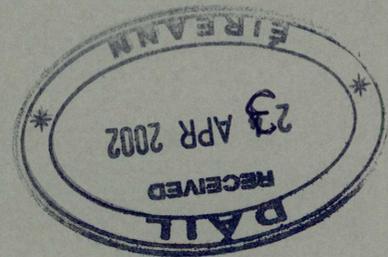


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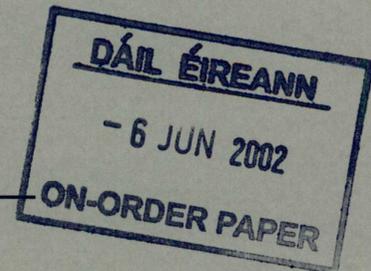


**Tithe an Oireachtais**  
**Houses of the Oireachtas**



**REPORT OF THE JOINT COMMITTEE ON JUSTICE,  
EQUALITY, DEFENCE AND WOMEN'S RIGHTS ON THE WORK  
OF THE SUB-COMMITTEE ON THE ABBEYLARA INCIDENT**

April 2002



**TUARASCÁIL ÓN gCOMHCHOISTE UM DHLÍ AGUS CEART,  
COMHIONANNAS, COSAINT AGUS CEARTA NA mBAN  
MAIDIR LE hOBAIR AN FHOCHOISTE AR AN TEAGMHAS I  
MAINISTIR LEATHRÁTHA**

Aibreán 2002





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**REPORT OF THE JOINT COMMITTEE ON JUSTICE, EQUALITY,  
DEFENCE AND WOMEN'S RIGHTS**

**ON THE WORK OF THE SUB-COMMITTEE ON THE ABBEYLARA INCIDENT**

1. The Abbeylara incident is by now a well-known matter of public concern. On 20 April 2000, Mr. John Carthy was shot dead by Gardai at Toneymore, Abbeylara, Co. Longford. Following the shooting there was an internal Garda inquiry (conducted by a Chief Superintendent) into the circumstances surrounding the events at Abbeylara. A report of that inquiry was submitted to the Commissioner of An Garda Síochána who, in turn, submitted his own report to the Minister for Justice, Equality and Law Reform ("the Report"). The Minister referred the Report to the Oireachtas, following which both Houses referred it to the Joint Committee on Justice, Equality, Defence and Women's Rights ("the Joint Committee") and the Report was (with the benefit of parliamentary privilege) then made available to the public.
2. The Joint Committee considered the Report in private on 26 October 2000 and decided to invite submissions from the public by means of newspaper advertisements. Twenty-one such submissions were received – most of them critical of the Report's conclusion that the shooting of Mr Carthy was necessary to protect the lives of Gardai.

In view of these submissions, the Joint Committee established a Sub-Committee ("the Sub-Committee to Inquire into the Abbeylara Incident"). The Sub-Committee was conferred with compellability powers conferred by the Houses of the Oireachtas pursuant to the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 ("the 1997 Act") and on 24 April 2001 the Sub-Committee embarked on public hearings. Members of the Sub-Committee visited Abbeylara on 25 April 2001 and had further public hearings on 26 April 2001, 27 April 2001 and 30 April 2001, at which juncture the hearings were adjourned for 30 days in consequence of the making of a reference to the Ceann Comhairle on behalf of nine members of An Garda Síochána's Emergency Response Unit pursuant to a provision of the 1997 Act claiming an exemption from giving evidence.

3. Before that 30 day period had expired, 36 members of An Garda Síochána (each of whom had been directed to attend before the Sub-Committee) issued judicial review proceedings against 19 members of the Joint Committee as well as against Ireland and the Attorney General. These proceedings were separately defended on behalf of the Joint Committee, on behalf of Deputy Alan Shatter (representing himself) and on behalf of Ireland and the Attorney General. Following a High Court hearing before a Divisional Court of three judges (which commenced in July 2001 and resumed in early October 2001 after an adjournment during August/September 2001), the High Court, in a judgment of 23 November 2001 (inter alia) declared that the conduct of a public inquiry (with the aid of the power of the State and conducted by members of the Oireachtas under the aegis of the Houses of the Oireachtas and with the authority thereof) liable to result in findings of fact or expressions of opinion adverse to the good name, reputation and/or livelihoods of persons not members of such Houses was 'ultra vires' the powers of such Houses.

