

I

There are few figures in Irish history that excite and command as much debate and controversy as Roger Casement. He remains at the centre of public discourse largely because he embodied in one life so many different and seemingly contradictory personalities.

We have in this one man many and varied characters; Casement the International Humanitarian; Casement the British Empire Diplomat; Casement the Avowed Enemy of the British Empire; Casement the English King's Grateful Knight; Casement the Hohenzollern Pawn; Casement Born of Landed Gentry; Casement the Irish Revolutionary; Casement the Edwardian Liberals' Moral Hero; Casement the Low-Life Homosexual; Casement the Victim of Dirty Tricks; Casement the Creator of His Own Myth; Casement the Victim of Crown Injustice; and Casement the Irish Martyr.

His trial and the appeal on charges of High Treason at the height of the Great War were clearly thought at the time to be a very major event in English legal history, meriting depiction in Lavery's great canvas now in Kings Inns and the immediate publication in book form of a comprehensive account of both proceedings which was obsequiously dedicated jointly to the presiding judges at the trial and appeal.

Casement's trial and execution did not bring its intended end to his standing as an historical figure.

Far from bringing down the curtain of history on his life, the hangman's lever launched Roger Casement into more than one kind of immortality; he instantly became the unquenchable object of passionate inquiry, speculation and debate.

Far from being an ignominious place of punishment for treachery, the gallows at Pentonville instead became a stage on which the character of Roger Casement still treads the boards with all the dramatic fascination of Hamlet, and, I think, he will always do so.

Like Hamlet, we also have Casement the tortured soul.

His papers show him to have been, by turns, idealistic, vainglorious, sensitive, naïvely optimistic and frequently despondent.

His friends and acquaintances admired him almost to the point of idolising him; few if any could see far into his secret, darker and more private world.

If Casement was ever on intimate terms with anyone other than himself, we have no record of it. His poetry, perhaps, is the one window into his inner nature and self-image.

In the end, each of us is left at liberty to imagine and even to judge his real character as we choose.



To understand the context and significance of the Casement trial, it is necessary to briefly describe his upbringing and career up to 1914.

Casement was born into the family of an impoverished Anglo-Irish ex-officer living in Sandycove, Dublin, and later in England. After his father's death, he was educated on the fringes of the families of wealthier relatives in County Antrim.

Leaving school at 16 to work as a clerk in a shipping company, he eventually was employed by the African International Association which acted as the means whereby King Leopold of the Belgians established and exploited a personal colony in the vast Congo basin as part of the European carve-up or the Scramble for Africa.

Casement later joined the British Colonial Service and was commissioned to write a report on human rights abuses of the Congolese natives under the cruel personal regime of Leopold. His report, when published, gave rise to international outcry and led to the transfer of ownership of the Congo from Leopold personally to the Belgian state.

Later, he was posted to South America where he eventually wrote yet another report into appalling human rights abuses, this time by a British-registered enterprise, of the Amazon's Putamayo Indians.

The Liberal government in England, with a slight conscience over its own imperialism, feted and decorated Casement for these reports, making him a Knight in 1911.

Casement, however, had in the meantime fallen totally out of sympathy with the British Empire. He had joined the Gaelic League in 1904 and Arthur Griffith's Sinn Féin in 1905. His youthful romantic view of Ireland was transformed into a strong commitment to the cause of self-government for Ireland.

In 1913, having just retired from the Consular service, he became involved, with Eoin Mac Néill in the establishment of the Irish Volunteers, although neither of them was in the IRB. He played a major part in organising the Howth gun-running and went in July 1914 to the US to raise money for the Irish Volunteers.

Taking the view that the recently started Great War was an Allied injustice against the Germans, in October 1914 Casement travelled, at the request of veteran Fenian, John Devoy, from America to Christiana, the capital of the neutral, recently independent Kingdom of Norway, and from there to Germany to obtain the Kaiser's support for the cause of Irish independence.

By now Casement was under very close surveillance by the British secret services while in America. At one point, by irony, he was being trailed both by private detectives hired by the IRB to verify his bona fides and by British agents.

Prior to his departure from America, Casement had written a formal letter to the German Emperor seeking Germany's support for Irish freedom. In the course of that letter he said the following:

"Hoping as we do that Germany will win this war so unrighteously forced upon her by a combination of assailants each lacking the courage to act alone, we earnestly commend to Your Majesty's attention this fundamental fact that to restore the equilibrium of sea power so grievously injured by Great Britain, to the detriment of the whole world since the Napoleonic Wars, Ireland must be freed from British control.

While the fortune of war may not bring German troops to Ireland, the hearts of thousands of Irishmen go out to the German shores today. Thousands of Irishmen are prepared to do their part to aid the German cause, for they recognise that it is their own. ...

On these grounds alone, did not natural sympathy and admiration for a people fighting against such heavy odds lead us to address Your Majesty, we should hope for a German triumph over an enemy who is also our enemy. We pray for that triumph for Germany; and we pray with it Your Majesty may have power, wisdom and strength of purpose to impose a lasting peace upon the seas by effecting the independence of Ireland and securing its recognition as a fixed condition of the terms of final settlement of the great maritime powers."

That letter was signed by the entire executive of Clann na Gael in America.



