TWENTY-SIXTH INTERIM REPORT

of

THE COMMITTEE

on

COURT PRACTICE AND PROCEDURE

BAILE ÁTHACLIATH
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FOILSEACHAIN RIALTAIS, AN RANNOG POST-TRACHTA,
4-5 BOTHAR FHEARCHAIR, BAILE ÁTHACLIATH 2,
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The Hon. Mr. Justice Robert Barr, Judge of the High Court;

The Hon. Mr. Justice Esmond Smyth, President of the Circuit Court;

Judge Peter Smithwick, President of the District Court;

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Joseph McPeake, Esq.;

Ms. Marian McGennis, T.D.

Secretary: P. D. Kavanagh, Esq.

TWENTY SIXTH INTERIM REPORT OF THE COMMITTEE ON COURT PRACTICE AND PROCEDURE

ISSUES OF COURT PRACTICE AND PROCEDURE ARISING FROM THE EARLY RELEASE OF PHILIP SHEEDY FROM PRISON.

To: Mr. John O'Donoghue, T.D.
Minister for Justice, Equality and Law Reform.

INTRODUCTION

1. The Committee on Court Practice and Procedure was appointed by the Minister for Justice on the 13th April, 1962, with the following terms of reference:

   (a) to inquire into the operation of the Courts and to consider whether the cost of litigation could be reduced and the convenience of the public and the efficient despatch of civil and criminal business more effectively secured by amending the law in relation to the jurisdiction of the various Courts and by making changes, by legislation or otherwise, in practice and procedure;

   (b) to consider whether, and if so to what extent, the existing right to a jury trial in civil actions should be abolished or modified;

   (c) to make interim reports on any matter or matters arising out of the Committee's terms of reference as may from time to time appear to the Committee to merit immediate attention or to warrant separate treatment.

2. By warrant dated the 19th day of July, 1973 of the Minister for Justice the foregoing terms of reference were extended by the addition of the following sub-head: "(d) to make recommendations on such matters (including matters of substantive law) as the Minister for Justice may from time to time request the Committee to examine".

3. On the 28th October 1999 the Minister for Justice, Equality and Law Reform requested the Committee to examine issues referred to in certain recommendations contained in a report of his Department into the early release from prison of Philip Sheedy. The recommendations were as follows:-

"Recommendation 6: The Committee on Court Practice and Procedure should be asked as a matter of urgency to consider and make recommendations in relation to the actual assignment of cases to judges and the circumstances in which cases can be transferred between judges.

Recommendation 7: The Committee on Court Practice and Procedure should carry out an urgent examination of practice and procedure in the criminal courts and make recommendations which, following approval, should be referred to the appropriate Rules Committees for the drawing up of applicable rules by an early date."

THE SHEEDY CASE

4. Although they are well known, having been the subject of extensive publicity in the media at the time, it is relevant to set out the facts in the Sheedy case, as they emerge from the Department's Report.

5. Philip Sheedy was charged with three counts of dangerous driving causing death, dangerous driving causing grievous bodily harm and driving a motor car while above the alcohol level. He was arraigned before His Honour Judge Matthews in the Dublin Circuit Court on the 11th June 1997 and pleaded guilty to the first and third counts. The matter was adjourned for sentence to the 20th October 1997, medical reports and a probation and welfare report to be obtained in the meantime. On the 20th October, the court, having heard the evidence tendered and submissions

made on behalf of the Director of Public Prosecutions and the accused, sentenced him to imprisonment for a period of four years on Count 1, the sentence to be reviewed on the 20th October 1999. The court also ordered him to be disqualified from holding a driving license for 12 years in respect of Count 1 and for one year in respect of Count 3. There was no application to the court for leave to appeal to the Court of Criminal Appeal on the ground of severity or on any other ground.

