

# ECHR Series B: Pleadings, Oral Arguments, and Documents

1960-1961

"Lawless" case

REPORT OF THE COMMISSION

APPLICATION NO. 332/57

Oral hearing of 17th to 19th April 1959

The Sub-Commission took a decision on 24th March 1959 the relevant part of which was as follows:

"... Having regard to the Pact that the Applicant claim in the present case is for an award of damages by way of substantial compensation for the alleged breach of the Convention, the Sub-Commission is called upon to establish all the facts relevant for the determination of the question of compensation, should the occasion for such a determination arise. In this connection the Sub-commission desires to obtain further information from the Parties on the points:

(4) whether or not the Applicant, in July 1957, had in fact ceased to be a member of an illegal organisation and ceased all activities in support of such organisation; and (5) whether or not the Applicant acted unreasonably in refusing on 11th July 1957 to sign an undertaking to respect the Constitution and laws of the Republic of Ireland and in continuing, until 11th December 1957, to refuse to sign any undertaking with regard to observance of the law.

The Sub-commission, furthermore, notifies the Parties that it desires, in particular:

(a) on the fourth point, to put questions to the Applicant and to Detective-Inspector P. McMahon and to hear their statements; (b) on its fifth point, to put questions to the Applicant and to hear his explanations; and that, in accordance with Rule 54, paragraphs 2 and 3 of the Rules of Procedure, the reasonable expenses of the Applicant and Detective-Inspector McMahon in connection with their appearance as witnesses before the SubCommission will be reimbursed to them.

The Sub-commission accordingly invites the Parties at the oral hearings on 17th and 18th April to submit any further observations which they may wish to make on the two points mentioned in the preceding paragraph and further invites:

(A) the Applicant to present himself before the Sub-commission on 17th April for the purposes set out in (a) and (b) of the preceding paragraph, and (B) the Government to arrange for Detective-Inspector McMahon to present himself before the Sub-Commission on 17th April for the purpose set out in (b) of the preceding paragraph.

The Sub-commission also invites the Parties to clarify or amplify any other points in the case which they may deem necessary, always bearing in mind, however, the considerable amount of information and argument which has already been submitted to the Commission and Sub-Commission in the previous written and oral pleadings.

Finally, the Sub-Commission wishes to point out that, in accordance with Article 33 of the Convention and Rule 26 of the Rules of Procedure, hearings of the Commission and the Sub-Commissions and all other proceedings in the case are secret. Failure to observe the secrecy of the proceedings may compromise the satisfactory working of the Commission and SubCommission? . For first part of this Decision see paragraph too above.

128. Both witnesses appeared at the oral hearing, and the Applicant first made a statement and answered questions put to him by the President and members of the Sub-Commission to the effect:

(a) That he was not a member of any illegal organisation in 1957.

He had ceased to be a member of I.R.A. and of the minority group in December 1956, and he had demonstrated this simply by dissociating himself from the organisation and its activities.

His membership of I.R.A. had been for idealistic and patriotic reasons, but he had ceased to be a member as he decided that it was not getting sufficient support from the Irish people in order to achieve its aim and also that the ending of partition was first and foremost a job for the Government. He had joined I.R.A. about the beginning of January 1956, but did not take an oath or join for a specific period. He had taken a simple pledge to obey orders after a short course in a recruit class.

(b) That he had been arrested on 14th May 1957, at the corner of Ballybough Road in Dublin by Detective-Sergeant O'Connor.

He had then said that he "was not in anything now" by which he meant that he was not a member of any illegal organisation.

He was subsequently charged with membership of an illegal organisation and acquitted, but was convicted and sentenced to one month's imprisonment on a charge of being in possession of incriminating documents. He agreed that, in respect of his conviction, he then had a legal remedy by appeal to the Higher Court.

The document found in his pocket at the time of his arrest was a document which he was trying to dispose of when, twenty minutes previously, he had seen Irish police cars in front of his house. He had kept this document since 1956 in a suitcase and it related to a projected operation about that date. He had not been questioned about that particular document at the subsequent hearing in court.

(c) That, in 1957, he was prepared to give the undertaking which in fact he gave later to the Attorney-General. He did not have a real opportunity to do so until the proceedings before the Detention Commission.

(d) That, when he was arrested, he was embarking for England to get employment. He had not written to any firms but had got addresses of Catholic hostels where he could stay.