There is one particular incident in late 1914 that has an important bearing on the later trial of Roger Casement. En route to Germany in his pursuit of German assistance for the Volunteers, Casement travelled under a false name accompanied by his man-servant and occasional sexual partner, Adler Christensen, aged 24 and from Norway. British intelligence was trailing Casement from America to Norway.

Christensen, a manipulative character, either contacted or was contacted by the British legation in Christiania. His loyalties are unclear and were probably mixed and possibly for sale. He was, on Casement's account, promised £5000 by the British to have Casement "knocked on the head".

During the negotiations with Adler Christensen, the British Minister in Norway, one Mansfeldt de Cardonnell Findlay, learned that Casement and Christensen were sexual partners. Findlay also obtained corroboration of Casement's homosexuality from other Norwegian sources. He passed this information onto the Foreign Office in London in late 1914.

The plot to kill him became an obsession with Casement, who called it “the Findlay Affair”.

Fearing that he would be eliminated by the British in Norway, Casement expedited his departure for Germany via Copenhagen under German escort.

Once in Germany, he set about dealing with their Foreign Office, proposing the establishment of an Irish Brigade and a declaration of German intentions in relation to Irish independence.

He then sought evidence of the Findlay Affair, and arranged that Adler Christensen would obtain a written offer of £ 5000 signed in Oslo by Findlay for his capture, and hoped to persuade the Germans to lay a trap for British intelligence to expose their dirty dealings.

All of this was fed by a pre-occupation that his activities in America and Germany would be raised in the Houses of Parliament as proof of treachery.

He composed and circulated an open letter to Sir E Grey (see Appendix 2) setting out his version of the Findlay Affair and ending with a renunciation of his Knighthood. This letter was circulated to foreign Embassies in Berlin.

The letter is notable for two reasons. It would, if produced at his trial, (i) have totally deflated the Attorney General’s opening speech to the jury which placed great emphasis on Casement’s obsequious letter of grateful acceptance of his Knighthood written in 1911, and (ii) would have severely discredited the Crown’s tone of moral outrage by exposing the “dirty dealings” of British intelligence. To try a man for treason in respect of actions taken after the Crown had conspired to murder him might appear a little unjust.

But the letter’s production at trial would, as the letter’s text makes clear, have also constituted a clear written admission in terms of treason.

Unsurprisingly, then, neither side produced the letter to the jury.

This suppression of underlying fact was by no means the only one in the trial of Roger Casement. As we shall see, the version of events given to the jury, both by Casement and the Crown, was at best highly selective and at worst deeply misleading.

Both the prosecution and the accused, for different and opposite reasons, colluded in a process of distorting the facts to suit their several political ends.

IV

We are fortunate that Casement during his period in Germany kept a diary for substantial periods and that he entrusted his papers, including his German Diary, to a third party, a Dr Charles Curry, for safe-keeping immediately before his departure by U-boat for Ireland in April 1916.

The German Diary was clearly written with an eye to posterity. In its pages, we see Casement as a rather excitable and volatile character coping with illness, frustrations, and a growing realisation that the Kaiser's government was dealing with the Irish separatists' project as a diversionary nuisance rather than as a rebellion with German political commitment to bring about an independent Ireland.

Germany, he discovered, was not interested in a military invasion and defeat of the UK or Ireland; it sought military victory on the continent which it hoped would lead to a peace with the British.

Casement describes his first encounter with the German Foreign Office at Wilhelmstrasse in Berlin on Monday 2nd November, 1914. As he waited there to meet Arthur Zimmerman, the Under Secretary of State, he reflected on his mission, and recorded that reflection in the following terms:

"Strange thoughts were mine, as I sat on a big sofa in the centre of policy of the German Empire. No regrets, no fears – well – yes – some regrets, but no fears. I thought of Ireland, the land I should almost fatally never see again. Only a miracle of victory could ever bring me to her shores. That I did not expect – cannot in truth hope for. But, victory or defeat, it is all for Ireland. And she cannot suffer from what I do. I may, I must suffer – and even those near me and dear to me – but my country can only gain from my treason. ...

'Home Rule' must indeed become home rule – and even if all my hopes are doomed to rank failure abroad, at least I shall have given more to Ireland by one bold deed of open treason than Redmond and Co. after years of talk and spouting treason have gained from England. England does not mind the 'treason' of the orthodox 'patriot'. She took the true measure of that long ago. She only fears the Irish man who acts; not him who talks. She recognises only action, and respects only deeds. Those men have killed England with their mouths time and time again – I am going to hit her with my clenched hand. It is a blow of sincere enmity, based on a wholly impersonal disregard of consequences to myself. Sure alone that it is in truth a blow for Ireland, I should be a traitor did I not act as I am doing."

There can be no doubt that Roger Casement subjectively viewed his actions as treasonable towards the United Kingdom of Great Britain and Ireland and towards the Crown. His actions in Germany amounted to a premeditated treason against the Crown and despite the fact that Casement was to grow increasingly disenchanted with the Kaiser's government, Casement never doubted for a moment that his actions would be viewed as treason in the eyes of Britain and that his actions would, in the ultimate, lead him to the gallows if he fell into the hands of the British government.

From the foregoing, it seems clear that Casement never envisaged as a realistic possibility a German invasion of Ireland but strongly believed in a negotiated end to the Great War which would entail the granting of independence to Ireland.