On 6th November 1997, counsel on behalf of Philip Sheedy applied to Judge Matthews for an Order vacating that part of the order which provided that the sentence should be reviewed on 20th October 1999. There being no opposition on behalf of the DPP, that order was duly made. In the result, Philip Sheedy would have normally served the entire sentence of four years originally imposed on him subject to the remission of sentence to which he would be entitled for good behaviour, unless the Minister for Justice, Equality and Law Reform ordered his early release from prison. The effect of the order vacating the provision for a review date was that the Circuit Court, and every judge thereof, was at that stage *functus officio* i.e. they had no further function in relation to the case. To that general statement there is only one proviso which need be added: there having been no application for leave to appeal against the sentence, Judge Matthews might have heard - and indeed subsequently did hear - an application on behalf of the applicant for an extension of time for the service of notice of appeal to the Court of Criminal Appeal.

6. In October 1998, following a conversation with Mr. Justice O'Flaherty, then a member of the Supreme Court, the then County Registrar for Dublin, Mr. Michael Quinlan, obtained the file in the case from the Circuit Court staff under his control. He (Mr. Quinlan) then spoke to the solicitor on record in the case, Mr. John Walsh of Walkinstown, who informed him that Mr. Michael Staines, solicitor, would be taking over the case. Mr. Quinlan said that he then got in touch with Mr. Staines, who said that he had not spoken to his client yet. Mr. Quinlan advised him that, should he receive instructions to do, he could take an application before a judge of the Circuit Court, who might or might not be willing to hear and deal with it. He recommended that any such application should be made to the Judge in Court 24. That is the court in which lists of criminal cases pending in the Dublin Circuit Court are "called over". The judge then sitting in Court 24 was His Honour Judge Cyril Kelly. Judge Matthews was not sitting in Dublin at that time.

7. Approximately a week later, Mr. Staines advised the County Registrar that he had spoken to his client and asked that the file be made available to the court. The County Registrar then gave the court file to Mr. Brendan O'Donnell, a Higher Executive Officer in the Circuit Office, and asked him to have the case listed for 12th November 1998. Mr. O'Donnell telephoned Ms. Mary Downes, a Clerical Officer who dealt with the Circuit Criminal Lists in the Circuit Court Office, and asked her to have the case listed.

8. On 10th November 1998, Mr. Michael O'Donnell, a Higher Executive Officer in the Circuit Criminal Court office and a court registrar assigned to Court 24, was telephoned by a prison officer in Shelton Abbey Prison, inquiring if the case was listed in the Circuit Criminal Court on 12th November 1998. Although the case was not in the list on that date according to the court sheet, Mr. O'Donnell made a further inquiry to Ms. Noeleen Donnery, a Clerical Officer who also deals with Circuit Criminal lists. He was told by her that the case was listed for 12th November 1998 and he informed the prison officer accordingly. He also told him that Judge Kelly would be dealing with the Court list for that date. The prison officer asked for a note directed to the prison governor requesting that Philip Sheedy be produced to the court on 12th November 1998 and that was done. On 11th November 1998, in accordance with what was stated to be the normal practice, the list for Circuit Court No. 24 for the 12th November 1998 was sent by fax to the Chief State Solicitor's office.

9. A transcript was made available of what transpired before Judge Kelly when he sat to deal with the list on 12th November 1998. It is relatively brief and can be set out in full:-

"Judge: *Who appears in Philip Sheedy, No. 19 in the list?*

Mr. Rea: *I appear.*

Judge: *Is he here?*

Mr. Rea: *Yes, my lord*

Judge: *Can you bring him up for me? Subject to the prosecution, this is a*

case where I have the benefit of a psychology report and -

Mr. Rea: *I (hand in) some testimonials.*

Judge: *I have grave concerns in relation to his mental condition at the moment,Okay. So I will suspend the balance of his sentence, own bond of three years to be of good behaviour. There is no review in that sentence, is that right?*

Mr. Rea: *No, my Lord*

Judge: *No, it has been brought in by the defence, under the supervision of the probation and welfare service.*

The Prosecution: *My Lord, there is a review date.*

Judge: *It was removed, I understand?*

The clerk of the court: *The 29th October 1999, it was fixed for.*

Mr. Rea: *It was vacated by Judge Matthews subsequently*

Judge: *Yes: it was vacated, thank you. His own bond*

[The defendant entered a bond]

Mr. Rea: *May it please your Lordship*

Judge: *Thank you.*

The hearing adjourned.

