

THE CENTRAL CRIMINAL COURT

LIMERICK

DIRECTOR OF PUBLIC PROSECUTIONS

Prosecution

-V-

Defendants

DESMOND DUNDON, ANTHONY MCCARTHY, JAMES
MCCARTHY, DAVID STANNERS and CHRISTOPHER
COSTELLO

ACTION HEARD BEFORE MR. JUSTICE BUTLER

ON WEDNESDAY, 22 OCTOBER 2003

I hereby certify the
following to be a true
and accurate transcript
of my shorthand notes of
the evidence in the
above-named matter.

3

APPEARANCES

FOR THE PROSECUTION: MR. DENIS VAUGHAN-BUCKLEY SC
MR. JOHN O' SULLIVAN BL

INSTRUCTED BY: The Director of Public
Prosecutions

FOR MR. ANTHONY McCARTHY: MR. O' HANLON SC
MR. O' LI DEADHA BL

INSTRUCTED BY: Michael Hanahoe & Company

FOR MR. DESMOND DUNDON: MR. B. O' CARROLL SC
MR. M. MALONEY BL

INSTRUCTED BY: John Devane

FOR MR. DAVID STANNERS: MR. SAMMON SC
MR. M. BOWMAN BL

INSTRUCTED BY: Andrew McCarthy

FOR MR. JAMES McCARTHY: MR. JOHN EDWARDS SC
MR. ANDREW SEXTON BL

INSTRUCTED BY: Andrew McCarthy

FOR MR. COSTELLO: MR. BRENDAN NIX SC
MR. B. McINERNEY BL

I N D E X

<u>W I T N E S S</u>	<u>EXAMI NATION</u>	<u>PAGE</u>
MR. JOHN O' BRIEN		
DIRECT - MR. VAUGHAN BUCKLEY		6-8
CROSS - MR. O' HANLON		8-9
MR. DAVID LEAHY		
DIRECT - MR. VAUGHAN BUCKLEY		9-11
CROSS - MR. NIX		11-11
SUPT. GERARD MAHON		
DIRECT - MR. VAUGHAN BUCKLEY		13-14
CROSS - MR. O' HANLON		14-14
SUBMISSIONS IN THE ABSENCE OF THE JURY:		
MR. VAUGHAN BUCKLEY		14-16
MR. EDWARDS		16-20
MR. O' CARROLL		22-24
MR. SAMMON		24-24
MR. O' HANLON		24-25
MR. NIX		26-27
MR. VAUGHAN BUCKLEY		27-30
JURY CHARGE		35-36
DISCUSSION IN THE ABSENCE OF THE JURY		42-43

1 of the jury anyhow who will be sworn in. They have
2 not been given a charge yet, but they have been sworn
3 in, and what happens in their absence can not be
4 reported at any rate.

5 MR. JUSTICE BUTLER: That is a fact but I am 17: 54
6 making now a special
7 direction.

8 MR. VAUGHAN BUCKLEY: So the press do not report
9 what is happening now, my
10 Lord. 17: 56

11 MR. JUSTICE BUTLER: The jury are absent, yes.

12 MR. VAUGHAN BUCKLEY: The situation is that I
13 have been instructed by
14 Superintendent Mahon, who is the senior officer in
15 charge of this investigation, that yesterday, a 17: 56
16 brother of one of the jurors, a Mr. O'Brien, the
17 juror who lived in the vicinity of the accused
18 apparently, my Lord, his brother contacted the
19 Gardaí, and a solicitor on behalf of that juror also
20 contacted the Gardaí, and certain very serious 17: 56
21 reservations were expressed on his behalf concerning
22 his eligibility to sit on this jury, my Lord. I call
23 evidence to deal with that matter. I will call
24 Mr. O'Brien the brother, please, of the juror.

