

**5th NATIONAL PROSECUTORS CONFERENCE**

**Saturday 22 May 2004**

**OPENING ADDRESS BY JAMES HAMILTON,**

**DIRECTOR OF PUBLIC PROSECUTIONS**

## **INTRODUCTION**

I would like to welcome you all to our fifth National Prosecutors' Conference. Most of you are prosecutors, and include the legal staff in my Office, counsel who act for the prosecution before the courts, as well as the local state solicitors who act for the State outside Dublin in criminal as well as civil proceedings. I would also like to welcome those persons attending the Conference, who, although not prosecutors, are concerned with the effective functioning of the criminal justice system. I would particularly welcome the members of the judiciary who are present. I would also like to welcome representatives from An Garda Síochána, the Office of the Attorney General, the Department of Justice, Equality and Law Reform, the Law Reform Commission, and distinguished legal academics from our law schools. The interaction between all these different people with an interest in the criminal justice system is a very valuable one.

Since the last Conference we were all saddened by the sudden and tragic death of Eamon Leahy, SC. Last year Eamon spoke at our Conference, and he was a strong supporter of this event since its inception. Eamon was, in every way, larger than life, a brilliant speaker and advocate with a devastating sense of humour and a huge intellect. His death was an enormous loss to the Bar, to the criminal justice system in Ireland and in particular to the prosecution service for whom he frequently acted, as well as to public life in general. On my own behalf and on behalf of the Office and this Conference I would like to extend sympathy to his widow Mary and to his family.

This year again, our Conference focuses on a single subject, that of prosecutions for offences relating to child pornography. I hope that our conference will make a contribution to serious debate on this important topic. All too often reporting of these cases in the popular press does not rise above the sensational and often

consists merely of reporting the more salacious aspects of cases and denouncing the defendant. The aim of our conference is to take a more dispassionate look at a number of important issues which arise in child pornography cases. Questions such as – what is the typical psychological profile of offenders? What leads people to commit this particular crime? What link is there between accessing pornographic images of children on the Internet and other offences, including the actual abuse of children? What are the appropriate criteria to be used in sentencing offenders? What are the prospects for successful rehabilitation of offenders? What currently are the possibilities for tracing the use which has been made of a computer for accessing child pornography and proving the material in court? We also intend to take a comparative look at the experience in prosecuting child pornography cases in the United Kingdom.

I should draw your attention to one change which has been made to our programme. Professor Taylor of the COPINE project in University College Cork is not able to be present at the Conference. Instead we will have a presentation from D/Superintendent Eugene Gallagher, who is a qualified barrister, and D/Sergeant John Finan, both from the Computer Crime Investigation Unit of the Garda Bureau of Fraud Investigation, on the subject of “Digital Evidence and Computer Forensics”. I am obliged to them for agreeing to speak at short notice. I would also like to thank our other speakers, Dr. Pat Walsh of the Granada Institute, Tom O'Malley of the National University of Ireland, Galway, Domhnall Murray of this Office and Esther George of the Crown Prosecution Service of England and Wales, and to thank Mary Ellen Ring, S.C., for agreeing to chair this morning's session of the conference.

## **CONTEMPT OF COURT**

I referred a few moments ago to the tendency of some elements in the media to emphasize the more sensational aspects of child pornography cases. However, I am afraid that the problem is widespread in relation to criminal trials generally. During the past year there have been frequent examples of inappropriate media reporting of criminal cases. While many newspapers and broadcasters continue to adhere to the responsible standards which used to characterize most of the Irish media, and while most court reports are competently and fairly written, there is an increasing number where standards have lapsed. I fear that some elements of the media seem determined to imitate the unacceptable excesses of tabloid journalism as practised in our neighbouring jurisdiction.