The hearing resumed

Judge: *Mr. Rea, that last matter as usual I read my papers, just the various reports give concern in my mind in relation to his mental stability.*

Mr. Rea: *Yes, my Lord. That is my concern.*

Judge: *That is for the record anyway.*

THE HEARING CONCLUDED"

10. Although an intervention by a representative from the Chief State Solicitor's office is recorded, it is clear that the Director of Public Prosecutions had not been put on notice of any application by the defence in the matter. The list of criminal cases for that date having been sent to the Chief State Solicitor's Office in the normal way, a representative from the office was due to attend in court and, having noticed that this case was included in the list, brought the file with him.

11. Philip Sheedy was thereupon released from custody. Some time later, he was seen by a member of the victim's family who was surprised that he was at liberty. An inquiry as to the circumstances of his release having been made to the office of the Director of Public Prosecutions, the matter was further investigated by the latter. As a result, an application was made in February 1999 on behalf of the DPP to the High Court for an order by way of judicial review quashing the order of 12th November 1998. On 25th March 1999 Philip Sheedy, having been advised that the order in question was made in excess of jurisdiction, withdrew his statement of opposition in the judicial review proceedings and surrendered himself to custody. He subsequently sought from Judge Matthews an extension of time to apply for a certificate for leave to appeal and, if that were granted, a certificate for leave to appeal against severity of sentence. Judge Matthews granted the extension of time sought and the matter came on for hearing before the Court of Criminal Appeal in October 1999. That court allowed the appeal, being satisfied that it had been the intention of Judge Matthews that the applicant should serve no more than 24 months in custody and, accordingly, varied the sentence to one of three years imprisonment which, with remission for good behaviour, would equate to a sentence of 24

months imprisonment.

Following an inquiry into the case by the Chief Justice and the furnishing by him to the Government of a Report, Mr. Justice O'Flaherty and Judge Kelly (who, since the events in question, had been appointed a Judge of the High Court) resigned their respective offices. The County Registrar resigned his office following the inquiry by the Department of Justice, Equality and Law Reform into the case and the furnishing of their Report to the Government.

ASSIGNMENT OF CASES TO JUDGES

12. Section 10(1) of the Courts of Justice Act 1947 provides that:

> *"For ensuring an equitable distribution of the work of the Circuit Court amongst the several judges thereof and the prompt dispatch of the business of the Circuit Court in the several Circuits thereof, the President of the Circuit Court shall have and exercise the powers conferred on him by subsections (2), (3), (4), (5) and (6) of this section."*

The provisions which follow empower the President to make orders fixing the dates and venues of sitting of the Circuit Court, having, in the case of any circuit, first consulted the Circuit Judge permanently assigned to that Circuit. Subsection 5(a) provides that:-

> *" Where two or more Circuit Judges are for the time being assigned (whether permanently or temporarily) to a particular Circuit, the President of the Circuit Court, after consultation with the said Circuit Judges, may, from time to time, allocate the business of the Circuit Court in that Circuit amongst the said Circuit Judges."*

Since there is invariably more than one judge sitting in the Dublin Circuit Court, the President of the Circuit Court, in exercise of the power conferred by that subsection, allocates the cases in the Dublin Circuit Court among the Circuit Judges, after consultation with them. Because of the large volume of criminal business now being transacted in the Dublin Circuit Court, there is invariably more than one Circuit Judge sitting to deal with criminal cases. Either the President

himself or one of the judges who normally deals with criminal business is in charge of the list and allocates the cases for hearing among the different judges.