Casement's dual purpose in Germany – (i) to secure German support for an independent Ireland with a view to discouraging recruitment of and participation by Irish soldiers on the British side, and - (ii) the recruitment of Irish prisoners of war into an Irish Brigade which would eventually be used to support the cause of Irish independence – must be judged in the light of his clear statement at his first meeting with Zimmermann that his *“efforts with the soldiers must be strictly defined as an effort to strike a blow for Ireland – not an attempt merely to hit England”*.

Casement pointed out to Zimmermann that *“any Irishman might commit treason against England for the sake of Ireland, but that he would not do anything mean or treacherous. He would put his neck in the noose, as I had done, for the love of Ireland; he would not ‘desert to any enemy’ or forsake his own colours merely to assail England.”*

Some of these themes emerge in Casement's defence at his trial of the charge of high treason put against him. While he could not by way of defence admit that he had engaged in *“one bold deed of open treason”*, and while he could not put in evidence his acknowledgment that he had knowingly *“put his neck in the noose”* for love of Ireland until his speech before sentence, his case was, nonetheless, to insist that his actions had to be judged as being taken for Ireland and not against Great Britain.

Viewed from the perspective of an Irish Nationalist, Casement was drawing a fine distinction between supporting the cause of Ireland in arms and assisting in making war on Great Britain. But from the perspective of the government of the United Kingdom of Great Britain and Ireland, it is hard not to agree with Casement's subjective description of his own actions as *“open treason”*.

Casement's German diaries also make clear his total opposition to the military rising being plotted for Easter 1916 by Devoy, Pearse, Clarke and others. On St. Patrick's Day 1916, Casement reflected on his growing disillusionment with the German government's policy since the 17th of March 1915 in the following terms:

“Even then hope had gone from me- for I realised then, already, that those I trusted here were little to be trusted and that their only interest in me lay in exploiting me, and the Irish cause in their own supposed interests.

Since then a hundred proofs have accumulated – and yesterday the climax came, and as now but little is left I begin, today, a hurried record of things that must be stated in order that some day the truth may be known.

*In three weeks’ time I shall probably be at sea in the maddest and most ill-planned enterprise that the history of Irish revolutionary efforts offers. But it is not of my own choosing, of my planning, or undertaken with my approval. I go because honour calls me to go – and because to stop it now (even if I could stop it) would involve others and perhaps bring greater grief. Moreover by going with the tiny band (twelve men probably) that is to sail on 8th of April I **may** save them – and perhaps Ireland too from a dreadful fate. To stay here, in safety, while those others go would do no good to Ireland – and would leave me a prey to eternal regret.*

*Thus while I strongly disapprove what is being attempted, and so wretchedly attempted with a foregone assurance of failure, I **must** lend it my countenance and accompany the forlorn hope.”*

On that day, Casement’s German diary expresses his profound disillusionment in relation to the planned Rising and the manner in which Germany was making a token offer of support providing 20,000 captured Russian rifles instead of the 200,000 weapons promised to Casement. He described the mission to import those arms to Ireland in conjunction with the Rising as “*stupendous idiocy*”, having “*fundamental falsity*” and destined “*for doomed failure*”.

He also confided to his diary his fear that he himself would be “*held to all ages in Irish history as a ‘traitor’, as the man who, at the moment of destiny, failed his country’s cause and prevented the great German empire from extending ‘military help’ to revolutionary Ireland. My God! Was ever sane man in such a position!*”

On Tuesday the 11th of April 1916, Casement wrote his final entry in his German diary expressing his revulsion at the manner in which he had been treated by the Germans in the following terms:

“My last day in Berlin! Thank God – tomorrow my last day in Germany – again Thank God. An English jail, or scaffold, would be better than to dwell with these people longer. All deception – all self interest – all ‘on the make’.”

V

It was in these circumstances that a sick and demoralised Roger Casement staggered ashore through the surf at Banna Strand in the early morning of Good Friday 1916. His sole aim at that point was to communicate with Eoin MacNeill in the hope of calling off the Rising. After his arrest, he attempted to communicate that message through a priest.

Casement was quickly brought to London and interrogated by officers of MI5, one of whom, Major Frank Hall, had played a central role in the organisation of the Ulster Volunteers and the running of German guns into Larne for the UVF in 1914. In the course of three interviews over the Easter weekend Casement pleaded with his interrogators for an opportunity to communicate with MacNeill to call off the Rising but was refused, being told: *"It's a festering sore, it's much better it should come to a head."*

Thus British intelligence was content to allow the Rising proceed and to keep the civil administrations in London and Dublin in the dark, as they had done in relation to decrypted German telegrams informing Berlin that the Rising was planned for Easter. It suited the cause of the United Kingdom and the Empire, they thought.

On one view, they were successfully undermining their masters' interests in the most thorough-going act of treason. These highly political spys were calmly watching a burning fuse that would destroy the United Kingdom in five years and start the destruction of the Empire itself.

VI

These events, then, form the factual background to the trial of Roger Casement on a charge of high treason. Much has been written about Casement's trial.

E Montgomery Hyde published his excellent account of the trial in 1960 and revised it in 1964.

