

**Report on the involvement of the Chief State Solicitor's Office in
relation to the case of the DPP -v- Sheedy**

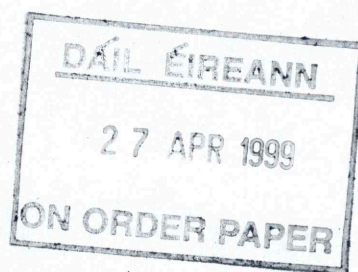
1. This report is intended to deal with any outstanding issues in relation to the above matter relevant to the Chief State Solicitor's Office which have not been covered by the reports made by the Chief Justice and the Secretary General of the Department of Justice, Equality and Law Reform. The report is intended to be supplementary to those reports and should be read in conjunction with them. A number of other questions have also been raised in Dáil Eireann and in public discussion generally concerning the role of this Office.

2. Throughout these proceedings, my role was to act as solicitor to the Director of Public Prosecutions from whom I obtained my instructions in this as in all criminal matters.

3. For ease of comprehension the principal events in the case are set out hereunder. They are as follows:
 - (i) On the 13th December 1996 this matter was listed before Judge O'Connor and a trial date was sought. The defendant was remanded on bail to the 7th May 1997.

 - (ii) On the 21st March 1997, on the application of the defence and on notice to the State, the case was listed again and the defence indicated that a plea of guilty would be offered. As was usual at that time, Judge Kelly dealt with that particular list.

 - (iii) The matter was relisted for the 7th May 1997 and next came before the Court on that date when by consent it was adjourned to the 11th June 1997.



- (iv) On 11th June 1997 the matter came before Judge Kelly and Mr Sheedy was arraigned and pleaded guilty. The case was further adjourned for sentencing to the 20th October 1997.
- (v) On 20th October 1997, Judge Kelly transferred the case to Judge Matthews who, having heard the evidence and the plea, imposed a sentence of four years.
- (vi) On 6th November 1997 this Office appeared in the matter when the review date was vacated.

4. A number of issues arise from documents appended to the Chief Justice's report concerning alleged discussions in chambers before both Judge Kelly and Judge Matthews in relation to which there is a dispute of fact between the two judges. Having discussed this matter with the Director of Public Prosecutions, I think it would be improper of me to comment any further on these questions at this time as I am advised that these issues may be relevant to continuing proceedings which Mr Sheedy is bringing in order to apply for an extension of time in which to appeal. I therefore make no further comment in relation to these matters, except to say that there is a direction in force made by the Director of Public Prosecutions on the 12th June 1998 and communicated to all relevant members of my staff concerning this question. A copy of that direction is contained in the Appendix to this report.
5. Following the decision on 6th November 1997 this Office heard nothing further in the matter until the 11th November 1998. At 12:32 p.m. on that date the Circuit Court office faxed the list of cases for Court No. 24 for the following day to this Office. The case of the DPP -v- Sheedy was listed as number 19. This was the first and only indication received by this Office that the case of the DPP -v- Sheedy was listed. An erroneous impression has been formed in some quarters that the Office had four days notice of the case. This impression appears to have arisen due to a mistake in an *Irish Times* report on 30th March 1999 concerning dates which wrongly stated that notice was

received on 8th November. The date of the hearing was also wrongly reported as 9th November instead of 12th November.

6. The list for the 12th November 1998 was dealt with by Eileen Creedon, Senior Assistant Solicitor, and Stephen Brown, who is a Legal Clerk. The list for this date consisted of cases listed for arraignment (the procedure whereby an accused is formally asked whether he pleads guilty or not guilty), mentions (these would be miscellaneous cases in the list only for mention to fix dates or for some other similar purpose) and pleas (these are cases in which an indication would already have been received that an accused intended to plead guilty and which would be dealt with solely on that basis). The list did not contain any cases which were going to be heard by way of a full trial. In addition to the two representatives from the State Solicitor's Office, the State was also represented by particular Counsel who would have been instructed in various particular cases which appeared in the list.
7. On 11th November 1998, when he saw the case appearing in the list, Mr Brown apparently assumed that it had been listed by mistake. It was marked "for sentence" and Mr Brown was aware that sentence had already been passed by Judge Matthews. Therefore Judge Matthews was the Judge who had had seisin of the case. It was, however, in Judge Kelly's list. Mr Brown thought there was a review date. In fact the review date had by then been vacated with the result that in the words of the Chief Justice's report "the function of the Circuit Court was complete". While the Chief State Solicitor's Office file indicated that the review date had been vacated Mr Brown did not notice this statement on the file and believed that a review of sentence had not taken place. It should be added that it is not unknown for a case to appear in the list in error. No notification had been received by the Chief State Solicitor's Office prior to the 11th November that the case was to be listed and no notification as to the reason for the listing was ever given.
8. Upon receipt of the Court list on the 11th November 1998 Mr Brown assembled the files and prepared the case report forms for each case listed on that date for transmission to the Director of Public Prosecutions Office when

the cases were finished. This form as completed in the case of Sheedy subsequent to the hearing is exhibited as Appendix 20 in the report of the Secretary General of the Department of Justice, Equality and Law Reform. The case report form is primarily designed as a basis for calculating payments due to counsel for the prosecution (and is also used to calculate Defence Legal Aid fees). The Chief State Solicitor's Office fills out the form for transmission to the Fees Section in the DPP's Office (as a standard procedure whether counsel is present or not, as it forms the basis of legal aid fees) every time a criminal matter is listed before the Courts.

