

VIEWPOINT

THE CENTRAL CRIMINAL COURT: THE LIMERICK
EXPERIENCE

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The paper which I am giving this evening was written to be delivered at a conference in King's Inns a couple of years ago. The circumstances which gave rise to its not being given on that occasion are detailed in an article in the current issue of the *Judicial Studies Institute Journal*.¹

Re-reading the paper this morning for the first time in a couple of years, I cannot for the life of me understand what all the fuss was about.

Dean Fennell, ladies and gentlemen, I give you the banned paper.

At this time last year, there was such a backlog of murder cases from Limerick awaiting trial in the Central Criminal Court that the court would never be without a Limerick murder trial at hearing. A murder trial may involve over one hundred witnesses, many of the members of An Garda Síochána, proving preservation of a scene, service of tea and biscuits pursuant to the Treatment of Persons in Custody Regulations and negating ill-treatment of prisoners in custody.

In the normal run of cases, these witnesses will be dispensed with by agreement between the parties. We were told, however, at

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¹*Editorial Board*: The article to which His Hon. Mr. Justice Carney refers is "Extra-Judicial Comment by Judges" by Rónán Kennedy (2005) 5(1) *Judicial Studies Institute Journal*. Mr. Kennedy, at p. 202, outlines the circumstances involved:

In early 2004, Mr. Justice Carney was due to speak at a conference in Dublin on the criminal justice system. His paper commented on the sittings of the Central Criminal Court in Limerick in late 2003. The Chief Justice, who was chairing the conference, was not prepared to attend the conference if the paper was delivered as drafted. According to the *Irish Times*, Mr. Justice Keane objected to three elements in the paper: the fact that it referred to matters in the recent past or still current; the fact that these matters may present themselves before the courts in another form; and his concern that judges should not talk in public about cases they had presided over.

Mr. Justice Carney did not speak at the conference.

the Fennelly Commission that, in conditions of backlog and delay, such agreement would not be forthcoming because legal teams feared that they might not ultimately be in the case due to another case running on and might be blamed by their successors for making an erroneous concession. In this situation, it seemed that, for the foreseeable future, it would not be possible to police the streets of Limerick due to manpower being tied up in Dublin. Accordingly, it was decided that the Limerick problem would be tackled in Limerick with the Central Criminal Court sitting outside Dublin for the first time since the foundation of the State.

There was a lead-in to the first sitting to avoid clashes with the Circuit and District Courts and to summon a Central, as distinct from Circuit, Court panel of jurors. During this time, I was told on a daily basis, by almost everyone I met, how the venture could not succeed:

- No jurors would come to court
- No jury would convict
- The jurors would all know the accused
- There would be insufficient jurors in the county
- The juries would be intimidated

I was reminded on a daily basis of the advertising slogan of some decades ago for the failed Guinness Light: “They said it couldn’t be done.”

The first murder trial in Limerick was heard at sittings in July of 2003. Counsel agreed that a juror coming from certain areas connected with the case should justify a challenge for cause shown. In fact, there was not the slightest difficulty in empanelling juries for any case at these sittings. The jury panel seemed to me to have a steely determination to reverse the city’s bad press.

The case ran quickly. When the jury retired to consider its verdict, the large press and television corps retired to the pub without leaving anyone behind to keep nix. Nix was, in fact, on this occasion holding the prosecution brief. The jury returned unexpectedly early, in under two hours, with a unanimous guilty verdict. Evidence of character and antecedents and victim impact evidence was taken

immediately and sentence was imposed without a single member of the press pack having returned from the pub. On the way back to Dublin, I listened with some amusement to reconstructed descriptions on the car radio of the return of the jury, the evidence given and the reaction of the parties to the conviction and sentence.

The second murder trial went as smoothly as the first. Again, a unanimous guilty verdict was returned in under two hours. On this occasion, the press took no chances, but the television cameras had now abandoned us.

The third trial in the July sittings was a rape which resulted in a unanimous acquittal. This was in line with the norm, as the majority of contested rape trials result in acquittals.