As a result I have been forced to invoke the contempt jurisdiction of the courts on an unprecedented number of occasions in the last year. Some of the publications concerned caused real damage within the criminal justice system. Within the last twelve months the jury trials of at least seven or eight defendants have had to be postponed at the eleventh hour because of the publication of prejudicial material shortly before the trial date. This is usually not publicized for fear of causing further prejudice. Fortunately we have not yet had a case where a court has permanently prohibited a trial because of pre-trial publicity. Nevertheless real damage is done where a case has to be postponed. It is unfair both to the interests of the people of Ireland, represented by the prosecution, as well as the interests of the accused. The longer a trial is delayed the less satisfactory the process is. We have also seen cases where some of the media have identified accused persons (including children) despite statutory prohibitions or court orders preventing them from doing so. In other cases certain publications have reported the content of argument and applications made in the absence of the jury while a trial was still taking place. Following the recent manslaughter trial before Judge

Michael White three publications were found guilty of contempt of court despite the fact that the judge had on a number of occasions during the trial given clear, specific and express warnings and instructions to the media and had even considered (but decided against) imposing a complete ban on reporting until after the trial. At that time, on my instructions, my counsel argued against a ban on the grounds that it would be unfair to penalize those who had acted responsibly.

The cases which have been prosecuted as contempts represent only the tip of an iceberg. In addition to these cases there have been frequent examples of inaccurate, sometimes sensationalist and even lurid reporting where, however, it would be difficult to establish an intent to cause prejudice and which were not, therefore, prosecuted as contempts.

The law on contempt of court is in many respects unclear and in need of reform. This makes the task of the prosecutor or the judge more difficult when dealing with contempt of court. In fairness to journalists it does not make their task any easier either, and I have considerable sympathy for journalists who complain that the scope of what they may or may not report is not always clear.

A particular problem exists in relation to cases where a prosecution is imminent but has not yet commenced. In a recent case of *DPP v Independent Newspapers Ireland Limited and others* Mr. Justice Kelly decided in the absence of legislation not to extend the law of contempt to cases where charges had not yet been laid. The cases concerned the naming of child defendants who could not have been named once charges were actually brought. As long ago as September 1994 the Law Reform Commission reported on the law of contempt and put forward a comprehensive proposal for statutory reform, including a proposal to apply the law of contempt where proceedings are imminent. The present Minister for Justice, Equality and Law Reform has undertaken a huge legislative programme

and has demonstrated a great commitment to law reform. I hesitate to call on him to take yet another project on board, but nevertheless, nearly ten years after the Law Reform Commission made its report, it is surely time that the Oireachtas dealt with the pressing need to reform the contempt of court laws.

I believe that the existence of sensationalist reporting which falls short of contempt demonstrates the need for a Press Council, and I welcome the Minister for Justice, Equality and Law Reform's promise to bring forward proposals in relation to the establishment of a Press Council later in the year.

### **DELAY IN THE COURTS**

I want to turn now to another matter. That is the continuing problem of delay in the criminal courts. In the Central Criminal Court the most recent information I have indicates that the total number of cases awaiting trial is now 141, against 220 last September. Cases are now being given a trial date within twelve months compared with eighteen months this time last year. This improvement has been brought about largely due to the decision of Mr. Justice Paul Carney and his colleagues to hold a special sitting of the court during the summer vacation, last September, to try to clear some of the backlog. It also reflects a decline in the number of new cases. But the present situation is not one to be satisfied with. Twelve months is still much too long when one realizes that the date is fixed only after the case is ready for trial, and that this is usually some years after a crime has been committed. Of the trials now fixed for 2004, over one-quarter of them relate to cases which were sent forward for trial in 2001 or earlier. Allowing for the time before a case is sent forward for trial, about one-quarter of cases are not heard until at least four years after a crime has been reported.