129. The Applicant then gave the following replies to question put to him by the Attorney General.

(a) That he first objected to the Irish Constitution on religious grounds in the spring of 1954. This was the result of lectures by Professor Father Fahey which

criticised Article 44 of the Constitution. When he took the oath of loyalty as a soldier of the Reserve of Men, he was not aware of any inconsistency. He was 17 years old and did not know that internment without trial existed.

(b) That he had broken away from the main body of I.R.A. in June 1956, but did not wish to give any information about the period of his membership.

(c) That he admitted that he had taken part in September 1956 in an armed raid within the Government jurisdiction when guns were stolen, but that only three guns were fit for military service, namely an Enfield rifle, Thompson sub-machine-gun and .45 revolver. He had been subsequently acquitted by the Central Criminal Court on a charge in this connection.

(d) That his exact words to the Dublin District Court in May 1957 were "whether the judge, the Senior justice, realised or not that the Special Branch were using the process of the Court to protect the last remains of the British Empire in my country".

(e) That, when charged with possession of incriminating documents, he had not offered the explanation that he was about to throw one document away as he was clearly guilty of possession, having had the document since 1956.

(f) That between his release and 11th July 1957, he did not avoid the police but was living at home. He had wholly abstained, since his release, from all activities in support of illegal organisations or those engaged in illegal activities. Admittedly, he had been a frequent visitor at 39 Mary Street, Dublin, which was the office of an organisation for the relief of political prisoners in any part of Ireland. He had been active in organising such relief.

He was not a member of Fianna Eireann in February 1958.

On 22nd June 1958, he had taken part in a commemoration ceremony at Bodenstown which he thought was organised by Fianna Eireann (which was a Boy Scout organisation), but he had not marched in military formation with Sean Geraghty.

He had heard of Saor Uladh, which the Attorney-General alleged was a militant organisation, but did not know if a man called Kelly was the leader. The Courts had decided that it was a legal organisation and he did not know if it had met at 39 Mary Street.

(g) That Sean Doyle was a friend of his and was awaiting trial on a charge of intimidating witnesses. The Applicant admitted that on one occasion he had attended court during proceedings concerning that charge, Doyle being a friend of his. He had read in the newspapers that the charge against Doyle was connected with another case regarding the use of firearms.

(h) That on 17th March 1958, (St. Patrick Day) neither he nor his friends had attempted to interfere with a parade in O'Connell Street, Dublin.

(i) That, in regard to the Court proceedings in May 1957, he had not refused to recognise the Court but had himself taken part in the proceedings and cross-examined the State witnesses.

(j) That Liam Walsh, Sean Geraghty and Joseph Chrystle were also put on remand the same day but were not in

the dock with him. As far as he knew, they were at the same time sent for trial to the Dublin Circuit Court on the charge of armed robbery of explosives at The Swan.

In Mountjoy Prison he shared a cell with Sean Geraghty and Liam Walsh at the orders of the Prison staff and not of his own choice. He had not refused to be put in A or B wings but had in fact been put in C wing, which was the remand wing, while B wing was apparently for convicted members of I.R.A. Chrystle was in the same wing in an adjoining cell. He associated with those three men and with certain others who could talk about current topics. He objected to stating whether any of the three men were members of the minority splinter group. Doyle was not a member of any illegal organisation.

He did not know who took part in the armed raid on the premises of Messrs. Fleming at The Swan at Athy.

(k) That, on the night of his arrest, Inspector McMahon asked if he was prepared to give information as to the location of arms and ammunition. The Applicant had said that he had no such information and resented being considered as a possible informer.

He was also asked to give information about I.R.A. and was offered money and work in Ireland or in England if he did so. He did not reply to Inspector McMahon that he would like to think this over during the night.

He had not been asked to dissociate himself from the splinter group. He repeated to Inspector McMahon that he was not a member of any illegal organisation. Superintendent Gill, Detective McArdle and another detective officer were present.

In the course of the Applicant deposition, the Attorney-General declared that there could be no question of criminal proceedings against the applicant in respect of any statements made by him before the Sub-commission.

130. The Applicant freely answered questions put to him by his own representatives to the following

(a) That he swore an affidavit on 10th September 1958, and three others on 18th September 1957, 8th November 1957 and 16th June 1958. The statements in these affidavits were correct, and that of 10th September 1958 and one other affidavit concerned his interview with Inspector McMahon.