25 17: 57
26
27
28
29

1 MR. JOHN O'BRIEN, HAVING BEEN DULY SWORN, WAS THEN
2 EXAMINED-IN-CHIEF, AS FOLLOWS, BY
3 MR. VAUGHAN BUCKLEY:
4

- 5 1 Q. MR. VAUGHAN BUCKLEY: Now, Mr. O'Brien, I 17:57
6 understand you are a
7 brother of one of the jurors; is that correct?
8 A. That's correct, sir, yes.
9 2 Q. He was sworn as a juror in this case yesterday?
10 A. Yes. 17:57
11 3 Q. I think he did indicate to my Lord and the other
12 members of the jury panel that he lived in the
13 vicinity of where the accused live or some of accused
14 live?
15 A. That's correct, on two occasions. 17:58
16 4 Q. He said that on two occasions?
17 A. On two occasions, yes.
18 5 Q. He did not apply to have himself discharged?
19 A. No.
20 6 Q. He agreed to act on the jury? 17:58
21 A. Pardon me?
22 7 Q. He agreed to be sworn in as a juror?
23 A. He agreed to be sworn on the jury, but I think he was
24 shocked, under -- not under duress, but he was
25 stressed out on the matter. He just did not react I 17:59
26 don't think just to be perfectly honest about it.
27 8 Q. Were you in contact with him since he has been sworn
28 in as a juror?
29 A. I had to go over last night.

1 9 Q. Tell the Court in your own words what his condition
2 is and what his attitude is to acting as a juror on
3 this case?

4 A. Just that I got a phone call to my mother - he is
5 living at home with my mother - yesterday afternoon 18:00
6 about four o'clock to say that he had been selected
7 for the jury panel and that she had never seen him as
8 distracted and as distressed about having had to be
9 called that I went over last night. I stayed for
10 over an hour with him, talking to him. He didn't eat 18:00
11 anything. I don't know how he got through the night,
12 like. As I say, I haven't -- I have my own family --
13 but I am quite concerned that because of the
14 proximity of the address of one of the people
15 involved in the case, that it would place an 18:01
16 unbearable burden upon him and upon my mother and
17 consequently upon the rest of the family but
18 particularly on himself and my mother.

19 10 Q. I think did you personally contact Gardaí at whatever
20 parish you called to explain? 18:02

21 A. No, I contacted a solicitor friend of mine and he did
22 it for me. I just didn't know what to do basically,
23 just rang him and he said he would deal with the
24 matter.

25 11 Q. What solicitor did you contact? 18:02

26 A. David Leahy of Leahy and Partners.

27 12 Q. David Leahy?

28 A. David Leahy of Leahy and Partners.

29 13 Q. Mr. Leahy is in court; is that correct?

1 A. He is present now at the moment, yes.

2 14 Q. Did you authorise Mr. Leahy to tell the Court what he
3 did on your behalf?

4 A. I did, yes.

5 15 Q. Do you authorise Mr. Leahy to tell the Court in his 18: 03
6 capacity as a solicitor what contacts he made on your
7 behalf and on behalf of your brother?

8 A. Yes.

9

10 END OF DIRECT-EXAMINATION 18: 03

11

12 MR. JUSTICE BUTLER: Does anyone want to ask
13 this witness anything,
14 really?

15 18: 03

16 MR. O' BRIEN WAS THEN CROSS-EXAMINED, AS FOLLOWS, BY
17 MR. O' HANLON:

18

19 16 Q. MR. O' HANLON: Just one or two very short
20 questions. When did you 18: 08
21 contact the solicitor?

22 A. It would be approximately half three, quarter to four
23 when I found out that he had been selected.

24 17 Q. Yesterday?

25 A. Yesterday afternoon, yes. 18: 08

26 18 Q. Are you aware of whether he contacted the Gardaí?

27 A. The solicitor?

28 19 Q. Yes.

29 A. Immediately upon my phone call he contacted them

1 thereafter.

2 20 Q. Are you aware that he made the Gardaí fully cognisant
3 of your concerns at that time?

4 A. At the time with the information that he had
5 available to him, he did, yes.

18:08

6 21 Q. Thank you very much

7

8 END OF CROSS-EXAMINATION

9

10 MR. JUSTICE BUTLER: Anyone else really want to
11 ask any questions? Thank
12 you very much indeed for your being here.