In addition there are three papers, in particular, which stand out as excellent considerations of the trial proceedings themselves. These are: the paper by **Frank Callanan SC**: *"Between Treason and Blood Sacrifice: the Trials of Roger Casement"*, **Conor Gearty's**: *"The Casement Treason Trial in its Legal Context"* and **Owen Dudley Edwards**: *"The Trial of Roger Casement: a Study in Theatre Management"*. These papers are happily published together in a Royal Irish Academy volume entitled *"Roger Casement in Irish and World History"* edited by **Mary Daly**, first published in 2005.

Taken together with the published proceedings of the trial edited in 1917 by George H. Knott, we have a very full account and expert assessment of Casement's trial from a number of perspectives, technical, political, and historical.

The charge read to Roger Casement by the King's Coroner on the first day of the trial, Monday the 26th of June 1916, was one of High Treason *"by adhering to the King's enemies elsewhere than in the King's realm – to wit, in the Empire of Germany – contrary to the Treason Act 1351, 25 Edward III, Statute 5, Chapter 2"*.

It alleged against Casement that between the 1st of December 1914 and the 21st of April 1916 *"being then ... a British subject, and whilst on the said several days an open and public war was being prosecuted and carried on by the German Emperor and his subjects against our Lord the King and his subjects,"* Casement by *"traitorously contriving and intending to aid and assist the said enemies of our Lord the King"* had *"traitorously adhered to and aided and comforted the said enemies in parts beyond the seas without this realm of England – to wit, in the Empire of Germany"*.

The overt acts of treason set out in the indictment centred upon allegations that Casement had attempted to induce prisoners of war in Germany to forsake their duty and allegiance to the King and to aid and assist his enemies. Curiously one of the overt acts related to the circulation of a recruitment leaflet of the Irish Brigade which included the following sentence: *"The object of the Irish Brigade shall be to fight solely the cause of Ireland, and under no circumstance shall it be directed to any German end."*

The evidence adduced at the trial clearly demonstrated that Casement had attempted to create an Irish Brigade in Imperial Germany by recruiting prisoners of war in the service of the King to take part in a military force to be deployed in support of Irish independence.

The Lord Chief Justice in his summing up to the jury directed them as to the meaning of adhering to the King's enemies. He said that giving aid and comfort to the King's enemies included the act of any British subject which strengthened or tended to strengthen the enemies of the King in the conduct of the war against the King. He stated that that included acts which weakened or tended to weaken the power of the King and of the country to resist or to attack the enemies of the King. The test, he said, was:

"Were the acts done such as would strengthen the German Emperor or such as would weaken His Majesty the King?"

He added:

"It does not need a very vivid imagination to see that if Germany could introduce arms and ammunition into Ireland for the purpose of helping to create a rebellion there, or strife of a serious character, so as to occupy the attention of the British Executive, and also to necessitate the maintaining of a considerable number of his Majesty's soldiers in Ireland, that would be assisting Germany."

Summarising the defence case he said:

“The defence says that Sir Roger Casement only asked persons, these soldiers, to become members of the Irish Brigade for the purpose of assisting to resist the Ulster Volunteers after the war had concluded. The whole importance of this for the moment is whether it is right to say that that is the true effect of the evidence. The Crown says to you that that is not the true effect; that every fact that you examine points to the contrary; and that what was intended was that at the first sea victory Irish soldiers should be landed, and that the Irish Brigade should then be introduced into Ireland; and the comment is naturally made that until there had been a sea victory of Germany it would be impossible for Germany to land, at any rate, any considerable number of Irish soldiers ... Those are the two contentions.”

Having regard to the terms of a Treaty, not produced in evidence but negotiated by Casement with the German authorities (see Appendix 3) and in particular, the provisions of Articles 6 to 10 of the Treaty, there can be little doubt that Casement had, in fact, given aid and comfort of a treasonable kind to the King’s enemies, when viewed from the perspective of the law of the United Kingdom of Great Britain and Ireland.

In these circumstances, it is difficult to resist the conclusion that the trial was conducted in a manner which was reasonably fair insofar as it dealt with issues of law and fact within the parameters of relevance laid down by the Trial Judges.

Reading the transcript, the presiding judges were at pains to be courteous and to appear even-handed. The Crown’s witnesses and evidence were strong and the issues were fairly and impartially set out for the jury to decide. Given that Britain was at war with Germany, the trial was remarkably free from passion or emotion.

Much has been made of the arguments advanced by the defence concerning the meaning and interpretation of Norman French wording of the Treason Act of Edward III. The words of the statute, as paraphrased by the Lord Chief Justice, were as follows:

“It shall be treason if a man levy war against our Lord the King in his realm or be adherent to the King’s enemies in his realm giving to them aid and comfort in the realm or elsewhere.”

The defence argument was that the words *“or elsewhere”* only governed the words *“aid and comfort in the realm”* and had no application to the words *“be adherent to the King’s enemies”*. As the offence charged was one of adherent to the King’s enemies, if the words *“or elsewhere”* did not apply to the adhering, no offence was committed under the Statute.

The Crown’s contention that the words *“or elsewhere”* governed adhering to the King’s enemies and that it was plainly an offence to adhere to the King’s enemies by an act committed outside the realm.

Even the somewhat obsequious George Knott had this to say about the argument made by Serjeant Sullivan for the defence:

“As a matter of common sense as an effective law treason for the present day this may appear to the reader as not at all satisfactory but if the question is merely what is the grammatical

meaning of the sentences in the Act he will, we think, consider them very puzzling, and agree that on the face of it Serjeant Sullivan's rendering is possible or even probable. It presents a nice exercise in grammatical construction and one arrives at a very unflattering conclusion of the literary skill of the draftsmen of the Edwardian era.