In the case of the Circuits other than Dublin and Cork, to which only one judge is normally permanently assigned, the President does not have to exercise any function in relation to the allocation of cases. He may, however, pursuant to s.10 (3) temporarily assign another Circuit judge to a Circuit.

13. The committee is satisfied that no difficulties are experienced in practice in the operation of this system and none was revealed by the Sheedy case. Similar systems are operated by the President of the High Court and the President of the District Court, although there are differences reflecting the different jurisdictions of the various court levels.

14. The aspects of the Sheedy case which gave rise to concern were not the result of any defect in the system of assigning judges. The Circuit Court judge concerned dealt with a case in respect of which neither he nor any judge of the Circuit Court had any function, following a discussion between a Supreme Court judge and the County Registrar, in circumstances where neither party had made any application to have the case re-entered and where, in any event, even if re-entered, it could not be dealt with by any judge, even including Judge Matthews who had originally heard the case, unless an application was made to Judge Matthews for an extension of time for an appeal. Further concern was caused by the fact that the judge proceeded to deal with the case, although one of the parties, the Director of Public Prosecutions, had not been notified of its being listed. The listing of the case in pursuance of the direction of the County Registrar, following his discussion with Mr. Justice O'Flaherty, and the manner in which it was thereafter dealt with by Judge Kelly were, so far as is known, without precedent and were not the result of any defect in the system of assigning cases in the Dublin Circuit Court, as is clear from the report of the Chief Justice and of the Department of Justice, Equality and Law Reform on the case.

TRANSFER OF CASES BETWEEN JUDGES

15. It is the normal practice in the Circuit Court, as in the High Court and District Court, for a judge, having assumed seisin of a case, to retain seisin of it until the case has been finally

disposed of in that court. To that general rule there are, of course, exceptions. Thus, in both the High Court and the Circuit Court, it is perfectly normal for interlocutory applications - i.e. applications such as temporary injunctions and orders in relation to the production of documents - to be heard by a judge other than the judge who ultimately deals with the case. Circumstances may also arise in which a judge in civil proceedings may not be in a position to proceed with a particular case which has been assigned to him for hearing. Order 49, Rules 2 and 3 of the Rules of the Superior Courts - which, in the absence of a corresponding provision in the Rules of the Circuit Court, are also applicable in that court – provide for such contingencies as follows:-

> *"2. Any cause or matter may, at any stage, be transferred from one judge to another judge by either of such judges with the consent of the other judge.*
>
> *3. A particular application in, or any particular part of, any cause or matter may be heard and disposed of by any judge, who shall consent to do so, at the request or with the consent of the judge before whom the cause or matter is pending."*

None of the aspects of the Sheedy case which gave rise to concern were the result of any defect or *lacuna* in the system of transferring cases between judges: they arose solely from the highly irregular manner in which the Circuit Court judge concerned purported to deal with a case which had already been finally disposed of by his colleague. As the Chief Justice in his report stated:-

> *"There is no practice in the Circuit Court whereby a Circuit Court judge can review, in a criminal case, the final order of a judge of equal jurisdiction who is available or is likely to become available."*

Accordingly, even if the review clause had still been in operation in the present case, the only judge who could have operated it was Judge Matthews.

16. Our attention was drawn to Order 4, Rule 7 of the Supreme Court Practice 1999 in England and Wales set out in the "White Book" as follows:-

"(1) .. (2) Where, by virtue of any of these rules, any application ought to be made to, or any jurisdiction exercised by, the judge by whom a cause or matter has been tried, then, if that judge dies or ceases to be a judge of the High Court, or if for any other reason it is impossible or inconvenient for that judge to act in the cause or matter, the President of the Division to which the cause or matter is assigned may, either by a special order in any cause or matter, or by a general order applicable to any class or causes or matters, nominate some other judge to whom the application may be made or by whom the jurisdiction may be exercised."