18:09

13

14 THE WITNESS THEN WITHDREW

15

16 MR. VAUGHAN BUCKLEY: Mr. Leahy, please.

17

18 MR. DAVID LEAHY, HAVING BEEN DULY SWORN, WAS THEN
19 EXAMINED-IN-CHIEF, AS FOLLOWS, BY

20 MR. VAUGHAN BUCKLEY:

18:09

21

22 22 Q. MR. VAUGHAN BUCKLEY: Mr. Leahy, I think you are
23 a qualified solicitor; is
24 that correct?

25 A. That is correct.

18:09

26 23 Q. What firm do you practise in?

27 A. Leahy and Partners.

28 24 Q. Leahy and Partners. Are you the principal in that
29 firm?

1 A. I am one of the partners.

2 25 Q. One of the partners. Now, you were in court for the
3 evidence of Mr. O'Brien, the brother of one of the
4 jurors?

5 A. Yes. 18: 10

6 26 Q. Did he in fact contact you yesterday about his
7 apprehension concerning his brother serving as a
8 juror?

9 A. He did, yes.

10 27 Q. Did you speak to his brother as well? 18: 10

11 A. I didn't.

12 28 Q. You just spoke together?

13 A. That's correct.

14 29 Q. As a result of what he said to you, did you get in
15 contact with a member of the Garda Síochána? 18: 11

16 A. Yes.

17 30 Q. Who did you get in contact with?

18 A. I am actually unsure of the name of the guard, but it
19 was the Gardaí in Roxborough that I spoke to.

20 31 Q. The Gardaí in Roxborough? 18: 11

21 A. That's right.

22 32 Q. You are aware that that was brought to the attention
23 of senior Garda officers?

24 A. Yes.

25 33 Q. What did information did you give the Garda officer? 18: 11

26 A. I informed the Garda that I had
27 received. . . (INTERJECTION).

28 34 Q. Speak up.

29 A. Sorry, that I had received a call from John O'Brien

1 purely on behalf of his brother, and that I had
2 spoken with John but not his brother who had concerns
3 about his brother being on the jury. The concern was
4 in particular due to the address of Joseph O'Brien,
5 which I understand may be close proximity-wise to one 18: 13
6 of the accused.

7 35 Q. Yes. Thank you.

8

9 END OF DIRECT-EXAMINATION

10

18: 15

11

12 MR. DAVID LEAHY WAS THEN CROSS-EXAMINED, AS FOLLOWS,
13 BY MR. NIX:

14

15 36 Q. MR. NIX: Mr. Leahy, are you aware 18: 15
16 that for any juror who was
17 sworn yesterday, the names and addresses of all of
18 the principal characters in this case were announced
19 to the jury panel?

20 A. I actually knew nothing about it until I got the 18: 16
21 call. I didn't even know... (INTERJECTION).

22 37 Q. Then do I take it from that that the answer is no?

23 A. Yes.

24 38 Q. Thank you very much.

25

18: 17

26 END OF CROSS-EXAMINATION

27

28 MR. JUSTICE BUTLER: Thank you very much. Thank
29 you very much for coming.

1 MR. VAUGHAN BUCKLEY: Superi ntendent Mahon,
2 please.
3 MR. JUSTICE BUTLER: Thank you very much i ndeed,
4 thank you for comi ng.
5 18: 19
6 THE WITNESS THEN WITHDREW
7
8 MR. EDWARDS: Just while the
9 superi ntendent is comi ng
10 up, it occurs to me that we shoul d know which 18: 19
11 accused' s address is an issue because we are not on
12 notice any of us, my Lord.
13 MR. JUSTICE BUTLER: Is there any reflection on
14 the accused, on any
15 accused? As far as I am concerned there is not, it 18: 19
16 is just the proximity, you know. I think it would be
17 helpful not to but -- now, I have no clue who it is.
18 I think it is better that way.
19 MR. VAUGHAN BUCKLEY: Maybe the
20 superi ntendent 18: 20
21 ... (I NTERJECTI ON).
22 MR. JUSTICE BUTLER: You are entit led to ask the
23 superi ntendent anything you
24 I i ke.
25 MR. VAUGHAN BUCKLEY: Very good. Come up, 18: 20
26 Superi ntendent, pl ease.
27
28
29

1 SUPERINTENDENT GERARD MAHON, HAVING BEEN DULY SWORN,
2 WAS THEN EXAMINED-IN-CHIEF, AS FOLLOWS, BY
3 MR. VAUGHAN BUCKLEY:
4

5 39 Q. MR. VAUGHAN BUCKLEY: Superintendent Mahon, I 18: 21
6 think you are the senior
7 officer in charge of the investigations in this
8 particular case?