The ingenious renderings of the judges and Serjeant Sullivan may be read in the arguments, where is also to be found some very interesting antiquarian lore about the MSS. of the old statutes.

The language, then, of the Statute of Treasons must be admitted to be ambiguously worded, and Serjeant Sullivan could not merely give his reading, and leave it there, without doing something more to make his reading appear to be the more probable of two or more possible ones.

It was obvious that the judges could not simply be asked to read and construe the statute as if they saw it for the first time. The principle upon which Serjeant Sullivan proceeded in his argument is one expressed in a passage from Maxwell on the Interpretation of Statutes, Chapter 2: 'The language of a statute must be understood in the sense in which it was understood when it was passed, and those who lived at or near the time when it was passed may reasonably be supposed to be better acquainted than their descendants with the circumstances to which it had relation, as well as with the sense then attached to legislative expressions'."

As Gearty points out, however, there were few precedents to hand in the Law Reports on this issue of construction. Gearty opines concerning the defence argument:

"But consider the result which such creativity would have produced – excoriation by the British public for having contrived the acquittal of an admitted traitor on the most technical of technicalities. The case would have been more interesting had these been the various hurdles over which their Lordships had to jump in order to secure a conviction that the authorities and the people badly wanted."

Gearty points out that success for the defence argument would have required the Judges "to distinguish both case law authority and the unanimous view of legal scholars such as Coke, Hawkins, Hale and Stephens."

He agrees with Owen Dudley Edwards in the latter's conclusion that the "legal principle involved in the Act of Edward III had almost certainly been resolved correctly and against Casement".

The argument that Casement was "hanged upon a comma" still excites legal interest today but the decision of the Court of Trial and of the Court of Appeal on the issue does not appear to be unreasonable or contrived whatever about the infelicities of mediaeval draftsman-ship.

Indeed, quite apart from the wording of the Treason Act upon which reliance was based, there was in any event arguably a common law offence of treason which criminalised adherence to the King's enemies by a King's subject regardless of whether the adherence took place within or without the King's realm.

Indeed, it would seem counter-intuitive to believe that the law made a distinction between treasons committed within the King's realm and those committed elsewhere.

In short, while the legal submissions put forward by the defence on the construction of the statute were strongly arguable on the basis of first principle, they flew in the face of centuries of case law and legal commentary to the contrary.

And if the statute had the meaning contended for by the defence, it seems highly improbable that it would not have been amended at some time during the 500 years from its enactment.

The Appeal against conviction was heard in the Court of Criminal Appeal on Monday the 17th of July 1916. After lengthy submissions by Serjeant Sullivan on the sole issue of the proper interpretation of the Statute of Edward III (other grounds of appeal not having been argued), the Judges retired and on re-assembling indicated that they required no reply from the Attorney General. The Appeal Court upheld the decision of the Trial Court in relation to the proper interpretation of the Statute and dismissed the appeal.

VII

The lawyers appearing in the trial and appeal of Roger Casement deserve some comment here.

Firstly, George Gavan Duffy was a nationalist solicitor in practice in a large firm in London. He was the son of Sir Charles Gavan Duffy, an Irish nationalist who later became Prime Minister of the province of Victoria in Australia.

Gavan Duffy was educated in England at Stoneyhurst and his services as Casement's solicitor were sought by Gertrude Bannister and Alice Stopford Green, two society ladies who were friends of Casement. When he undertook the defence of Casement, Gavan Duffy was confronted by his legal partners with a choice of withdrawing from the case or resigning his partnership. He made a very considerable sacrifice in defending Casement.

He returned to Ireland and became involved in the struggle for Irish independence, ultimately co-signing the Treaty in Downing Street with FE Smith who had led the prosecution against Casement. Having briefly served as Minister for Foreign Affairs in the Free State government, he resigned over the treatment of republican prisoners by that government and, having been called to the Bar, was appointed to the judiciary eventually becoming the President of the High Court.

Gavan Duffy had difficulty in assembling a team of counsel to defend Casement and ultimately persuaded his brother in law Serjeant Alexander M Sullivan, to take the brief. Sullivan was a constitutional nationalist who was wholly out of sympathy with the Easter Rising and who later left Ireland to practice as a barrister in London, having prosecuted cases arising out of the War of Independence and having had threats made to his life.

That there was bad blood between Casement and Sullivan, there can be no doubt. Sullivan was to describe Casement as a megalomaniac. After the dismissal of his appeal, Casement wrote to his old friend Richard Mortens, complaining that Sullivan dropped some of his grounds of appeal with no notice to Casement. He said: "*I wish I had stuck to my two Welshmen [Artemus Jones and JH Morgan]and had not brought in the other [Sullivan] at all*".

Sullivan was a man of very strong and often intemperate opinions. His famous collapse in the course of his address to the jury was probably caused by immense stress.

His junior, Artemus Jones (also well known as being the plaintiff in the leading case relating to unintentional defamation), was obliged to complete the address to the jury which he did with great competence and rhetorical vigour. However, the strength of the case against him obviously preoccupied him as can be judged by his peroration:

"I am not going to address any appeal to you based on sympathy or upon anything like an emotional plea in the way of mercy. The ancient and valiant race from which this man springs does not produce the type of man who shrinks from death for the sake of his country.