4. This decision of the High Court was then appealed by all the Respondents to the Supreme Court, which appeal was heard in January 2002 before seven members of the Court.

The Supreme Court, in a 5-2 decision delivered on 11 April 2002, dismissed the appeal (with separate lengthy judgments from each of the seven members of the Court), but narrowed somewhat the principal declaration of the High Court as referred to above. A brief and necessarily preliminary legal analysis of the implications of the Supreme Court judgments is contained in Appendix 1 to this Report.

5. On the same date as the Supreme Court decision (11 April 2002), the Minister for Justice, Equality and Law Reform initiated the process for the establishment of a Tribunal of Inquiry into the Abbeylara Incident pursuant to the Tribunal of Inquiries Act, 1921 (as amended).
6. Given that the current (28<sup>th</sup>) Dáil is now nearing dissolution, it is not possible for this Joint Committee itself to undertake a detailed examination of the Supreme Court decision and its implications for parliamentary inquiries in general. The Joint Committee recommends, however, that the decision (and the seven separate judgments) be subjected to careful consideration after the election and the convening of the next Dáil and Seanad. Apart from any examination the Government may direct the Attorney General to undertake on its behalf, the Joint Committee recommends that the Oireachtas itself should consider, in the aftermath of the decision, the extent of the powers of either House separately, or both Houses jointly, to conduct inquiries.
7. The Joint Committee recommends that the Committee on Procedure and Privileges of the Dáil and Seanad ("the CPP"), or a sub-committee thereof, embark on such a consideration as soon as the CPP is constituted in the next Dáil and Seanad, with a view to clarifying and if necessary, recommending reforms in both law and policy in this area. Otherwise, the working of committees may be inhibited, whether necessarily or unnecessarily, by uncertainty as to the extent of their powers. Given the increasingly important role of committees in parliament, this would be a most undesirable development.

The Joint Committee notes and welcomes the content of the *Houses of the Oireachtas Commission Bill, 2002*. In the event of this Bill being re-introduced and passed during the next Dáil and Seanad, it would then be appropriate for the CPP, or a sub-committee thereof, to recommend to such a Commission that resources be allocated for certain forms of inquiry work to be conducted by the Commission on behalf of committees. It should be noted that (as provided in Standing Order 91 (1) (b) (Dáil) and Standing Order 84 (1) (d) (Seanad)), the CPP is empowered to: "*oversee the procedure in Standing, Select, and Special Committees (as the case may be), whether by request from the relevant Committee or otherwise, and to examine, where appropriate, the role of Committees as they evolve*".

8. In this regard, the Committee would strongly support the recommendation contained in the *Parliamentary Inquiry into D.I.R.T. First Report* [Vol. 1 (15 December 1999) Page 199] ie. appointment of a Parliamentary Inspector to carry out preliminary fact-finding inquiries on behalf of committees. Indeed, the Committee was disappointed to note that no progress has been made in implementing such an initiative.

9. **Conclusion**

As already stated, in light of the imminent Dáil dissolution, it would not be possible for the Joint Committee to consider the several issues which arise in the wake of the Supreme Court decision in the *Abbeylara* case. The Joint Committee simply indicates the following issues which do arise for further and urgent consideration:

- the extent of the powers of committees to conduct inquiries.
- the preparation of new rules and guidelines for committees, which would set out the proper scope of inquiry work pursuant to current law as well as the application of the rules of natural and constitutional justice in this context.
- the merits of appointing a parliamentary inspector – as recommended in the *Parliamentary Inquiry into D.I.R.T. First Report* [Vol. 1 (15 December 1999), page 199] to carry out preliminary fact-finding inquiries on behalf of committees.
- whether legislation is necessary or desirable and, if so, its extent.