The most significant event to occur during the July sittings was on July 30th, when the District Court returned five accused for trial for the murder of Kieran Keane and the attempted murder of Owen Treacy. Until recently, that case would have taken two years to come to trial in Dublin. I doubt if the case could have been held together over such a protracted period of time. This was a case entirely dependent on the evidence of one witness who was being, and still is, openly threatened with death; who wore body armour in court, as evidenced by the dull thud whenever he beat his breast; and who was minded in court by two armed guards, wearing radio sets on their faces, as they inferentially told us, to keep in communication with each other within the courtroom if shooting or whatever else broke out.

Being in Limerick at the time, I was able to take immediate seisin of the case the day after the return for trial, to adjudicate on applications for separate trials and applications for change of venue and to fix a date for trial at the start of the following legal term in Limerick.

In relation to the July sittings in Limerick, there was no difficulty in empanelling jurors. As I indicated, the body language of the array seemed to me to be expressing a determination to bring the rule of law back to the city of Limerick.

When the feud case came on in the next term, however, the situation was entirely different. The court itself has no function in relation to security, which is a matter for the guards. There was

obviously a lot of media interest in the Keane trial and a Sunday newspaper reported that there would be a ring of steel around the courthouse. The County Registrar conveyed his concern to the Gardaí that the security, in his view, should be as low-key as possible to avoid causing anxiety to the jury panel and to future jury panels in both the Central and Circuit Criminal Courts.

About ten days before the trial, 72 jurors out of 429 summoned had indicated that they would attend and, given the 42 challenges available as of right and the projected length of the trial, the County Registrar decided to summon another 100 jurors. The day before the projected trial I took suddenly ill and had to be replaced for jury selection by Mr. Justice Butler. I am advised by the County Registrar that the area around the courthouse was cordoned off. A Garda boat and water unit were on in and under the river, a Garda helicopter was in the air, sniffer dogs were in the ground and snipers were on the roof. The jury panel were searched with metal detectors. The County Registrar found a significant increase in the number of medical certificates presented and, for women, they mainly claimed “stress and anxiety” as the cause for unfitness to serve. It was not found possible on that occasion in Limerick to swear a jury and the trial was transferred to Dublin where I was in a position to take over the trial again.

In view of what had occurred in Limerick, specifically the enormous press hype about the impossibility of swearing a jury to try it and the well-publicised projections that the case would take at least eight weeks, the registrar decided to double the number of jurors summoned. This proved completely unnecessary as a jury was empanelled in Dublin without the slightest difficulty. No juror sought to be excused from service when his or her name came out of the box. This was surprising in the wake of the hysterical press coverage about the failure to empanel a jury in Limerick. The trial moved to Cloverhill Courthouse where the security was relatively low key. The jury seemed to me to be relaxed and conscientious in their demeanour and six weeks later brought in their unanimous verdicts of guilty against all accused.

It is ironic that a practice such as the placing of snipers on the roof of the Old Bailey and other court buildings in England, which

has been criticised from time to time in relation to the trial of Irishmen as being over the top, should have the effect in this jurisdiction of intimidating jurors against turning up.

The most important feature of the Keane trial to my mind was that the timescale achieved by the accident of my being present in the county at the time of the return for trial, enabled a timetable to be adopted which kept the trial together. If it had followed the traditional path, I do not believe it would have held together.

The statutory provision which abolished preliminary examination in the District Court directs that an accused person should appear before the court of trial within 42 days of arrest. If this is effected, a trial could take place in every case within ten weeks of the arrest which, in many cases, would be within ten weeks of the crime. In respect of a number of cases, because they appeared to me to be of such national importance, I tried to impose this timescale on the parties, but this was resisted by both the prosecution and the defence. These cases were each resolved at a much later stage by pleas of guilty. The leisurely approach insisted upon by the parties gratuitously increased the suffering of the victims' families who, of course, are not parties nor afforded any status under the law as it now stands and, therefore, cannot influence the timescale or anything else for that matter. Making a judge available to give an immediate trial to every accused after return for trial would produce guilty pleas at an earlier stage and the judges so assigned could be returned to other areas after the plea was delivered to the judge in charge of the list. They would in effect be cardboard judges whose immediate availability, if needed, would make what was going to happen in any event happen at a much earlier stage.