9 A. That's correct.

10 40 Q. Now, did you become aware yesterday of the concern, 18: 21
11 the brother of one of the jurors had in fact
12 representations made on his behalf to the Gardaí by
13 the last witness, Mr. Leahy, the solicitor?

14 A. Yes, I did, my Lord, yes. It was late yesterday
15 evening when I became aware of it. 18: 22

16 41 Q. Late when you became aware of it?

17 A. Yes.

18 42 Q. In relation to -- I think Mr. Edwards asked this
19 question, it was asked this question, do you know in
20 the vicinity of which of the accused does this juror 18: 22
21 live?

22 A. He lives in the vicinity of 5 Fair Green.

23 43 Q. Which is where Anthony McCarthy lives?

24 A. Yes. Anthony Noddy McCarthy

25 44 Q. How far from that house does he live? 18: 23

26 A. He lives on a road which is back to back with
27 5 Fair Green, a walking distance of approximately,
28 Judge, four hundred metres. It would be shorter as
29

1 the crow flies, it is back to back.

2

3 END OF DIRECT-EXAMINATION

4

5 MR. JUSTICE BUTLER: Would anyone like to 18: 24
6 question the
7 superintendent?

8

9 SUPERINTENDENT GERARD MAHON WAS THEN CROSS-EXAMINED,
10 AS FOLLOWS, BY MR. O' HANLON: 18: 25

11

12 45 Q. MR. O' HANLON: Did you say in the
13 proximity of number on the
14 indictment?

15 A. Number 5 Fair Green. 18: 25

16

17 END OF CROSS-EXAMINATION

18

19 MR. JUSTICE BUTLER: All right. Thank you very
20 much indeed, 18: 26
21 Superintendent.

22

23 THE WITNESS THEN WITHDREW

24

25 MR. VAUGHAN BUCKLEY: Well, in the light of that 18: 26
26 evidence -- the jury have
27 not yet been given a charge, my Lord, but in the
28 light of that evidence I think it would be highly
29 wrong to go ahead if we let that juror stay.

1 MR. JUSTICE BUTLER: That is the first question,
2 that is the only question
3 right now, yes.

4 MR. VAUGHAN BUCKLEY: That would reduce the jury
5 to 11, and of course a 18: 26
6 juror strictly speaking -- there are 12 jurors, a
7 trial cannot commence. It is only after they have
8 been given a charge --

9 MR. JUSTICE BUTLER: Yes, I know that.

10 MR. VAUGHAN BUCKLEY: -- that a jury could be 18: 32
11 discharged. That
12 juror... (INTERJECTION)

13 MR. JUSTICE BUTLER: Yes, yes, yes.

14 MR. VAUGHAN BUCKLEY: I understand there is also,
15 from the registrar, I do 18: 32
16 not know much about this, but I understand there is
17 apprehension being expressed in some regard by a
18 second juror as well.

19 MR. JUSTICE BUTLER: That may be so as far as I
20 know. We will find out 18: 32
21 about that but just deal with what we have at the
22 moment.

23 MR. VAUGHAN BUCKLEY: Again, if the situation is
24 that we are down to ten
25 people only having been sworn in as jurors, if they 18: 33
26 are both allowed go, my Lord, it is very
27 unsatisfactory situation. It could be that another
28 panel of jurors could be brought in for some days
29 next week sometime and have two more jurors sworn in,

1 but that I think would be unsatisfactory. I do not
2 know what your Lordship's view of the matter is, but
3 what I would suggest, and indeed the Gardaí would be
4 anxious if at all possible, that I think this jury
5 should be discharged, the matter should be adjourned 18: 34
6 to the Central Criminal Court in Dublin before
7 Mr. Justice Carney next Tuesday, and then
8 Mr. Justice Carney can fix another date for trial
9 either in Limerick or Dublin or wherever he directs,
10 my Lord. 18: 34