**Joint Committee on Justice Equality,  
Defence and Women's Rights  
23 April 2002**

## APPENDIX 1

### PRELIMINARY ANALYSIS OF THE IMPLICATIONS OF THE SUPREME COURT DECISION OF 11 APRIL 2002 IN THE 'ABBEYLARA CASE' (MAGUIRE AND OTHERS V ARDAGH AND OTHERS)

#### 1. CONTEXT

The Abbeylara Sub-Committee appealed the High Court order of 23 November 2002 that, in effect, the Houses of the Oireachtas could inquire only into matters relating to their own management and members. The Supreme Court (the "Court") by a majority of 5:2 dismissed the appeal but narrowed the High Court order.

#### 2. KEY POINTS

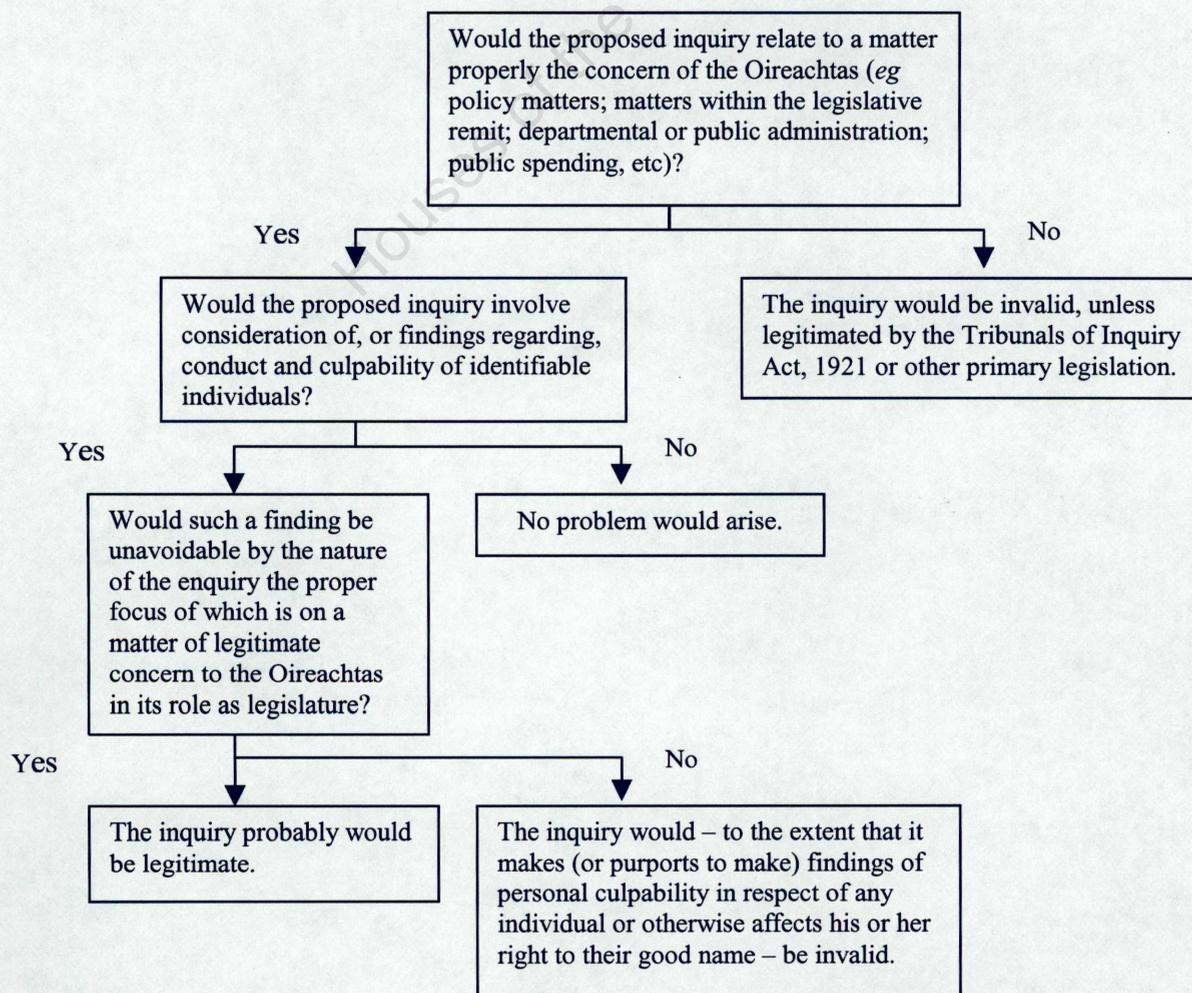
- 2.1 **Default position.** Any person (including a member of the Oireachtas) may, within the limits of the law, inquire into anything. However, the complexion changes entirely when the rights of others are affected by an inquiry, *eg* if the inquirer seeks to compel a person to attend a hearing, or the inquirer makes (and implicitly, publishes) findings which in reality, even if not in strict form, will affect a person's reputation. Then the person undertaking the relevant inquiry must be able to point to a power for him or her to do so, as constitutional law provides that a citizen's rights may not be affected except by a power which expressly or implicitly derives from, or is inherent in, the Constitution.