Secondly, it is one thing to fix a date for a case, but another thing to actually hear it. Of 119 cases listed in the Central Criminal Court between last September and last April, 20 had to be adjourned because there was no judge available to hear them. This is just over one case in every six. These 20 cases consisted of 13 rape cases and 7 of murder. When a case is not reached a date has to be fixed again and what must seem to victims to be an interminable wait to get their cases heard, starts all over again. Of the 119 cases listed between September and April, 11 were previously listed for trial. Last term, 52 cases were listed for trial. Fourteen of these were not heard because there was no judge available to hear them. Ten of these were rape trials. My conclusion is that there are still not enough judges assigned to hear criminal trials. Either we need more judges or we need to give a greater priority to crime over civil cases. To my mind the need to hear criminal cases promptly is of fundamental importance and should take priority over resolving civil disputes.

Delay in obtaining a trial date is also a problem in the Special Criminal Court. There are now very few cases heard in that court. However, they tend to be lengthy trials often involving multiple defendants. At present there are 10 trials listed and a further 3 where persons have been charged. All involve allegations of terrorist-related crime and all but one involve allegations of dissident republican activity. At present dates are fixed for about fifteen months from now which means a trial about eighteen months after the charge. If trials cannot be dealt with quickly in the Special Criminal Court it becomes very difficult for the prosecution to succeed in objecting to bail even where the Gardaí believe that defendants remain active in dissident republican groups.

The situation in the Circuit Court is much more uneven. The good news is that there are no significant delays in the Dublin Circuit Criminal Court, which deals with about half of the crime in the State. Cases in Cork take about six months to

get on. However, there are significant backlogs of cases in some other centers, including Limerick, Waterford and Tralee. There are a number of reasons why this is happening. Trials last longer. Senior counsel are more frequently engaged. District Court judges are refusing jurisdiction more often than they used to, which has increased the workload of the Circuit Court. I suspect, without having statistical information to back it up, that the increasing urbanization of the major centers outside Dublin plays a part. In the meantime, while most circuits now have two judges assigned rather than one as used to be the case, there is not always enough time assigned to deal with criminal business. The listing of cases tends to be driven by the availability of a judge (and sometimes of counsel) rather than by the need to hear the case. Sometimes cases which are likely to take time cannot be slotted in and are adjourned from session to session for very lengthy periods.

What all of this seems to point to is the need for greater management of the criminal caseload of the Circuit Court as a whole. It is probably unfair to the local judges assigned to circuits to expect them to try to slot as many cases as they can into the time available without anyone having control of the overall picture. There may be court venues where it is necessary to assign an extra judge or two on a temporary basis until backlogs are cleared.

## **DISCLOSURE**

Before I conclude I would like to refer briefly to one matter which, although somewhat technical, is of importance. It concerns our obligations as prosecutors regarding disclosure of material to the defence. This is an issue which has been considered by the courts in several cases over the past couple of years. Indeed, George Birmingham SC gave a paper to last



year's Conference regarding the most recent case law. In the intervening period there have been further cases in the higher courts dealing amongst other things with issues surrounding breath testing in drink driving prosecutions. Issues also continue to arise in the area of the disclosure of closed circuit television footage, which due to recent developments in the technology and broad defence requests can present the prosecution with logistical and manpower problems. Indeed, there are disclosure issues touching on the subject matter of this conference, child pornography prosecutions, which will be referred to later on today.

As prosecutors, we are all aware that our disclosure obligations can be very onerous and it is an area where increasing amounts of time are expended carefully considering and dealing with defence requests. The Statement of Guidelines for Prosecutors which I published in October 2001 deals specifically with the handling of disclosure and is, of course, relevant to prosecutions in all courts. It has been supplemented by various directions on individual topics issued by my Office from time to time. Frequently issues will arise on seemingly straightforward files relating to the disclosure of what the Garda Síochána deem to be sensitive information which may present a risk of some sort. If the Garda Síochána consider there would be a problem with disclosing particular information it is important for them to tell us this when submitting the file. In the event that any of you are uncertain how to deal with a particular disclosure request, my professional officers will be happy to deal with your queries and offer what guidance we can. If in doubt I would prefer that you seek instructions.

Finally, I want once again to welcome you all and to express the hope that you will find the conference an interesting and a rewarding one.

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