it was part of the Tory Party.

(Unionism as a British political movement existed from 1886 to 1914. The word was expressive of the connection between the Tory Party and the Joseph Chamberlain Liberals — one of those illicit affairs through which Toryism has periodically rejuvenated itself over the centuries. Though those British Unionists fought a great campaign to save Ulster from Home Rule, their interest in each other quickly became independent of the Ulster issue. After the 1914 war the two had become one substance, and Chamberlain's son, Neville, confirmed their integration by becoming the Tory leader. Look at any history of the Tory Party, and you will find much about Chamberlain's Liberal Unionism, and little or nothing about Ulster Unionism. But the name *"Conservative and Unionist"*, and the token connection allowed to Ulster Unionism, exerted a reassuring influence on the Unionist middle class and fostered delusions.)

In the Stormont period *"politics"* became merely a question of selecting which individuals were to be elected. The specific virtue of Presbyterian Ulster showed itself as a withdrawal from politics, except for voting for whoever appeared on the Unionist ticket.

After Brookeborough, this

politically unpractised middle class, which was living in a mirage, had to undertake the apparently simply but actually subtle business of keeping Stormont in being. It quickly made a most awful mess of it. And then, with a perverse feeling that it was doing something virtuous, it withdrew from politics and aborbed itself in private affairs, which it found more pleasant as well as more profitable.

British political activity is a complex interaction of civil society and government. The various institutions of civil society act as avenues of bilateral influence between the Government and society at large.

I was not long in Belfast before I saw that, in the Protestant community, the impulse of civil society was extinct. In the Catholic community the impulse of civil society was hale and hearty. Therefore, the institutions of civil society, which in the rest of the state are avenues for the representation of private interest to the Government, are in Northern Ireland avenues of misrepresentation. And private interest, which in Britain is a relative term, is in Protestant Ulster an absolute term.

Mrs. Thatcher astonished Britain about a year ago when she said: *"You know, there is no such thing as society: there are only individual men and women and their families"*.

Britain is incapable of existing like that. And even if Mrs. Thatcher rules into the next century I doubt that she will make much progress towards realising her ideal there. But in Protestant Ulster, which she has treated so badly, her ideal was realised at least a generation ago. And that is why it is incapable of offering her any positive opposition.

With a second hand duplicating machine costing £5 I set about changing all of this.

In September 1969 I published in a fringe magazine called *The Irish Communist* — which still had a circulation much greater than the *Belfast Magazine* ever achieved — an article on the history of Unionist Ulster which gave great offence in Dublin. With that article I ruined my prospects. And whenever I see what has become of my old acquaintance, Eamon McCann, I am profoundly grateful that I have at least succeeded in ruining my prospects.

Unionist Ulster, having no inner political life, must attempt to judge political matters by non-political indicators. The indicators on which it relies in assessing political opinion are wealth and professional status. Because I had neither, it could take no heed of what I said. But by the same token, nobody whom it was capable of taking heed of — that is, with a substantial private interest to tend to — would be capable of saying what needed to be said.

What we have here is an absolute disjunction between vested interest and the capacity for political thought: something which England has always taken great care to avert.

And so, twenty years ago I embarked on an absurd enterprise—an enterprise which only somebody with no private property concerns and no career ambitions could have undertaken, and which was bound to fail because the basis of understanding in the middle class of the Protestant community is laid out in property values and professional status.

I could do this only because I had just as little respect for their values as they had for mine. I come of a small community in Munster, which evolved from a Gaelic aberration, where a sense of equality is bred in the bone, and which, though it conducted its economic affairs with considerable success, retained a fascination with people independently of property. It is perhaps the only place in Ireland where Pearse's *"The Fool"* appears as one of the great poems of the world. And the individuals it produces have no inhibitions grounded in either property or status.

And so I set out to teach the Protestant middle class what it was incapable of learning from me—and what nobody had an interest in teaching it.

I did that for fifteen years. then I stopped, feeling that I had more than done my duty even by the exacting standards of Canon Sheehan and M.J.F. McCarthy. But soon after I stopped, it seemed that I had not wasted my time after all. The Campaign for Equal Citizenship emerged from the trauma (for Protestants) of the Anglo-Irish Agreement.

I began this Magazine in the hope that it might give some depth to the CEC. But the CEC preferred to live at the superficial level of slogans. And last February I was declared anathema to CEC members by the CEC leaders, Dr. Laurence Kennedy and Robert McCartney QC. (I will take my leave of Belfast politics by publishing a reply to that anathema, which the Executive

of the CEC refused to circulate internally.)