11 MR. JUSTICE BUTLER: Does anyone have anything
12 to say?

13 MR. EDWARDS: My Lord, the Juries Act
14 expressly provides for this
15 situation, and before any question arises of 18: 42
16 discharging of a jury, the statutory mechanism must
17 be tried at least. Now, Section 14 of the
18 Juries Act 1976 under the heading of 'Summoning of
19 jurors to make up deficiency' says:
20 18: 42

21 "If it appears to a Judge of a Court
22 that a jury to try any issue before the
23 Court will or may be incomplete, the
24 Judge may require any persons
25 being referred to as..."

26 ... (INTERJECTION). 18: 43

27 MR. JUSTICE BUTLER: Yes, I have a copy, I have
28 read it.

29 MR. EDWARDS:

1 "...qualified and liable to serve as
2 jurors in that Court to be summoned by
3 the County Registrar in order to make
4 up the number needed and the Judge to
5 specify the area in which the persons
6 may be summoned which may be in the
7 area in the vicinity of the Court and
8 the method of summons whether by
9 written notice or otherwise. The names
10 of the persons summoned should be added
11 to the panel of jurors."

18: 44

9 Now, we have at the moment 11, possibly there may be
10 a difficulty with another juror, so let us be
11 pessimistic and say ten, we still have ten jurors out
12 of 12. We therefore only need to make up two. The
13 Act provides a specific mechanism for the making up
14 of any deficiency, and it would be wholly wrong for
15 this jury to be discharged, because our clients are
16 in custody and are entitled to a speedy trial by a
17 jury of their peers. This trial has
18 been... (INTERJECTION).

18: 44

18: 45

19 MR. JUSTICE BUTLER: And are entitled to use up
20 all their objections, yes.

18: 45

21 MR. EDWARDS: Yes, and if having availed
22 of their rights, there is
23 an insufficient number of jurors to make up a jury
24 in the first instance, the statutory mechanism must
25 be employed before any drastic action like the
26 discharge of a jury and the sending of the trial to
27 Dublin... (INTERJECTION).

18: 46

28 MR. JUSTICE BUTLER: Who says it must be
29 employed?

1 MR. EDWARDS: I beg your pardon, my Lord?

2 MR. JUSTICE BUTLER: Why do you say it must be

3 employed?

4 MR. EDWARDS: Well, the Oireachtas has

5 provided a mechanism. 18: 47

6 MR. JUSTICE BUTLER: Yes, but nobody says it

7 must be employed.

8 MR. EDWARDS: Well, if one has

9 regard... (INTERJECTION).

10 MR. JUSTICE BUTLER: Separation of powers in 18: 49

11 this State.

12 MR. EDWARDS: There is, my Lord, but

13 statute law is the

14 framework in which the courts operate.

15 MR. JUSTICE BUTLER: That is interesting, there 18: 50

16 is a Constitution -- carry

17 on, yes.

18 MR. EDWARDS: Yes, my Lord, I will carry

19 on with your leave and

20 permission. My Lord, the framework within which the 18: 52

21 selection of the panel of juries is to be done, is

22 set out in statute by the Juries Act 1976. Our

23 clients are in custody. They are entitled to a

24 speedy and early trial. The trial was fixed for

25 yesterday. We started the process of empanelling a 18: 52

26 jury yesterday. We are only one day into that.