The history of Ireland contains many melancholy and sad chapters, and not the least sad is the chapter which tells and speaks so eloquently of so many mistaken sons of that unfortunate country who have gone to the scaffold as they think, for the sake of their native land.

I am not going to base any appeal to you upon emotions. If the Crown have made out their case it is your duty as lawful citizens to return a verdict of guilty; but I claim this, that the law requires that the Crown should prove their case, and prove it up to the hilt, and you must with sure judgment and with clean consciences consider if you be satisfied upon that point; and if you do that, if you approach the case in that spirit and apply that test to it, dark and heavy as the case may be as far as the defence is concerned, I do suggest to you that there is a way open to you to return a verdict which would be nonetheless just because it is humane."

The technical defence mounted in relation to the interpretation of the Treason Act was, as far as can be judged, largely developed by JH Morgan, his other junior counsel. While Casement admired Morgan's ingenuity, he nonetheless felt that the technical defence was unlikely to succeed and, if made, ran the risk of adulterating and compromising the effect of his intended speech from the dock before sentence.

FE Smith, prosecuting as the Tory Attorney General in Asquith's coalition, was, of course, deeply compromised in the eyes of many by the fact that he had between 1912 and 1914 taken a leading role in the establishment of armed resistance to Home Rule.

Along with Carson and Craig, that movement had involved the creation of an armed force determined and pledged to resist Home Rule by force if necessary. It even involved the creation of a "provisional government" in Ulster, a close parallel to the establishment of a provisional government by the signatories of the 1916 Proclamation.

Taking into account the massive importation of UVF arms from Germany on the *SS Clyde Valley* in early 1914, and the events described as the Curragh Mutiny in which British officers stationed in Ireland violated their duty of loyalty to the Westminster Government by a collective decision to refuse to use force against the UVF, Smith, who was in many respects one of the chief instigators of all these actions was hardly in the strongest moral position to credibly allege treason against Sir Roger Casement. But that did not trouble him.

Smith himself was to be the subject of an explicit and telling attack in the course of Casement's speech before sentence. Comparing his own actions with those of Smith, Casement stated:

"The difference between us was that the Unionist champions chose a path they felt would lead to the woolsack; while I went a road I knew must lead to the dock, and the event proves we were both right. The difference between us was that my 'treason' was based on a ruthless sincerity that forced me to attempt in time and season to carry out in action what I said in word, whereas their treason lay in verbal incitements that they knew need never be made good. And so I am prouder to stand here today in the traitor's dock to answer this impeachment than to fill the place of my right honourable accusers."

In the words of H Montgomery Hyde:

"At this point the Attorney General was observed to smile ironically and murmur in an audible aside: 'Change places with him? Nothing doing.' Then as if to show his contempt for the prisoner he got up and ostentatiously walked out of court with his hands in his pockets."

An ignominious lapse for an Attorney General, I think.

VIII

It is noteworthy that throughout the trial Roger Casement deliberately avoided raising in any way by way of defence his own intention, when landing at Banna Strand, to have the Easter Rising called off. All of the content of the German Diary demonstrating Casement's total disapproval of the Rising was swept under the carpet in order that Casement could adopt the position that the rebellion was justifiable and that he took full responsibility for taking part in it.

A lot of this mystery can be explained by Casement's realisation that his status in history would be completely undermined if he were to distance himself from or criticise the signatories to the Proclamation.

It is an irony that the British Government issued a statement on the 4th of August 1916, after Casement's execution, justifying its failure to reprieve the death sentence which indicates that between the trial and his execution, the Government had come into possession of conclusive evidence that Casement intended to use the Irish Brigade against the British Crown in Egypt.

This suggests that a copy of the Treaty negotiated by Casement with the German Government had by then fallen into the hands of the British Government.

Curiously, the same Government statement includes the following:

"The suggestion that Casement left Germany for the purpose of trying to stop the Irish Rising was not raised at the trial, and is conclusively disproved, not only by the facts there disclosed, but by further evidence which has since become available."

The German Diary disproves that assertion categorically.

The Government statement makes a veiled reference to the content of the Black Diaries in the following terms:

"Another suggestion, that Casement was out of his mind, is equally without foundation. Materials bearing on his mental condition were placed at the disposal of his counsel, who did not raise the plea of insanity. Casement's demeanour since his arrest, and since the trial, gave no ground for any such defence, and indeed was sufficient to disprove it."

Clearly the Government was referring to the offer by FE Smith made to Serjeant Sullivan of access to the Black Diaries with a view to mounting a defence of insanity based on the sexual behaviour disclosed therein. The likelihood of such a plea succeeding was plainly nil.

Although Casement clearly decided to conceal from the court and from the public his total opposition to the Easter Rising in order to secure his place in history as an Irish patriot, his decision as to how he would conduct his defence was greatly influenced by the suggestion by George Bernard Shaw that he should use his trial as a stage from which to make a totally disarming defence of his actions in terms of his nationalism, his patriotism, and the rights of the Irish people to independence and self-determination.

In one sense, Casement took, with some reluctance, an each-way bet on the outside possibility of acquittal. However, he was acutely aware that as a matter of probability his guilt would be established and that he would be judged by history by the rhetorical defence he made of his own actions.