Mrs. M'Aleese caught the Magazine in flank. Through the efforts of David Young and Mark Langhammer a small amount of wholesale distribution was achieved. But this meant producing three issues without income. (This would have been the third issue, after which money would have come in four months in arrears.)

The sum involved was piffling by commercial standards, but it involved us in debts which were not piffling to us.

The business of stopping a magazine by threatening distributors with libel action against an earlier issue if they continued to sell it seems to have been begun by the millionaire, Sir James Goldsmith, against Private Eye. The counter, as far as I recall, is for the publisher to guarantee the distributors against financial loss resulting from a successful libel action. And I couldn't even pay for a solicitor's letter.

I have been of the opinion, ever since I grasped the character of Northern Ireland affairs, that the only secure magazine published from this viewpoint would be a subscription magazine. And that has now been demonstrated.

It has also been demonstrated that times are changing in Northern Ireland. To make that point I need only say that the Belfast Magazine was made possible by the voluntary efforts of Davey Young, Mark Langhammer, Sean MacGouran, Davy Gordon, Niall Cusack, Bill McClinton, Nicola Jones, David Morrison, Joan Jones, Pat Walsh and others. Such a thing would have been inconceivable ten years ago.

10 October, 1988
Belfast.

Dear Professor McAleese,

Within the past six weeks I have twice heard at second hand that you threatened legal action against a Belfast bookshop in connection with an article about you in *A Belfast Magazine* (Aug-Sept 1988).

As Editor and publisher of the magazine I would have expected to be the first to be contacted by you in such a matter. I have not been contacted by you. But I learn this morning that Gardiners bookshop has received from you a copy of a solicitor's letter alleged to have been sent to me. I have received no such letter.

I wish to make it clear to you that if you can demonstrate that there is an inaccuracy in the *Belfast Magazine* article about you, that inaccuracy will be put right. Or if you wish to reply to the article, your reply will be published. But if you prefer to do neither of these things I can only await your pleasure.

Yours faithfully,
Brendan Clifford

6th October, 1988
L'Estrange & Brett
Belfast.

Dear Sir,

RE: Our Client - Mrs. Mary McAleese

We have been consulted by Mrs. Mary McAleese of the Institute of Professional Legal Studies at the Queen's University, Belfast, in reference to an anonymous article appearing in Volume 3 No. 3 (Aug-Sept 1988) of *A Belfast Magazine*.

This article as a whole constitutes a serious and untruthful libel upon our client. Some passages call particularly for comment from us.

Our client's knowledge of the Northern Ireland legal system is called into question. In fact Mrs. McAleese:-

a) is an honours graduate in law of Queens University;

b) read for, was called to and practised at the Bar of Northern Ireland;

c) taught the criminal law and procedure of Northern Ireland for 10 years as part of her course while Reid Professor of Law at Trinity College Dublin.

With regard to the malicious concluding paragraphs of the Article we would point out the following:-

a) Mrs. McAleese took up her appointment full-time in January 1988, with the agreement of the Institute at the time of her appointment;

b) as the academic year had already commenced it was not required of her by the appointing committee to undertake the teaching of any courses in that year; although she had overall responsibility for all courses in t hat year;

c) she is in fact teaching four courses in this academic year;

d) this teaching is in addition to a very heavy administrative burden, which has involved the restructuring of much of the work of the Institute. Even the article pointed out that the Law Society almost withdrew it's [sic] support to the Institute BEFORE Mrs. McAleese's appointment, indicating the difficult task that faced our client upon her appointment.

We require you at the earliest opportunity to retract the allegations contained in this article and to apologise for it. Your readiness to do so will be of relevance to our client's further actions in relation to this matter including the question of amends.

Yours faithfully,

L'Estrange & Brett

OCTOBER 20TH, 1988
BELFAST.

Dear Professor McAleese,

I have received no reply from you to my letter dated October 10th (which was delivered to you on October 10th). On October 12th I received from L'Estrange and Brett a letter dated October 6 but postmarked October 11th. I understand that Gardner's Bookshop and Easons received copies of this letter on October 10th, and that you had approached Gardners about the matter some weeks earlier.

L'Estrange and Brett allege malicious libel against the *Belfast Magazine*. If the object was to get some inaccuracy rectified, it strikes me as strange that the publisher should be the last to be contacted, and that no action to remedy the matter should have been taken during the period of sale of the issue in question.

If I had been informed of an inaccuracy in the article about you at the time you first contacted Gardner's Bookshop, I would have put a correction, and, if appropriate, an apology, in the current issue of the magazine. Since you chose another course of action I could not do that.

It is not possible to gather from L'Estrange and Brett's letter in which particulars the article is held to be inaccurate.