While the introduction of a rule of that nature would not have prevented the chain of events which gave rise to concern in the Sheedy case, since there was no question of the judge who originally dealt with the case not being in a position to act in it, the Committee is of the view that the Superior Courts Rules Committee and the Circuit Court Rules Committee should give consideration to the introduction of a similar rule in this jurisdiction. The power vested by that rule in the President of the relevant division could be exercised by the President of the High Court or the President of the Circuit Court as the case may be. The Committee is of the view that, having regard to the far greater number of judges in both the High Court and the Circuit Court, a more expansive form of rule on the English model is now probably desirable. It should be pointed out, however, that the English rule appears to apply to civil proceedings only. That would also appear to be the case with Order 49, Rules 2 and 3 of the Rules of the Superior Courts.

RECOMMENDATION NO. 7

17. As we have already noted, the Report of the Department recommended that this Committee should carry out an urgent examination of practice and procedure in the Criminal Courts and make recommendations, which, following approval, should be referred to the appropriate Rules Committees for the drawing up of applicable rules by an early date.

The Committee have some difficulty in responding to this recommendation. As worded, it would appear to envisage a lengthy, albeit urgent, examination of all the rules of practice and

procedure applicable in the Central Criminal Court, the Circuit Criminal Court and the District Court. There is no indication in the body of the report as to what aspects of the rules in question are considered to be in need of review and it must be presumed that any imperfections which are thought to exist in the rules are not relevant to the Sheedy case, since the report of the Department has made specific recommendations on the matters, which, in their view, arose for consideration out of that case. The Committee have therefore decided to defer further consideration of this recommendation in the hope that the Department might be in a position to clarify whether there are any aspects of the rules which, in the view of the Department, are giving rise to concern.

OTHER RECOMMENDATIONS IN THE REPORT

18. This Committee is not confined in this report to a consideration of the two recommendations in the report of the Department to the effect that the matters referred to in those recommendations should be referred to the Committee. Since one matter to which reference is made in the report - i.e. the practice of "reviewing" sentences - had given rise to some concern both before and after the Sheedy case, the Committee take the view that it should be at least considered in this report.

THE REVIEW OF SENTENCES

19. In the report of the Department, reference is made to the fact that it has become the practice of some judges to review their own sentences, particularly in the Circuit Court. The view is expressed that this is a practice which, in the light of what happened in the Sheedy case, should be reviewed as a matter of urgency. Having said that there was a view that once sentence is passed, reviews, if any, should be a matter for the executive rather than the judiciary and to the statutory powers of the Minister for Justice to grant early release, subject to such conditions as he considers appropriate, the report went on to refer to criticisms which had been made of that system and suggestions that the Minister should exercise that power only with the benefit of an independent parole board. They then made the following recommendation:-

> *"Recommendation 3: In the light of recent events, priority should be given in the legislative programme to placing a parole board on a statutory basis. In*

this context, the opportunity should be taken to clarify the law as to the respective roles of the courts and the executive in the administration and review of sentences."

JUDGEMENT OF THE COURT OF CRIMINAL APPEAL IN DPP .V. SHEEDY.

20. As it happens, the most recent authoritative pronouncement on the practice of reviewing sentences is to be found in the judgement of the Court of Criminal Appeal in DPP .v. Philip Sheedy delivered by Denham J. on the 15th October, 1999. In the course of her judgement, the learned judge said:-

> *"the issue of the review date formula of sentencing was not fully argued. The review structure is a process by which a judge is able to individualise a sentence for the particular convicted person. It is a tool by which the judge may include in the sentence the appropriate element of punishment (retribution and deterrence) and yet also include an element of rehabilitation. For example, it may be relevant to a young person or a person who has an addiction or behavioural problem and at least some motivation to overcome that problem, it may well be appropriate as part of a rehabilitation aspect of the sentence to provide for a programme or treatment within the sentence as a whole and then to provide for a review of the process at a determinate time. However, this was not such a case. There was no evidence of, for example, addiction. There were no factors such as would render it appropriate to invoke a structure of treatment and then to review the sentence. This is not an appropriate case to sentence on the review date formula of sentencing."*