(b) That on 10th December 1957, he gave an undertaking before the Detention Commission as follows: "I hereby undertake that I shall not take part in any activities that are illegal under the Offences against the State Act". He had not been asked before that date to give an undertaking in that form, either verbally or in writing. He had been asked on 16th August 1957, to sign an undertaking as follows:

"I (giving the name) undertake to respect the Constitution of Ireland and the Laws and I declare that I will not be a member of or assist any organisation that is an unlawful organisation under The Offences Against the State Act."

The Applicant had objected to the word respect, which he considered to mean love, honour and obey

(c) That the organisation at 39 Mary Street was the Political Prisoners Dependents Organisation which, before

Christmas 1958, had obtained a licence from the Irish Courts to run a charity lottery. Fianna Eireann was not an illegal organisation but purely a Boy Scout organisation. The Bodenstown celebrations concerned Wolfe Tone, who was commemorated by the State Army and several political parties....

(e) That, after his release from the Internment Camp, he was unemployed for two months and then obtained employment on 17th February 1958, at Doran Bakery in Dublin. He worked there until 2nd August 1958, and was put on short time employment.

He then went to England and was employed in the Central London Bakeries, Mackenzie Road, London. He stayed there about a month, and then returned to Dublin and got his job back at Dorans Bakery, where he was still employed at £10.10.0 per week. His father was dead and he gave his mother about £5 per week.

He handed in a copy of a periodical called FIAT which was the journal of a Catholic organisation called Maria Duceand which set out the objections of Catholic social policy to Article 44 of the Constitution.

131. Detective-Inspector .McMahon then gave evidence and replied to questions put by the President and members of the Sub-commission to the following effect:

(a) That he had received confidential information in May 1957, that the Applicant had been one of a number of members of the splinter group who had taken part in armed raids at Moorestown on 12th January 1957, and at The Swan on 6th May 1957.

On 14th May, the Applicant was accordingly arrested with nine other suspected members. He was then in company with two members of the splinter group and was found in possession of an incriminating document. Two of the suspected men, one of whom was Geraghty, were identified in an identification parade at the Bridewell.

He had arrested the Applicant as a result of confidential information concerning his connection with the raids on the two magazines and not because he was suspected of carrying incriminating documents. He did not know of the Applicant explanation as to the document.

The Applicant, when consequently charged in the District Court, stated that he refused to recognise the authority of the Court.

He alleged that he had been ill-treated and, when sentenced, stated "The Court is here to safeguard the remnants of the British Empire". He had been fingerprinted in the Bridewell against his will but was not ill-treated.

(b) That the Applicant, when serving his sentence of one month imprisonment in Mountjoy Prison, chose to share a cell with Geraghty and Walsh. He was released on 15th June and confidential information showed that he continued his close association with the activities of the splinter group.

(c) That the Applicant was arrested on 11th July 1957, as a result of information that he was going to England to escape arrest, and taken to the Bridewell; that at 4.20 p.m., with Inspector McArdle, he interviewed the Applicant in his cell. He asked the Applicant if he was willing to hand over the arms in his possession which belonged to the splinter group and to dissociate himself

from the I.R.A. and illegal organisations. He also asked the Applicant if he would sign a form of undertaking, but he did not produce A written form. As far as he remembered, he had asked the Applicant to sign an undertaking to "uphold" (not to "respect") the Constitution.

The Applicant had refused and he had then asked him to give a verbal undertaking. Such undertaking was sometimes accepted by the authorities. The Applicant had again refused.

He next asked the Applicant if he was willing to give information concerning the splinter group in return for money. The Applicant seemed interested, and the conversation was amicable although the Applicant told him that he was going to be shot. He had not taken the Applicant threat seriously. The Applicant said that he would consider overnight his offer of money. On 12th July, the Applicant told Inspector McArdle that he would have nothing to do with that offer.

He had not specifically asked the Applicant if he was a member of an illegal organisation, as the whole discussion was on the basis that he was a member.

(d) That in Mountjoy Prison the Applicant could have elected to go to the official I.R.A. section or to the criminal section, where he would have got a remission of sentence, but he preferred to stay with his own group. This right of election was perfectly normal but would not appear in the prison records.

(e) That the Applicant, after the Act of 1940 came into force on 8th July, was attempting on 11th July to run away, as was known through confidential information.