27 Difficulties are being encountered but before the

28 process is abandoned and the ten or 11 jurors that we

29 now have are discharged and the matter is, as my

1 Friend, Mr. Buckley, suggests, returned to Dublin for
2 mention, the mechanism which the Oireachtas has laid
3 down should be applied by the courts, should be
4 employed I respectfully submit, and your Lordship
5 should direct, I respectfully submit, the county 18: 53
6 registrar to summon a further panel for next week or
7 at the earliest convenient opportunity, and we should
8 endeavour to fill the two vacancies, or one vacancy
9 as the case might be, in that way. Only when that
10 has been done, should we turn to the discharge of the 18: 54
11 ten or 11 that we have at the moment and the putting
12 of the matter in for mention to see where we go from
13 there. It would be wholly precipitous, I
14 respectfully suggest, to embark on that at this
15 point. 18: 54

16
17 As I say, there is an express mechanism which has
18 been laid down by the Oireachtas and that must be
19 tried in fairness to our clients having regard to
20 their constitutional right to a speedy and fair 18: 55
21 trial. If this is employed we may be able to get off
22 the ground as early as next week. If it is not
23 employed, we could be back for weeks or possibly
24 months, and obviously my client's entitlement to a
25 fair trial and to the vindication of their rights and 18: 55
26 liberty as I hope will occur in this trial, or is my
27 client's right to liberty, I am sure I speak for all
28 my Friends.

29 MR. JUSTICE BUTLER: Well, we will see do you.

1 MR. SAMMON: I am sorry, my Lord, but
2 as I have been referred to,
3 I wish to reply to your Lordship with an opportunity
4 to take instruction for my client,
5 Mr. David Stanners. 19:06
6 MR. JUSTICE BUTLER: Of course, yes.
7 MR. SAMMON: I was not aware of the
8 situation.
9 MR. JUSTICE BUTLER: I do not take Mr. Edwards
10 as speaking for you. Do 19:06
11 not worry, you will get your chance. Let Mr. Edwards
12 finish on his own behalf.
13 MR. EDWARDS: Well, I do not purport to
14 speak for my Friends save
15 to the extent... (INTERJECTION). 19:06
16 MR. JUSTICE BUTLER: I thought you did, I am
17 sorry.
18 MR. EDWARDS: Save to the extent that I
19 believe we are engaged in a
20 common purpose in defending our clients' rights, and 19:07
21 it would be extraordinary if my Friends were not
22 sharing in that objective.
23
24 So that is my position, my Lord. I believe
25 Section 14 of the Juries Act 1976 should be employed 19:07
26 at this point. There should be no question of your
27 Lordship exceeding to Mr. Buckley's application that
28 the jury be discharged.
29 MR. JUSTICE BUTLER: Yes, Mr. O'Carroll.

1 MR. O' CARROLL: My position, my Lord, is
2 that I would wish to take
3 instructions from my client. The likelihood is that
4 I would be agreeing what Mr. Edwards is saying.
5 MR. JUSTICE BUTLER: If people want to take 19:08
6 instructions, they have to
7 be allowed take instructions.
8 MR. VAUGHAN BUCKLEY: Yes, I appreciate that but
9 I think your
10 Lordship . . . (INTERJECTION). 19:09
11 MR. JUSTICE BUTLER: They have to be allowed to
12 take them.
13 MR. VAUGHAN BUCKLEY: Certainly, my Lord, I will
14 just briefly reply to
15 Mr. Edwards, my Lord. 19:09
16 MR. JUSTICE BUTLER: Yes, you might as well
17 reply to them all.
18 MR. VAUGHAN BUCKLEY: Just briefly in reply to
19 Mr. Edwards, the section
20 says . . . (INTERJECTION). 19:09
21 MR. JUSTICE BUTLER: Yes, I have read the
22 section.
23 MR. VAUGHAN BUCKLEY: There is no obligation on
24 your
25 Lordship . . . (INTERJECTION). 19:09
26 MR. JUSTICE BUTLER: Of course there is not.
27 MR. VAUGHAN BUCKLEY: It says you may.
28 MR. JUSTICE BUTLER: I said that to him, yes.
29 Of course there is not.