IX

Much has been written and said about the use, or abuse, of the Black Diaries of Roger Casement by the Attorney General, and by the British Government, both before and after the trial.

A central issue has always been whether the Black Diaries, which contained explicit accounts of homosexual activities by Casement in every corner of the world, were indeed written by Casement or, on the other hand, were clever forgeries by British intelligence agents engaging in the blackest of black arts.

For my part, I am completely persuaded of the genuineness of the diaries not least by the reasoned analysis set out by Seamas O'Síocháin in an Appendix to his 2008 biography of Casement, *Roger Casement Imperialist Rebel Revolutionary* (see Appendix 1). The case for the diaries being a forgery is, in my view, very weak indeed.

As I have pointed out earlier, the British Minister to Norway alerted the Foreign Office to evidence that Casement was an active homosexual in late 1914. He cited the statements of Adler Christensen and of certain other Norwegian sources confirming Casement's homosexual activity.

The forgery theory would have required the deployment of very substantial resources between Casement's arrest and his trial if the diaries had been concocted in 1916.

Internal evidence, as O'Síocháin's analysis shows, strongly suggests that the diaries were not forgeries. For instance, the typescript versions of them erroneously transcribe phrases in Irish and other names and places which appear in the manuscript diaries. One would imagine that if the typed transcripts were drawn up within weeks of the forgery of the diaries that these mistakes would not have occurred as the forger would have been in a position to identify and correct such errors.

Perhaps most telling, however, is the unsuccessful attempt by FE Smith, the Attorney General, to have Serjeant Sullivan read the Black Diaries in their original form prior to the commencement of the trial. FE Smith even threatened to report JH Morgan for professional misconduct for his alleged failure to give a copy of the diaries to Sullivan.

If the diaries were complete forgeries as alleged, and if Serjeant Sullivan had in fact agreed to inspect and read them with a view to examining whether a plea of insanity was available to Casement, as the Attorney General strangely hoped, it is inconceivable that Sullivan would not then have discussed them at length with Casement and, if they were forgeries, that Casement would not have immediately pointed out as much to his counsel.

In those circumstances, the fact that there were forged versions of his diaries in existence would have been clear to Casement and, presumably, his denials would have given rise to very major controversy and to allegations that he was the victim of an enormous Crown conspiracy to blacken his name.

Thus, it is hard to see why, if the forged diaries had been available prior to the commencement of the trial they would have been offered for inspection to Casement's counsel since their authenticity and provenance could have caused an incendiary dispute which, in turn, could have entirely derailed the trial itself and the motive, if any, for their forgery and production pre-trial.

In addition, the diaries were made available to a number of English and American journalists by one of the intelligence officers who interrogated Casement, Reginald Hall. Mary Boyle Reilly, an American news agency representative, supplied Gavan Duffy with details of the showing of the diary to her on the 3rd of June 1916, long before the commencement of the trial on the 26th of June 1916.

The diaries in question had been supplied by a Mr. Germain to Scotland Yard on the 25th of April 1916, four days after Casement's arrest. Reginald Hall had shown photographed extracts of the diary to journalists, to politicians, and they were even reportedly viewed by the King himself in May of 1916.

Undoubtedly propaganda use was made of the diaries to discredit Casement and to undermine his credibility and the credibility of those who were championing his cause or, at a later stage, campaigning for a reprieve from the death penalty. But it appears to be beyond contradiction that the existence of the Black Diaries in their present state predates significantly the Casement trial and the preponderance of evidence lies on the side of their authenticity.

X

The transformation of social attitudes towards homosexuals and homosexuality since the 1960s and, in particular, since the Marriage Equality Referendum in Ireland, raises the obvious question as to why it is or was relevant that Roger Casement was or was not a gay man.

However, the allegation that he was gay when made in Edwardian times and in post-independence Ireland right up to the 1970s was considered a grave slur on his integrity and reputation and, consequently, on his standing as an Irish patriot.

For that reason, the issue as to his gender orientation became one on which passionate opinions were ranged on either side. Books were written claiming that the Black Diaries were clever forgeries concocted by British intelligence for their nefarious ends. Herbert Mackey, a leading Dublin consultant, wrote a number of very elaborate works in support of the forgery theory.

In independent Catholic Ireland, the forgery theory easily rhymed with the general view that Casement was an heroic martyr who had given his life for Irish freedom.

The issue of the authenticity or forgery of Casement's diary was hotly debated, insofar as public decency would permit such debate, from the establishment of the Irish Free State onwards.

In the 1950s, the issue again arose in the letters columns of the Irish Times arising from the publication of a book by a journalist, Rene McColl claiming that the Black Diaries were genuine and that Casement had been homosexual. This led to an extraordinary controversy within the Irish legal profession.

His leading counsel, Serjeant Sullivan, by now retired and living in Terenure, joined in this debate and pointed out that if the diaries had been forgeries, he would have expected to have been instructed by Casement that he had not written them, given that they had been shown to journalists while Casement was still alive and was aware of their circulation. This had not happened, Sullivan claimed.

This, in turn, caused two leading barristers, Sean Hooper and Felix Sherry to write their own letter to the Irish Times claiming that Sullivan had breached a basic rule of his profession by disclosing confidential client instructions with express authority.