Another case from Limerick, though heard in the Dublin list, was one in which the witnesses developed collective amnesia and the accused, another member of the Keane family, upon being acquitted, made the gesture which was undoubtedly the most photographically reproduced one of 2003. Instant law reform was demanded, in particular the importation of a Canadian model. In principle, I would be against instantaneous, extreme reactions to unpredicted, isolated events. If the unexpected never happened, we would be operating a system of show trials.

In my view, the best solution to the problem came from a humble witness in a recent murder trial relating to an execution-style killing on High Street in Tallaght. A man was executed at point blank range, within feet of a witness, by a gunman who did not make any attempt to conceal his identity. As the gunman, at leisure, left the scene in a car, he made a gesture towards the witness which could have been interpreted as menacing. The guards came on the scene immediately and sought to take the witness to the Garda Station to make a statement. The witness said to the guards that he had been much too traumatised to spend several hours in a Garda Station making a statement. They could video what he had to say and convert it into a written statement at a later stage and he would sign it then. The guards could take it or leave it on this basis, he said. What the witness proposed was done and it worked very successfully. At the trial, which resulted in a conviction for murder, the videotape was called for by the defence and, to the best of my recollection, was shown to the jury.

It is also a matter for the Director of Public Prosecutions to decide in respect of which witnesses he should seek to perpetuate testimony by the depositions procedure.

In addition to the cases to which I have already referred, while I was dealing with the Keane/Treacy murder in Cloverhill, Mr. Justice White dealt with a case in Limerick which resulted in two murder convictions. Accordingly, in respect of the July to December period of 2003, nine persons are now serving life sentences for murder in cases originating in Limerick. This seems to me to be no mean response to the Guinness Light theorists.

The only incident since, in any way intimidatory of juries, was one in which grieving parents of a deceased, who had been called to give victim impact evidence, so attacked a jury for returning only a manslaughter verdict that one female juror became faint and had to be helped from court and rest while visibly blanched.

The court has resumed trying predominately murder cases in Limerick and cases awaiting trial from that city and county are being picked off one by one. It is my intention to continue with this exercise until a point is reached when I am in a position to hold a white gloves ceremony in the interests of the morale of the good

citizens of the city and county of Limerick. I myself would see no difficulty in such a ceremony being justified in respect, of course, only of the cases in which the Central Criminal Court has jurisdiction within the current year. The presentation of white gloves would of course only represent one brief moment frozen in time, but would be highly symbolic and I would hope demonstrate progress to the people of Limerick and to the nation.

In a 1994 *Irish Times* article, entitled “The White Gloves are Off,” Chief Justice Ronan Keane said:

When I was called to the bar in 1954, it was customary when there was no crime to be tried by a jury, for the county registrar to present the circuit judge with a pair of white gloves. This would prompt some complimentary remarks from the bench on the law-abiding qualities of the people of the county and the efficiency of the gardaí. Perhaps in a courthouse somewhere there is a pair of yellowing gloves wrapped in tissue paper awaiting the return of those idyllic times.

There is also anecdotal reference to the practice in the late Judge MacKenzie’s book, “Lawful Occasions – The Old Eastern Circuit,” which illustrates that the practice of actually presenting the judge with gloves may have fallen by the wayside and been replaced by the presentation of an empty box, in which the gloves would previously have been placed. Judge MacKenzie describes the practice in the courthouse in Wicklow, where he appeared as a young barrister in 1942 before Judge Michael Comyn, who then presided over the Eastern Circuit.

There being no criminal trials for that session, the county registrar, Michael O’Dwyer, stood up, bowed and said, “There are no indictments m’Lord.” He handed the judge a dingy box. This box was supposed to contain white gloves a custom from time immemorial. Michael received the gift graciously and

Mr. Angel, his crier, promptly handed it back.

If I succeed in achieving my objective, I shall be perfectly happy to fund the purchase from Eade and Ravenscroft of a set of ceremonial white gloves. I believe that those which emanate from the Oxford Circuit are particularly ornate and incorporate a yellow border.