132. Detective-Inspector McMahon then made the following replies to questions put by the Applicant's representatives and also by the President and members of the Sub-Commission:

(a) That it was the first time that he had been accused of ill-treating a prisoner and he had made a report.

(b) That he could give no particular reasons for not mentioning in his affidavit that he believed the Applicant on 11th July 1957, to be a member of an illegal organisation. An admission to that effect by the Applicant would, of course, have been the best evidence of this, but there would not have been any likelihood of such an admission being made. His interview with the Applicant was on the basis of his membership of an illegal organisation, and it would have been ridiculous to have asked him if he was a member. The Applicant at no time said otherwise.

He did not take very seriously the Applicant threat that he, the witness, would be shot. He had made a report on about 25th September of the interview with the Applicant, which he produced.

He had not mentioned in the report either the Applicant threat or his admission, direct or implied, that he was a member of an illegal organisation. His report had been made in September...

(c) That the Applicant had not been arrested only on his advice as the authorities had other sources of information.

(d) That the Applicant had the right to, and did in fact,

elect in Mountjoy Prison to share a cell with Geraghty and Walsh.

In the last two years much latitude had been given to political prisoners in that respect. He, Inspector McMahon, was not a member of the prison staff but had got his information from Mr. O'Donoghue, the Deputy Governor.

133. Detective-Inspector McMahon then made the following replies to questions put by the Attorney-General and also by the President and members of the Sub-commission:

(a) That the information of the police was that the Applicant, following his release by the Court, had continued his activities with the splinter group which had been fused with another subversive organisation called Fianna Uladh. His constant associates were Geraghty, who had been found in possession of a quantity of explosives and sub-machine-guns, and Doyle who had been newly arrested. They had sometimes met at Mary Street where genuine meetings of the "Prisoners' Dependents Fund" were also held. The police had taken no action in regard to the activities at Mary Street.

The information as to the Applicant complicity in the two armed raids came from a reliable source, and stolen ammunition was found in the house of one of the people similarly indicated.

The police had occasionally put a watch on the Applicant but he had taken care to conceal his activities.

(b) That the Applicant at the age of 16 had joined Fianna Eireann. In 1955 he joined I.R.A. and was again organising the splinter group of Fianna Eireann, which was not recognised by the official Fianna Eireann, being a boys' organisation. The Applicant visited the Dublin mountains where senior boys of Fianna Eireann were allegedly taking part in military exercises. There had been disputes between the two sectors of Fianna Eireann, and the Applicant had asked at the headquarters of the official body that their "boys" should be kept away from his "boys".

134. The representative of the Applicant, Mr. MacBride, then submitted as follows:

(a) That all Inspector McMahon evidence was "hearsay" or "hearsay upon hearsay" except as regards the interview on 11th July 1957, and the events in the Bridewell Prison in May 1957.

As to the 11th July interview, Mr. MacBride thought that there were three salient matters: (i) that Inspector McMahon offered to take a verbal undertaking in a modified form from the Applicant, (ii) that the Applicant had given him the impression that he would consider the offer of money to become a police agent, (iii) that the Applicant told Inspector McMahon that he would be assassinated.

Inspector McMahon swore an affidavit on 24th September 1957 in which he made no mention of those matters, although they were relevant to the application for Habeas Corpus, particularly as regards the Minister decision in ordering the Applicant imprisonment.

Inspector McMahon also made a report on 25th September 1957, in which he made no mention of the threat to assassinate him and also stated that he had

offered the Applicant not money, but work.

(b) That no reference had been made in any of the Government written pleadings, until the Counter-Memorial of 12th January 1959, which was after the decision on admissibility, that the Applicant had directly or indirectly admitted to Inspector McMahon, on 11th July 1957, that he was engaged in illegal activities.

(c) That Inspector McMahon had in his evidence repeated two accusations as to armed raids which had been made against the Applicant before the Detention Commission, but the Applicant had never been charged or tried for these matters. Similarly, if, on 11th July 1957, he had admitted membership of an illegal organisation he should have been charged and tried by the Irish Courts. This had not taken place.

During the Applicant cross-examination, he was never asked about the two armed raids at Moorestown and The Swan and had therefore no opportunity of replying to those accusations. The Attorney General had also confused the dates. It was 28th May and not 16th May 1957 when the two other men were on trial in the District Court for participating in The Swan raid.