It says the *"article as a whole"* is a libel. But most of the article has to do with you career in Eire politics, in which you chose a high profile. No inaccuracy is suggested in connection with that part of the article. And I cannot imagine that it is held to be libellous to refer to the active political career, in the recent past, of a person who for the time being has adopted an academic profile.

L'Estrange and Brett list your academic credentials. Since the *Belfast Magazine* article did not question your academic credentials I cannot see the relevance of that list.

The whole point of the article is that the Institute does not teach an academic law course. It gives a course for people who have completed the academic law course. Its purpose, as I understand it, is to bring people who have met the academic tests into contact with people who have extensive practical experience of work in the courts, and to give tips on such things as how to get somebody off a driving offence.

I understand that your predecessor as Director had over twenty years experience in the courts; and that other members of the staff have had extensive working experience, as distinct from academic knowledge; and that the job specification as advertised stressed the aspect of practical experience.

The central point of the article was that your career did not seem to meet the requirmement of extensive practical experience. And on this point the letter of L'Estrange and Brett is curiously silent. It gives no details of your practical experience.

I took the article on trust because the person who supplied it is eminently trustworthy. (And the description of it as *"anonymous"* strikes me as carping since people in legal practice customarily contribute articles for publication under the title of *"A Special Legal Correspondent"*.) But if you show that you have had extensive practical experience as a practising lawyer in Northern Ireland courts, I shall certainly publish an unconditional and wholehearted apology.

(I'm sure you appreciate that, with legislation in the pipeline making employment on merit enforceable at law, it is now a matter of great public concern that appointments and job specifications should be seen to match up.)

A secondary point in the article was that you had not taken any course from January 1988 to the end of the academic year. L'Estrange & Brett inform me that your contract specified that you would not take any courses

during the academic year in which you took up your appointment. I shall therefore publish this explanation in the next issue, apologise for any implied criticism of you for the undisputed fact that you did no teaching in the six months after you took up the appointment, and point out that the responsibility lies with your employer.

But I shall also say that it would have been prudent on somebody's part to make this clause in your contract known to the people on the course so that their natural resentment of the fact might have been directed at the party responsible for it instead of at you.

Yours sincerely,
Brendan Clifford.

28TH OCTOBER, 1988
L'ESTRANGE & BRETT,
BELFAST.

Dear Sir,

RE: Our Client - Mrs. Mary McAleese

You are aware that we act for Mary McAleese. We have read your letter of 10th October, 1988. It is clear that you are not prepared to make an appropriate apology.

Accordingly, our instructions are to issue proceedings against you. Kindly nominate Solicitors to accept service of proceedings within the next seven days otherwise we shall serve you direct.

Yours faithfully,
L'Estrange & Brett.

LONDON,
NOVEMBER 8TH.
Dear L'Estrange & Brett,

I have received your letter dated 28 October.

I am not in a position to *"kindly nominate Solicitors"* for the insuperable reason that Solicitors cost money and I have none.

Your client, by effectively interfering with the distribution of the Belfast Magazine, ended the only business keeping me in Belfast. Having returned to London, I am still without a permanent address. As soon as I get one I'll let you know of it so that you can serve your writ.

Your remark that I am clearly *"not prepared to make an appropriate apology"* is puzzling, but I assume it is deliberately so. What I *"made clear"* was that I would correct and apologise for any inaccuracies which were revealed to me. And I indicated that the one inaccuracy I could infer from your letter dated October 28 would be dealt with. If that was not taken to be an indication of willingness to make an appropriate apology, I can only suppose that some legal game is being played in which words do not have a sensible meaning.

Being faced with what seems to be a procedure of studied unreason, I can only await the serving of the writ. I gather that my defence against the allegation of libel can be conducted on legal aid. I shall therefore get you an address to serve the writ at as soon as possible, and thereafter hand the matter over to Solicitors.

Yours,
B. Clifford.

APOLOGY

An article in the August/September issue of *A Belfast Magazine* commented on the fact that Mrs. Mary M'Aleese did not, in the year of her appointment, carry out the teaching duties which, as Director of the Institute for Legal Professional Studies, the students were expecting from her.

While this fact is not in dispute, we have been informed by Mrs. M'Aleese's Solicitors, Messrs. L'Estrange & Brett, that responsibility for it lies with Mrs. M'Aleese's employers, who agreed to it as a term of her contract.

We therefore apologise to Mrs. M'Aleese for any suggestion of negligence on her part in this matter.

At the same time we must observe that, especially because of the controversy surrounding the appointment to this post of a politician from another state, it would have been prudent (to say the least) if the students had been made aware of why the new director was not in the year of her appointment giving the attention which her predecessors had done.

Having been made aware of no other inaccuracy in the article in question, there is nothing else that *A Belfast Magazine* can apologise for.