All the usual suspects waded into the correspondence column debate with great trenchancy and some with little regard for the truth.

Not content with criticising Sullivan in letters to the newspapers, leading members of the Irish Bar went on quite a witch-hunt against the elderly Sullivan, presenting a Memorial to the Benchers of Kings Inns on 13th April 1956 calling for the removal of Sullivan as an honorary bencher and for his disbarment for gross and dishonourable professional misconduct.

This action was all the more remarkable given that it was Sullivan himself who in 1950 had taken the first steps in the process that ultimately led to the Lavery painting of the Casement Appeal being lent to Kings Inns where it was unveiled by President Sean T O'Ceallaigh on 1 November 1951, and hangs to this day.

The Benchers, in turn brought the matter to Sullivan's attention with a view to permitting him to defend himself.

Ultimately, Sullivan requested that his name be removed from the roll of honorary benchers in a rather querulous letter sent on 14th July 1956 in which he resolutely defended his conduct in relation to the matter, and claimed that since he was appearing for Casement as a member of the Middle Temple, that that institution was the only one which could determine whether he was guilty of a breach of its rules.

His letter totally debunked the suggestion that Casement was unaware of the sexual content of the Black Diaries and claimed that Casement had taken the view that homosexuality was a traditional characteristic of many great men in history.

Sullivan, in his autobiography *The Last Serjeant* had described Casement's attitude to homosexuality as evidence of insanity, a curious echo of the offer by FE Smith made to Sullivan before the commencement of the trial that he should view the diaries with a view to considering a plea of insanity.

The barristers' Memorial and the correspondence of July 1956 is set out in Appendix 4.

XI

As for Casement's speech before sentence, there can be no doubt that it ranks – shoulder to shoulder with Robert Emmet's speech made in this room 113 years earlier - among the world's great examples of political oratory. He now succeeded, as Shaw had hoped he would, in his goal of converting his trial into an indictment of his oppressors.

Some passages stand out for their noble defiance, such as this:

“Let me pass from myself and my own fate to a far more pressing, as it is a far more urgent theme – not the fate of the individual Irishmen who may have tried and failed, but the claims and the fate of the country that has not failed.

Ireland has outlived the failure of all her hopes - and yet she still hopes. Ireland has seen her sons – aye and her daughters too – suffer from generation to generation always for the same cause, meeting always the same fate, and always at the hands of the same power; and always a fresh generation has passed on to withstand the same oppression.

For if English authority be omnipotent – a power, as Mr. Gladstone phrased it, that reaches to the very ends of the earth – Irish hope exceeds the dimensions of that power, excels its authority, and renews with each generation the claims of the last. The cause that begets this indomitable persistency, the faculty of preserving through centuries of misery the remembrance of lost liberty, this surely is the noblest cause men ever strove for, ever lived for, ever died for.

If this be the case I stand here today indicted for, and convicted of sustaining, then I stand in a goodly company and a right noble succession.”

And has there ever been a more impassioned plea for or hymn to the liberty of Ireland and the right of its people to struggle for that liberty than the following?

“We are told that if Irishmen go by the thousand to die, not for Ireland, but for Flanders, for Belgium, for a patch of sand on the deserts of Mesopotamia, or a rocky trench on the heights of Gallipoli, they are winning self-government for Ireland. But if they dare to lay down their lives on their native soil, if they dare to dream even that freedom can be won only at home by men resolved to fight for it there, then they are traitors to their country, and their dreams and their deaths are phases of a dishonourable phantasy.

But history is not so recorded in other lands. In Ireland alone in this twentieth century is loyalty held to be a crime. If loyalty be something less than love and more than law, then we have had enough of such loyalty for Ireland or Irishmen. If we are to be indicted as criminals, to be shot as murderers, to be imprisoned as convicts because our offence is that we love Ireland more than we value our lives, then I know not what virtue resides in any offer of self-government held out to brave men on such terms.

Self-government is our right, a thing born in us at birth; a thing no more to be doled out to us or withheld from us by another people than the right to life itself – than the right to feel the sun or smell the flowers, or to love our kind.

It is only from the convict these things are withheld for crime committed and proven – and Ireland that has wronged no man, that has injured no land, that has sought no dominion over others – Ireland is treated today among the nations of the world as if she was a convicted criminal.

If it be treason to fight against such an unnatural fate as this, then I am proud to be a rebel, and shall cling to my rebellion with the last drop of my blood. If there be no right of rebellion against a state of things that no savage tribe would endure without resistance, then I am sure that it is better for men to fight and die without right than to live in such a state of right as this.

Where all your rights become only an accumulated wrong; where men must beg with bated breath for leave to subsist in their own land, to think their own thoughts, to sing their own songs, to garner the fruits of their own labours – and even while they beg, to see things inexorably withdrawn from them – then surely it is a braver, a saner and a truer thing to be a rebel in act and deed against such circumstances as these than tamely to accept it as the natural lot of men.”

By any standard, these are noble, compelling words spoken from the dock to posterity by an Irishman, especially one who could so easily have avoided his fate by surrendering to the voices of doubt and of reason and by distancing himself from the enterprise of the Rising, but who felt compelled by honour, loyalty and circumstance to lay down his life for the love of his country and its freedom.

Who then can deny Casement the status of hero?