It is clear from that passage that, even if the practice of reviewing sentences is juristically securely anchored - a topic to which we shall return - its appropriateness in cases other than those of persons having an addiction or behavioural problems is at the least doubtful. Since that did not arise in that case, the observations on the juristic basis of review sentences may be regarded as obiter and, indeed, the learned judge expressly referred to the fact that the issue had not been fully argued.

21. Certain constitutional and statutory provisions are relevant to the question as to whether there is vested in the Central Criminal Court or the Circuit Court a jurisdiction to impose a sentence providing for a review of the sentence at the end of a determinate period.

Article 13.6 provides that:

> *"The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are hereby vested in the President, but such power of commutation or remission may, except in capital cases, also be conferred by law on other authorities."*

Article 13.11 further provides that:

> *"No power or function conferred on the President by law shall be exercisable or performable by him save only on the advice of the Government."*

To complete the picture, section 23 of the Criminal Justice Act 1951 as amended provides that:

> *"(1) ... the Government may commute or remit, in whole or in part, any punishment imposed by a Court exercising criminal jurisdiction, subject to such conditions as they may think proper."*

22. In reality, therefore, the power to commute or remit a sentence has been exclusively committed to the executive. The fundamental question is whether a sentence with a review date is compatible with these constitutional and statutory provisions.

23. In People .v. Cahill [1980] IR 8 the trial judge sentenced the accused to seven years imprisonment, but directed that the Court would consider suspending the balance of the sentence if, after three years, he had showed in the meantime that he had obeyed normal prison discipline. The Court of Criminal Appeal, per Henchy J., held that this form of sentence was, for several reasons, an undesirable one. Among the reasons given were (i) that this form of sentence was incompatible with the system of appeals postulated by the Rules of the Superior Court and (ii) that it gave the appearance of *"trenching on a function"* of the executive.

24. As to the first ground, Henchy J. said that Order 86 envisaged that the time for an appeal against sentence would run from the date of *"the close of the trial or within three days thereafter."* A sentence review date was incompatible with that appellate structure, and Henchy J. said that:

> *"The inevitable conclusion would seem to be that the appellate system postulates a trial that comes to a close with a final order which identifies once and for all the particular conviction and the particular sentence. From then on (save where it is specifically provided otherwise, by statute or under the rules) the trial judge is functus officio as far as this trial is concerned"*

On the second ground, Henchy J. held that:

> *"A direction that a prisoner is to be brought back to the court of trial for a review of his sentence after three years impliedly seeks to freeze the executive discretion as to remission during that period, and then to vest in the court a power of review which is not readily compatible with the powers withheld from the Courts and vested in the Executive by s.23 of the Act of 1951."*

25. In the People .v. Aylmer [1995] 2 ILRM 624 (but decided in 1986) a similar review sentence had been imposed in 1979. The balance of the sentence was then suspended in 1982 on condition that the applicant would remain of good behaviour. However, following a further separate conviction in 1984, the DPP applied to have the suspension of the balance of the (1979) sentence revoked and the Central Criminal Court duly ordered the applicant to serve the remaining balance of that sentence. The Supreme Court duly dismissed an appeal against this sentence, but for different reasons.