- 2.2 **Inherent in the nature of a legislature.** The Oireachtas has the right (and perhaps the duty) to inform itself on matters relevant to its parliamentary functions, and inquiries by committees are appropriate for that purpose. Therefore it is legitimate for Oireachtas committees to inquire into and make findings regarding matters relating to policy, legislation, departmental or public administration, public expenditure and such like, but each such statutory inquiry must have clear terms of reference and be conducted properly. The Court will take a reasonably restrictive view of the interest which the Oireachtas might properly have (*e.g.* the Court regarded as artificial suggestions that the immediate inquiry was legitimated by the responsibility of the Minister for Justice for An Garda Siochana).
- 2.3 **Role of politicians.** Although elected representatives are not automatically incapable of carrying out quasi-judicial inquiries (*i.e.* inquiries which make determinations of fact or which might affect a person's good name or business reputation), they may do so only if they conduct themselves in a quasi-judicial manner. Some judges commented that this theory (that elected representatives could properly undertake inquiries) might be difficult to implement in practice.
- 2.4 **Objectivity and bias.** Those who undertake quasi-judicial inquiries must act quasi-judicially, most obviously by avoiding both bias (*i.e.* 'subjective' bias) and the appearance of bias (*i.e.* 'objective' bias, meaning putting a reasonable concerned person in fear that bias may exist). An appearance of bias may arise where a person makes comments on relevant issues prior to being involved in making any final determination.