(d) That Inspector McMahon, in his evidence as to the events in the Bridewell Prison on 14th and 15th May 1957, said that there had been no force used on the Applicant. The latter, in his affidavit of 10th December 1957, concerning the proceedings before the Detention Commission, stated, on the other hand, that Chief Superintendent Carroll had alleged that the Applicant had made false accusations of ill-treatment by the police. Inspector McMahon, according to the press reports, had said before the District Court that: "There was not very much force used at all... That is not a true account (by the Applicant). He is exaggerating". The Respondent Government had been misinformed by the police as it had stated in the Memorial that the police had enquired at the hospital and that the Applicant had not been treated there for injuries. Hospital records had now been produced on behalf of the Applicant.

The Respondent Government had been invited to produce medical records from Mountjoy Prison to show that the Applicant had a black eye.

(e) That the Respondent Government had tried to establish not that the Applicant had taken part in any illegal activities but that he was guilty of taking part because of his association (i) with the Bodenstown commemoration. All political parties attended this and any such presumption regarding his attendance was far-fetched; (ii) with Fianna Eireann. This was simply a Boy Scout organisation; (iii) with the Prisoners' Dependents Fund. This was an authorised and charitable organisation. Association with it, although possibly indicating sympathy with political prisoners, should not prejudice the Applicant.

(f) That, as to the question of the Applicant membership of I.R.A., nothing had been put to him which displaced his categorical statements that he had ceased, at he end of 1956, to be a member of any illegal organisation. An Irish Court had acquitted him of such a charge and the Commission was bound by that decision.

The Court had convicted him of possession of an incriminating document but the Applicant had now explained why he still possessed that document and he had not been challenged.

Inspector McMahon had produced no evidence to show that the Applicant was still a member at that period. He had referred to the reports of police informers but these were not always reliable.

The decision in the case of Jencks against the United States was to the effect that the U.S. Courts could not rely upon undisclosed police evidence.

(g) That, as to the question of the Applicant refusal to sign an undertaking to "respect the Constitution", it should be pointed out that the Applicant, as appeared in his affidavit of 21st February 1958, had been asked orally, not in writing, to sign an undertaking to "respect the Constitution" and not "to observe the law". He had stated in his evidence that he would have been ready to sign the latter form of undertaking. The Applicant stated that he did not esteem the Constitution and this was a view shared by very many people in Ireland.

Further, there was no law or sanction, or other procedure prescribed by law as under Article 5 of the Convention, which required a person to sign an undertaking in order to obtain his freedom. The Courts could effect this by binding a person "to the peace and to be of good behaviour" but this was due process of law and not an arbitrary function. There were two cases (Kent v. John Foster Dulles and Briehl v. John Foster Dulles,) in which the U.S. Supreme Court decided that regulations, under which the Secretary of State could require an applicant for a passport to swear an affidavit disclaiming membership of the Communist Party, did not delegate that power to the Secretary of State. If it was not permissible under the rule of law to compel a person to sign an undertaking to secure a passport, it was a fortiori not permissible to impose such requirement as a condition of liberty.

The right to liberty was absolute and not subject to any test of "reasonableness" regarding the Applicant refusal to sign such undertaking.

135. The Attorney-General then made his observations on behalf of the Respondent Government. His submissions were as follows:

(a) That Inspector McMahon had not mentioned in his affidavit of September 1957 the implied admission of the Applicant during the interview of 11th July 1957 that he was a member of the splinter group, as the High Court had decided in 1940 that any question other than the existence of the Ministers' opinion was irrelevant in proceedings concerning a warrant of arrest issued by a Minister under Section 4 of the Act of 1940.

(b) That the suggestion was untrue that the Government had concealed information about the Applicant attendance for medical treatment at Jervis Street Hospital. The matter was insignificant, but the police had found an entry of a man called Lawler of a different address in the hospital records while the record card had not been made available to them.

(c) That, as regards the commemoration ceremony at Bodenstown, the Applicant had been asked whether he had attended as a member of a splinter group. The Applicant said he had been there under the organisation of Fianna Eireann. Fianna Eireann was a youth organisation founded in 1909 and associated with republican activities, today there was a splinter group of the organisation engaged in military activities with the

"concurrence" of the Applicant.

(d) That Saor Uladh (Free Ulster) was a military organisation which, although not declared unlawful, was by reason of its activities in Ireland in fact unlawful as were other organisations of a similar character.