Walsh J. rejected the argument that the sentence was in some way invalid:

> *"There is no way in which [the sentence] could be construed as a direction expressed or implied to the executive not to exercise the powers of commuting the sentence."*

While he did not express any view as to the correctness of Cahill, he drew attention to the fact that the sentence in that case had been one of penal servitude as opposed to imprisonment. (It is, with respect, not immediately clear why this should make such a difference.) Henchy J. concluded that the applicant had estopped himself by his own conduct from challenging the validity of the sentence, he having taken advantage of the suspension of the sentence. Griffin J. also held that the applicant was precluded by his conduct from challenging the validity of the sentence. Hederman J. felt that the Court could not review the 1979 sentence as the date for an appeal had long since passed . McCarthy J. appears to have taken the view that in substance the appeal constituted an application to the Supreme Court for a first instance investigation into the legality of the applicant's detention and he appears to have concluded that the Court had no such jurisdiction. While Henchy, Griffin and McCarthy JJ. mentioned Cahill in passing, they expressed no view as to its correctness.

26. No Court seems subsequently to have addressed the issue of the validity or constitutional propriety of such sentences, although this form of sentence has received at least the tacit endorsement of the Court of Criminal Appeal on many occasions within the last decade. Accordingly, the issues as to whether such sentences with inbuilt review dates have any proper legal basis and, if they do, whether such legislation is compatible with Article 13.6 remain issues which have yet to be authoritatively explored by the courts. As already noted the observations of the Court of Criminal Appeal in Sheedy were probably obiter and, in these circumstances, if the matter is to be resolved by the courts, it may have to await a case in which the matter comes before the Supreme Court.

27. It should be pointed out that the President of the Circuit Court drew the attention of the Committee to the divergent views of Circuit Court judges as to the validity or propriety of the practice of reviewing their own sentences. Some judges consider that the practice is of such dubious legality that it should not be adopted, at least until such time as it is authoritatively endorsed in the Superior Courts. Others, prompted undoubtedly by a proper concern to ensure, so far as they can, that the sentencing process fulfils one of its objects, i.e. the rehabilitation of the convicted person, would wish to see it continue in operation.

28. It will be obvious from the foregoing summary that the question of the review by judges of sentences raises serious issues of a constitutional nature related to the separation of powers

between the judiciary and the executive and, in addition, issues of penal policy. These extend far beyond matters affecting the operation of the courts, and possible changes in their practice and procedure, so as to reduce costs and assist in the efficient dispatch of the business of the courts, which are the remit of this body. Accordingly, the committee does not consider that it is in a position to make any recommendations in this area.

Ronan Keane (Chairman)

Robert Barr

Esmond Smyth

Peter Smithwick

Richard Nesbitt

Gerard Hogan

John Fitzpatrick

Garry McMahon

Peter Kelly (subject to reservation)

Jim Tunney

Marian McGennis (subject to reservation)

P.D. Kavanagh
Secretary
13th June 2000

RESERVATION OF MR. PETER KELLY SUPPORTED BY MS. MARIAN McGENNIS.

While the draft report is acceptable so far as Recommendation 6 of the Departmental Committee is concerned, I have serious reservations about its failure to reach any substantive conclusion in relation to Recommendation 7.

Public concern about this case centres on the fact that there was no system in place which could pick up the grave improprieties which occurred. Time-honoured Court procedures, which were perfectly adequate as long as judges behaved properly, proved inadequate when a judge departed from established procedure. This would never have come to light were it not for the accident of Sheedy having been seen at large.

We cannot assume that such improprieties will never occur again, or indeed, that they have not occurred before without being detected. Recent public concern about a licensing application in the District Court reinforces the view that a *system* is needed to assure that the established Court procedures are followed.

I conclude that no such system currently exists, and that one should be designed and installed. At its simplest, this could be a recording system in the Courts Service by which ***all decisions in the Courts were registered, with positive evidence that all key procedures were followed, including certification or other proof that all interested parties were in Court or represented in Court for the hearing, and that all the other circumstances of the hearing were conducted in accordance with the law.***

Modern information management methods would render the maintenance of such a system relatively straightforward and inexpensive.

It is disingenuous of the Report to state that "there is no indication in the body of the (Departmental) report as to what aspects of the rules in question are considered to be in need of review". Public disquiet has been caused, not by rules which need to be reviewed, but by procedures which do not exist.

Peter Kelly

Marian McGennis