#### 3. KEY IMPLICATIONS

- 3.1 **Oireachtas 'internal affairs' unaffected.** The competence of the Oireachtas to inquire into the conduct of its own members, and other matters wholly internal to itself (such as House procedures and privileges), is express in the Constitution and is unaffected by this decision.
- 3.2 **Fact-finding for legislative purposes.** The Oireachtas may appoint a committee to inquire into matters relevant to its legislative purposes. Such concerns typically would be at a high

level of generality, such as “policy, departmental and public administration, and public spending.”

- (a) Primary purposes and incidental consequences. Some of the judgments acknowledge that it would be permissible for an Oireachtas inquiry into such a matter to make findings of fact which necessarily or incidentally are adverse to an individual, if for example the finding related to his or her role as a senior officer in a public agency and the inquiry related to management in and public expenditure by that agency.
- (b) Differentiating primary and incidental consequences. It will be difficult to identify precisely the dividing line between a legitimate inquiry which incidentally makes findings of fact adverse to an identifiable individual’s good name, and circumstances in which that will not be legitimate. However, it seems implicit that the foundation of the inquiry – as stemming from a question properly within the ambit of concern and the constitutional role of the Oireachtas (such as public spending), rather than from a matter not properly so regarded (such as the operational decisions of individual gardai) – will determine the question. It seems that the more closely aligned the inquiry is with the proper (legislative) concerns of the Oireachtas, the greater will be the Court’s tolerance of findings of fact adverse to identifiable individuals, personal culpability and so forth; the less closely aligned are those matters, the less tolerant the Court will be of the relevant adverse findings. It probably would be highly relevant if it were that the primary purpose of legitimate parliamentary inquiry could not be served (irrespective of the inquirer’s methodology) without making such adverse findings.
- (c) Current law. On *current law*, the appropriate questions (and the order in which they ought to be asked) appear to be:



3.3 ***Extending the basis of legitimate inquiry.***

- (a) To the extent that an Oireachtas inquiry is not legitimate under the implicit or inherent powers which the Oireachtas has by virtue of its status as a legislative assembly, it seems from (but is not express in) the decision that the Oireachtas might by legislation confer on one of its committees power to inquire into specified matters. In fact, this is precisely what was done in the Tribunals of Inquiry (Evidence) Act 1921, although in the case of such statutory inquiries the detail is provided in resolutions of the Houses which then combine with the Act to provide the relevant terms of reference, and powers.
- (b) It appears that no constitutional amendment would be necessary for the Oireachtas to confer, by primary legislation similar to the 1921 Act, on one of its committees (or on any other entity) the power to inquire into and make determinations of fact (including those adverse to the good name of an individual). However, as emphasised, a requirement of fair procedures and natural justice will attach to every such inquiry, however structured. A doubt remains in respect of any inquiry's competence to make a determination of fact where that determination would amount in substance, even if not in strict legal form, to a finding of guilt of a criminal offence.

3.4 ***Fair procedures and natural justice – constant themes.*** Whatever existing model of inquiry is adopted – or new model formulated – every procedure adopted by every inquiry must be fair and must reflect principles of natural and constitutional justice.

3.5 ***Objectivity and bias.*** It is relevant to reiterate the importance attached by the Court to the issue of objective (*i.e.* 'the perception of') bias and the risk to any proceedings, where an inquirer makes comments on relevant issues prior to making any final determination; this risk being particularly acute when such comments are in the public domain, (*e.g.* are made to the media).

3.6 ***Document management.*** Although not forming part of the conclusion of the Court, several of the judgments make it clear that in the conduct of any inquiry being undertaken by a committee, it is essential that use of precedent materials be carefully monitored and strict document management be maintained.

## APPENDIX 2

### SUB-COMMITTEE ON THE ABBEYLARA INCIDENT

#### List of Members:

Deputies: Seán Ardagh (*Chairman*)

Monica Barnes

Brendan Howlin

Marian McGennis

Michael Moynihan\*

Alan Shatter

Senator: Denis O'Donovan

\*Appointed in substitution for Deputy John McGuinness on 12/04/01

### APPENDIX 3

#### JOINT COMMITTEE ON JUSTICE, EQUALITY, DEFENCE AND WOMEN'S RIGHTS

##### List of Members:

Deputies:           Seán Ardagh (FF) (*Chairman*)  
                          Monica Barnes (FG) (*Vice-chairperson*)  
                          Tom Enright (FG)  
                          Beverley Cooper-Flynn (FF)  
                          Frances Fitzgerald (FG)  
                          Brendan Howlin (Lab)  
                          Marian McGennis (FF) (*Government Convener*)  
                          John J. McGuinness (FF)  
                          Michael Moynihan (FF)\*\*\*\*\*  
                          Jan O'Sullivan (Lab) \*  
                          Alan Shatter (FG)\*\*\*  
                          Billy Timmins (FG)  
                          Eddie Wade (FF) \*  
                          G.V. Wright (FF)

Senators:           Eddie Bohan (FF)  
                          Helen Keogh (FG)  
                          Tony Kett (FF)  
                          Denis O'Donovan (FF)  
                          Kathleen O'Meara (Lab)

\* Deputy Jan O'Sullivan replaced the late Deputy Pat Upton by order of the Dáil on 2nd March, 1999.