(e) That, as regards the question whether the Applicant had ceased, in July 1957, to be a member of the I.R.A. or the splinter group, the fact of his acquittal of such membership in May 1957, did not, as was suggested, bind the Sub-Commission. The Applicant had been a member in 1956 and had left the main organisation about June 1956. He admitted taking part, when a member of the splinter group, in the larceny of firearms from the house of a man named Fowler, and was acquitted on technical reasons on a charge of being found in possession of firearms in County Leitrim. It was not until December that he said he had had a change of heart and dissociated himself from the group.

It was true that, on the occasion of the raid at The Swan on 6th May 1957, the only evidence available to the Government was that Inspector McMahon had confidential information that the Applicant took part in the raid but was not identified. Similar confidential information had been correct in the cases of Geraghty and Chrystle, who were later identified. This was hearsay evidence, but international tribunals were not bound by the same rules of evidence as domestic courts and should attach much significance to it.

(f) That, when charged on 16th May 1957, for being in possession of an incriminating document, he did not take the obvious course of giving the explanation he had now given to the Sub-Commission but, as Inspector McMahon had stated, challenged the right of the Court to try him as a soldier of the Republic.

He had denied this now before the Sub-Commission but had never done so in any written pleading. The map found in the Applicant pocket was undated, but the document which he left at home and which was of a more incriminating nature was dated 1956. Nothing suggested that the map was of 1956 date.

(g) That, as to his acquittal on 16th May 1957, the District justice may, as was often the practice, have acquitted him of being a member of an illegal organisation because he had already convicted him on another charge, namely that of possession of an incriminating document.

(h) That the Irish Times of 3rd July 1957 reporting the trial of Chrystle and Geraghty, contained the following statement of Geraghty: regardless of the consequences that may happen here I will return to that place and continue the fight against the army of occupation in Northern Ireland." It then added: "District Justice O'Flynn said that he would dismiss the charge of being a member of an illegal organisation as the evidence did not support a conviction on that charge." This appeared to be a freak decision unless the Court decided not to regard Geraghty statement from the dock as evidence.

(i) That, as regards the Applicant imprisonment in Mountjoy Prison, the Governor report of 2nd January 1959 stated that the Applicant associated at his own request with Walsh, Geraghty and Chrystle in "C" block. There were no contemporary reports.

The Applicant had now been asked whether he wished to

say if these men were members of the organisation, which by their activities they clearly were, and had answered "in a strange fashion" from which the Sub-Commission was entitled to make a very clear deduction. He refused to reply in regard to Chrystle, Geraghty and Walsh but stated that Doyle was to his knowledge not a member of any illegal organisation.

He associated with those three men in prison and there could be no stronger evidence of his continued participation in such illegal activities.

(j) That the Political Prisoners' Fund had applied for a lottery licence in December 1957. Mr. Sorahan, junior Counsel for the Applicant, had supported that application and said that the Fund had no written constitution, though the Applicant stated that its constitution denied membership to any member of an illegal organisation.

(k) That, as to the Applicant refusal to give an undertaking, he now stated that he had conscientious objections which he had not mentioned at the time to Inspector McMahon. In regard to his objection to Article 44 of the Constitution on religious grounds, the Constitution could not give rise to any reasonable objection on such grounds. If he had indicated his objections, the authorities would have doubtless met them, but it was not until 10th December 1957 that the Applicant had said, in reply to a direct offer, that he was prepared to give an undertaking as to his future conduct.

(l) That, as to the incident on 16th May 1957, there was a report in the Irish Times of 17th May 1957. There was also a photograph of the Applicant leaving court with a police officer.

136. In reply to the observations made on behalf of the Respondent Government, Mr. MacBride made the following submissions:

(a) That, in regard to the allegations of the Applicant participation in raids at The Swan and Moorestown and in illegal activities since his release, no questions were put to the Applicant and no direct evidence had been submitted to sustain those allegations. The Respondent Government had made these unfounded allegations in order to prejudice the Sub-commission.

(b) That the Respondent Government had not referred to the United States cases cited by him and had, therefore, presumably accepted his propositions concerning them.

(c) That, as to the trial of Chrystle and Geraghty before the Circuit Court on 29th May 1957, the newspaper reports showed that the accused had not been definitely identified and that the judge directed the jury to acquit them. The "Report of the Commissioner of Police for 1957 stated that:

"At the Circuit Court both were acquitted by direction of the judge through lack of satisfactory evidence of identification". Chrystle was released and was in State employment.