9. The case of DPP -v- Sheedy was listed at number 19 for Court No. 24 on the 12th November 1999. It was listed "for sentence". I have interviewed Mr Brown. He has little or no recollection of how the matter was dealt with on that date. I spoke also to Ms Creedon who also has no recollection of the matter but since it appears she was not in Court when it was dealt with this is not surprising. Mr Brown believed from the notes he made on the list (having checked the file) that the case was still to be reviewed and in this he was in error. The transcript for Court No. 24 on the 12th November 1999 shows that the case was called on out of turn by Judge Kelly at number 9 in the list. There is nothing on the transcript to indicate why the case was taken out of turn. As already stated, Ms Creedon was out of the court room when the case was called. It is likely she was taking a telephone call and it would be quite common for solicitors or clerks dealing with the list to be called away to the telephone during the business of the Court.

10. When Mr Sheedy was produced in Court Judge Kelly stated "I have grave concerns in relation to his mental condition at the moment. Okay. So I will suspend the balance of the sentence - own bond of three years to be of good behaviour. There is no review in that sentence, is that right?" At this point Mr Brown (though he did not have right of audience) intervened - "My Lord there is a review date". Judge Kelly stated that the review was vacated. The case then proceeded. Mr Brown did not, it appears, report on the matter to Ms Creedon. As will be appreciated, other cases in the list were called on which required Mr Brown's attention. On return to the Office he made the standard

report already referred to (which appears as Appendix 20 to the report of the Secretary General already referred to).

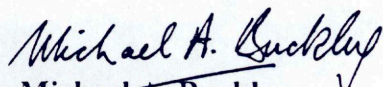
11. Human error can occur in any organisation. The question which has to be answered is whether the procedures in place are adequate to cope when it occurs and whether I need to put changes in place in my Office in the light of this case. Having regard to the extraordinary manner in which this case was dealt with, both in the manner in which it was listed and the way in which it was heard without inviting one side to make an application and the other side to reply, and having regard to the fact that, to the best of my knowledge, no incident of this sort has ever transpired before in court, I am not convinced that it is necessary to make fundamental changes in relation to the procedures which are followed in the Court by my staff. However, I have commenced a discussion with the Director of Public Prosecutions as to how the existing reporting arrangements might be improved, both internally in my office and as between my office and the Director's, and I have taken certain steps (referred to in paragraph 17 below) to tighten up procedures in my Office.
12. Having regard to the existing resources of the Chief State Solicitor's Office I consider that a senior solicitor and a legal clerk are adequate in normal circumstances to deal with the list in Court No. 24. However, for the reasons expressed above, I do not consider that on the date in question this case was dealt with in a normal manner by the Court. I feel it would be wasteful of my existing resources to increase the representation in that Court.
13. The next involvement of the Chief State Solicitor's Office in this matter was on or about the 1st February when contact was made by the Garda Síochána with Mr Brian McCreary to inform him that Mr Sheedy had been released and to enquire whether the Chief State Solicitor's Office knew anything about the matter. Mr McCreary subsequently had the conversations with Mr Luigi Rea, B.L., who had appeared for Mr Sheedy in the case, and with members of the Dublin Circuit Court Criminal Office staff, as detailed in the document "Memorandum for File" which is exhibited as Appendix No. 12 to the Chief Justice's report. Mr McCreary immediately brought the matter to the attention

of the Director of Public Prosecutions who on the 4th February directed that judicial review proceedings be commenced. The Director informed the Attorney General of the matter on the 10th February and I understand he in turn immediately informed the Minister for Justice, Equality and Law Reform and the Chief Justice.

14. The subsequent involvement of the Chief State Solicitor's Office in the matter relates solely to the judicial review proceedings which were then brought by the Director of Public Prosecutions and to the investigations carried out by the Chief Justice and the Secretary General of the Department of Justice, Equality and Law Reform and are detailed in full in those reports.
15. With regard to suggestions that I delayed in answering certain questions raised with me by the Secretary General of the Department of Justice, Equality and Law Reform, I took the view that, until the judicial review proceedings were disposed of, it would not be proper for me to give a full and formal answer to all the matters which I had been asked. I believe, however, that I brought to the attention of all necessary authorities any matters which required investigation by them at the proper time. I should add that the Chief Justice felt similarly constrained in relation to the investigations which he was carrying out at the time while the judicial review was pending by virtue of the fact that it was possible he would have a role to play in the case if an appeal were to come before the Supreme Court.
16. A further question in relation to this matter was raised by Deputy Nora Owen in Dáil Eireann on 20th April 1989 and subsequently in the *Irish Independent* of 21st April 1999 where she stated "we have not yet established if a request went to the Chief State Solicitor's Office for the full file to be available in the Court on the 12th November". The file of the Chief State Solicitor is the file of that Office and is not the file which would be before the Court. The Court has its own file which is exclusively in the possession of the Court. Accordingly, no request was made to the Chief State Solicitor's Office to have the file in Court and such a request would never be made.