\*\* Deputies Mary Coughlan and Eddie Wade replaced Deputies Mary Hanafin and Eoin Ryan (due to Ministerial appointments) on 9 March 2000.

\*\*\* Deputy Alan Shatter replaced Deputy Jim Higgins on 29 June, 2000.

\*\*\*\* Deputy Michael Finucane replaced the late Deputy Theresa Ahearn. Deputies Tom Enright and Billy Timmins replaced Deputies Charles Flanagan and Michael Finucane on the 29 March, 2001.

\*\*\*\*\* Deputy Michael Moynihan replaced Deputy Mary Coughlan on 12<sup>th</sup> April, 2001.

## APPENDIX 4

### MEETINGS OF THE SUB-COMMITTEE ON THE ABBEYLARA INCIDENT

<b>Date</b>	<b>Private / Public Session</b>
27 <sup>th</sup> March 2001	Private Session
3 <sup>rd</sup> April 2001	Private Session
10 <sup>th</sup> April 2001	Private Session
18 <sup>th</sup> April 2001	Private Session
24 <sup>th</sup> April 2001	Public Hearings / Private Session
26 <sup>th</sup> April 2001	Public Hearings / Private Session
27 <sup>th</sup> April 2001	Public Hearings / Private Session
30 <sup>th</sup> April 2001	Public Hearings / Private Session
3 <sup>rd</sup> May 2001	Private Session
10 <sup>th</sup> May 2001	Private Session
22 <sup>nd</sup> May 2001	Private Session
24 <sup>th</sup> May 2001	Private Session
29 <sup>th</sup> May 2001	Private Session
12 <sup>th</sup> June 2001	Private Session
14 <sup>th</sup> June 2001	Private Session
27 <sup>th</sup> June 2001	Private Session
4 <sup>th</sup> July 2001	Private Session
13 <sup>th</sup> November 2001	Private Session
27 <sup>th</sup> November 2001	Private Session

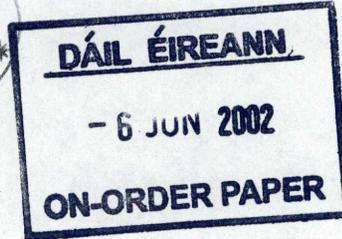
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An Chomhchoiste um Dhlí agus Ceart,  
Comhionannas, Cosaint agus Cearta na  
mBan  
Teach Laighean  
Baile Átha Cliath 2



Joint Committee on Justice, Equality,  
Defence and Women's Rights  
Leinster House  
Dublin 2  
Phone (01) 6183929  
Fax (01) 6184123 / 6184124



X

[Redacted]

Librarian

Dear Ms. [Redacted]

Please find attached 6 copies of the report of the Sub-Committee on the Abbeylara Incident dated 23<sup>rd</sup> April, 2002, which was adopted by the Joint Committee on Justice, Equality, Defence and Women's Rights at its meeting today, to be laid before the Houses of the Oireachtas. Please forward the usual official receipt at your convenience.