(d) That Saor Uladh could have been declared illegal if the Government considered it as such. This could have been done by a "suppression order" under the Act of 1939. Ex-Senator Kelly, with whom the Applicant was alleged to be in association, had never been interned and addressed meetings throughout the country.

(e) That the alleged I.R.A. manifestoes contained in

Schedules 5 and 6 to the Respondent Government Observations of 12th January 1959, were dated respectively 12th December 1956, namely after the Applicant had left I.R.A., and August 1957 namely when the Applicant was interned. They could not, therefore, be held against him.

(f) That the Applicant when in prison was ostracised by the I.R.A. prisoners as was mentioned in the Governor letter and Inspector McMahon report.

(g) That, in regard to the "beating up" of the Applicant at the Bridewell (Prison) on 15th May 1957, the Respondent Government had stated in its memorandum of 25th March 1958 that a police investigation had disclosed no record of the Applicant attendance at Jervis Street Hospital. It later stated that the record was of the wrong name and address but the mistake was slight and should not have prevented identification. The doctor concerned had been cross-examined at length by the police and had lodged the index card with the solicitors of the Medical Protection Council in order that the police should not remove it. The facts appeared from the Hospital Register and Medical Index card.

(h) That there had been several misleading statements by the Respondent Government. The newspaper reports did not support the allegations that the Applicant had challenged the jurisdiction of the Court on 16th May 1957, but he had done so, as he had stated, in October 1956.

(i) That it had also been alleged that the Applicant had been discharged, in writing by registered post, on 13th December 1956, from membership of the Defence Forces. That was untrue as the envelope had been wrongly addressed and had been returned, with the letter to, and kept in the files of, the Department of Defence.

(j) That the Applicant did not accept the contents of the letter signed by the Governor of Mountjoy Prison on 2nd January 1959, dealing with events in May 1957. That letter stated that on 23rd May 1957, the Applicant asked to see a solicitor with a view to bringing an action against Inspector McMahon in regard to his having been "beaten up". The letter further stated:

"I asked him to put his application in writing and he said he would, but eventually he let the matter drop, on the advice, I was given to understand, of Chrystle." He challenged the Government to produce the prison records showing that the Applicant had a black eye when he arrived at the prison. This was a matter which affected the credibility of the two witnesses and, according to the known facts, the Applicant had on 16th May 1957 made a charge in open court that he had been "beaten up" under the supervision of Inspector McMahon. The latter had now stated that the Applicant was "exaggerating".

Some days later, the Applicant asked to see a solicitor in order to start an action.

In July, after being arrested, he refused Inspector McMahon offer to become a police agent and had been, therefore, considered sufficiently reliable for that task. It might be that his consequent imprisonment was a result of his refusal.

137. The Attorney-General stated in his turn as follows:

(a) That, as regards the Chrystle and Geraghty cases, the depositions in the District Court showed that his

submission as to the evidence of Kelly and Nash was correct.

(b) That, as regards the Discharge Certificate, it had been returned to the Department of Defence, as the Applicant had left his previous address and it had later, at his solicitor request, been forwarded to him or his solicitor together with the original letter and envelope in order that he might be fully aware of the facts.

(c) That, as regards the alleged "beating up" incident, the matter was not material to these proceedings. Inspector Mach/lahon had denied it on oath. The photograph of the Applicant hardly showed a man suffering from serious assault about which he had just been complaining. The address and name in the hospital records were not those of the Applicant, and the index card could not be seen or obtained by the Government representatives.

(d) that he wished to put in the depositions in the District Court as to the Chrystle and Geraghty cases.

In regard to these last observations, the Agent for the Applicant, with the permission of the President, stated that he wished to put in newspaper reports concerning the Chrystle and Geraghty trial, as the Attorney-General had put in the deposition concerning that trial. As regards the photograph of the Applicant, there was a date on the back of August 1957. Inspector McMahon had recently certified that it had been taken on a certain date in 1957, but it was submitted that it had been taken on another date. He also replied to a question put by a member of the Commission that detainees, on the day after their arrival at the camp, were given a copy of Section 8 of the Act of 1940 which set up the Detention Commission.

The Commission, according to the Attorney-General, had first been set up on 16th July 1957.