17. **Conclusions and Recommendations**

- (i) As a result of the matters referred to above, I believe that it is appropriate that I give further consideration, in conjunction with the Office of the Director of Public Prosecutions, to possible improvements in the reporting arrangements in relation to the outcome of criminal cases.
- (ii) At the moment the question of a transfer of the solicitor service from my office to the direct control of the Director of Public Prosecutions is among the issues under consideration by a committee which has been appointed by the Government, chaired by the former Government Secretary, Dermot Nally, to consider the organisational arrangements of the prosecution system and I will bring to the attention of that Committee the matters referred to in this report.
- (iii) I consider, and it is clear also from the reports of both the Chief Justice and the Department of Justice, Equality and Law Reform, that there is a lack of clarity in court listing and notification procedures in criminal cases. I believe an examination of this area would be beneficial and I would welcome the opportunity to contribute to such a process.
- (iv) In the light of this case I am making arrangements to ensure that in future the solicitor in charge of the trials section should review cases in the court list before close of business on the date cases are heard. Directions to implement this procedure have now been put in place.


Michael A. Buckley

CHIEF STATE SOLICITOR

22nd April 1999

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OUR REF:

YOUR REF:

DATE: 12 June 1998

**CHIEF STATE SOLICITOR
EACH STATE SOLICITOR**

It has come to the notice of the Director that on a number of occasions before jury trials were due to take place and at the request of Defence Counsel, Prosecution Counsel has attended in the trial Judge's rooms to listen in to a discussion between defence Counsel and the Judge as to what penalty should be imposed on the defendant in the event of a plea of guilty to any or all of the counts and at the appropriate time to suggest the penalty or parameters of penalty he thinks should be applied.

The Director's approval for the involvement of Prosecution Counsel in any such discussion has never been sought and, if it were now to be sought, would not be given. The Director considers that if the practice of plea bargaining, as the behaviour above appears to constitute, is to occur within this jurisdiction, it should be provided for by legislation, after appropriate consideration of all the factors by relevant parties. Otherwise it will, if operated at local level in the country, result in an uneven administration of justice with the capacity for damage to the interests of the people, individual defendants and of victims of crime.

The question of whether Prosecution Counsel in this jurisdiction should have a role in the determination of penalty, particularly when the Director has now the right of appeal against an unduly lenient sentence, has been receiving attention in this Office. The view being expressed to the Director by senior lawyers outside the office is very much that present law and practice rules out the prosecution's attitude to penalty being expressed in Court.

A fortiori it should not be made known in private. Putting it at its mildest, the practice described in the first paragraph above is of doubtful conformity with Article 34(1) of the Constitution.

The Director is of the view that the practice must be discontinued, at least as far as prosecution counsel are concerned, and he would be obliged if any prosecution Counsel briefed by you would be so informed at an early stage.

Michael Liddy,
Professional Officer.

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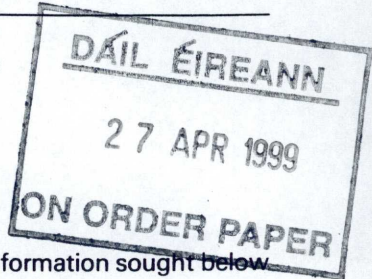
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P.N. 7146

DOCUMENT(S) TO BE LAID BEFORE HOUSE OF OIREACHTAS

Clerk of Dail



I enclose copies* of the undermentioned document(s) to be laid before the House. The information sought below is as set out.

[Redacted]

Protocol & General Division Department of the Taoiseach

23/4/99

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| 1. Department or other body laying document | Department of the Taoiseach |
| 2. Title of document | Report on the involvement of the Chief State Solicitors Office in relation to the case of the DPP -v- Sheedy |
| 3. If laid pursuant to statute, state Title and section of Act | N/A |
| 4. Is there a statutory period in relation to the laying of the document? | No |
| If so, give particulars | N/A |
| 5. Is a motion of approval necessary? | No |

*Three copies of the document in respect of each House, or six copies where it is to be laid before one House only.

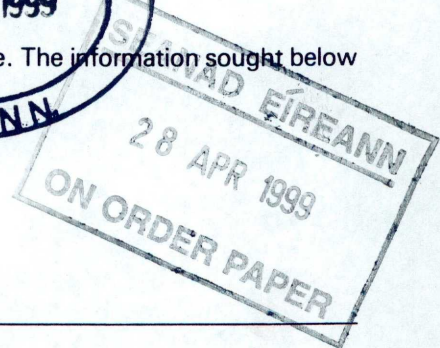
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