[Redacted]

Clerk to the Joint Committee  
23<sup>rd</sup> April 2002

Houses of the Oireachtas

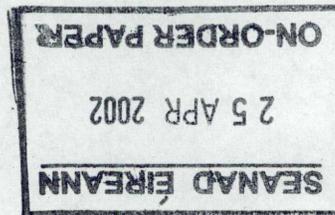
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An Chomhchoiste um Dhlí agus Ceart,  
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PW. 11542

**Joint Committee on Justice, Equality,  
Defence and Women's Rights**  
Leinster House  
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Phone (01) 6183929  
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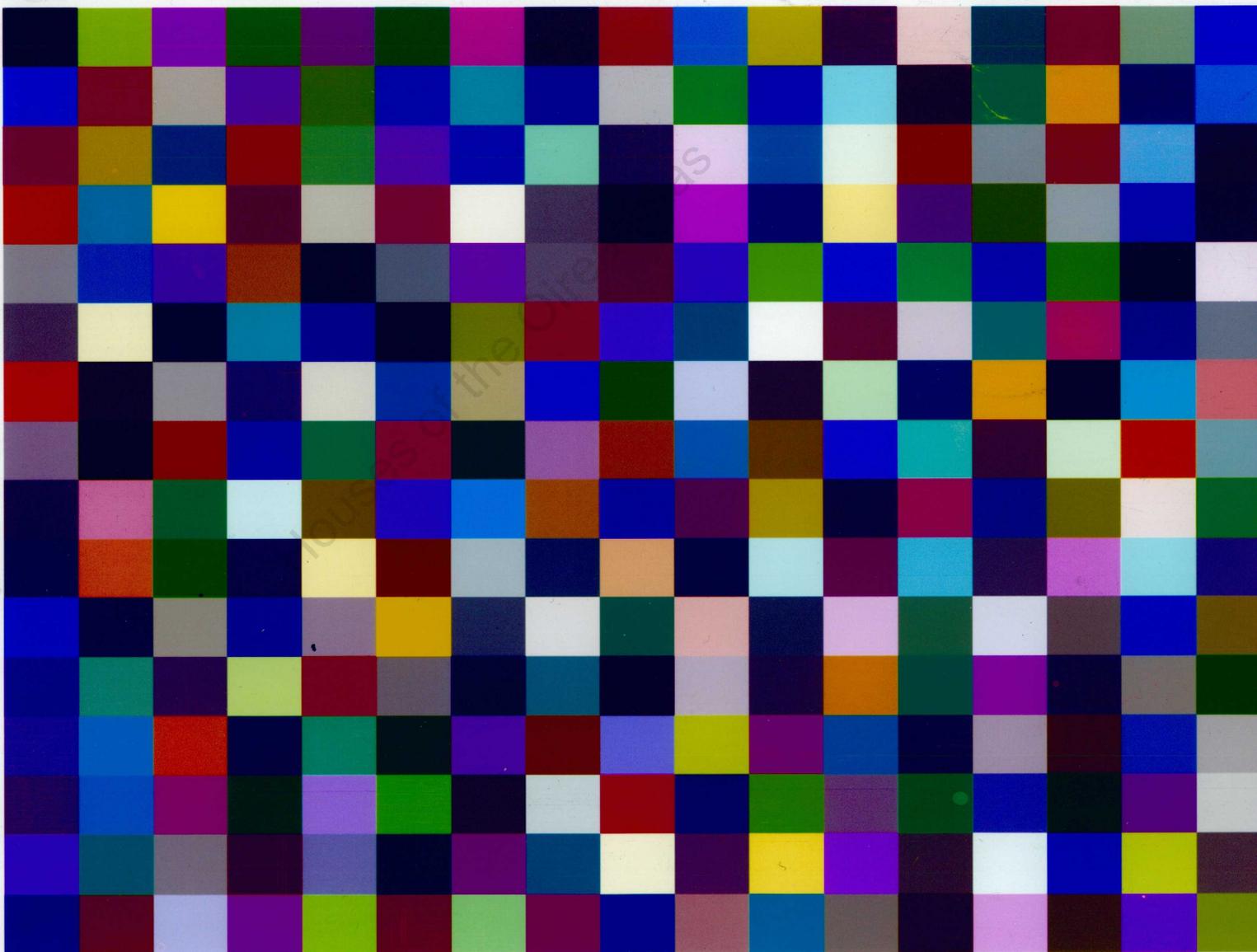
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