1 The courts still run the courts.
2 MR. VAUGHAN BUCKLEY: Absolutely.
3 MR. JUSTICE BUTLER: All right, I will rise for
4 -- will five minutes do?
5 MR. O' CARROLL: It will not take long, my 19: 10
6 Lord.
7 MR. JUSTICE BUTLER: Just to take instructions.
8 Whenever your ready but it
9 is just for the purpose of instructions because I do
10 not want to keep the jury there all the time. 19: 11
11
12 SHORT ADJOURNMENT
13
14
15 THE HEARING RESUMED, AS FOLLOWS, AFTER A SHORT
16 ADJOURNMENT:
17
18 MR. O' CARROLL: I will start, my Lord. In
19 relation my client,
20 Desmond Dundon, I have taken his instructions, my 19: 11
21 Lord. Mr. Dundon is firmly of the view that he would
22 prefer the trial to remain in Limerick. He is quite
23 happy with the jury that has been selected already.
24 He understands the provisions of the Juries Act and
25 the power that is available to the Court to bring 19: 12
26 other citizens in to the Court also for the purpose
27 of seeking a replacement for the last member of the
28 jury who has been discharged by your Lordship.
29

1 As your Lordship is aware, the Central Criminal Court
2 transferred the case to Limerick, so Mr. Dundon now
3 has the opportunity of having this matter dealt with
4 by a jury of his peers, people who would be
5 intimately aware of the surrounding background, my 19: 12
6 Lord, and he thinks that would be in his interest in
7 terms of establishing his innocence in the course of
8 the trial, in my respectful submission to your
9 Lordship, having regard to the provisions of Section
10 14 of the Juries Act, and that this power has been 19: 13
11 specifically made available to deal with the exigency
12 that has developed. It would seem to me that having
13 regard to my client's constitutional right to
14 fairness and fair procedures, that the fairness and
15 fair procedures would suggest that your Lordship 19: 14
16 ought to exercise the power available to you in the
17 Juries Act and send on extra summonses to make up the
18 shortfall.

19
20 Your Lordship is also aware that during the swearing 19: 14
21 in of the jury yesterday, I think all of the
22 defendants seemed to have now exercised their
23 statutory right to challenge the jurors without cause
24 shown, so that that tension would not be present on
25 the next occasion, my Lord. The Director of Public 19: 14
26 Prosecutions, in my respectful submission, also has
27 an obligation to take steps to ensure or to make an
28 application that the provision in the Juries Act is
29 the one that ought to be utilised prior to making the

1 application to discharge the jury, having regard to
2 the great difficulty that was experienced yesterday,
3 and it would seem to me, my Lord, on balance that the
4 proper thing to do, having regard to the all of the
5 circumstances, is the exercise the power of the 19: 15
6 Juries Act and they are my client's instructions.
7 MR. JUSTICE BUTLER: Thank you very much,
8 Mr. O'Carroll. Does anyone
9 else want to say anything?
10 MR. SAMMON: I appear for 19: 15
11 David Stanners. I wish to
12 adopt entirely the submission that has been made by
13 Mr. O'Carroll on behalf of his client. Mr. Stanners
14 desires the same situation. He wishes to have his
15 trial underway in Limerick and he wishes to have the 19: 16
16 statutory mechanisms available through Section 14
17 employed in order that that may come to pass.
18 MR. JUSTICE BUTLER: Thank you.
19 MR. O'HANLON: I appear for
20 Anthony McCarthy, my Lord, 19: 17
21 who is third on the indictment. I would also adopt
22 the application which has been made in submission,
23 which had been made in relation to this. My
24 instructions are that my client is anxious for this
25 matter to proceed. He is in custody. He is happy to 19: 17
26 proceed with the jury which has been impaneled. He
27 is happy to have the matter adjourned for a short
28 period of time in order that the Section 14 mechanism
29 can be applied. I have not been able to understand

1 or make out the reasons why the DPP or the
2 application is being made to bypass that procedure
3 completely, in what way it is suggested that this
4 procedure ought not be applied, and in that regard I
5 think it is worth noting that when the jury were 19: 18
6 empanelled, as I understand it, it was opened that
7 this case was likely to last a considerable period of
8 time, and the jury who are in place are a jury who
9 are available in that regard for a considerable
10 period of time. What is being asked to be put in 19: 19
11 place is a short deferment of the commencement of the
12 trial before that jury.

13
14 As your Lordship aware, if this matter were to go
15 back, it could be a considerable period of time 19: 19
16 before that availability -- that length of time could
17 become available for the Central Criminal Court to
18 take up the case, and in that regard it would seem,
19 in fairness to the defendants, and in particular to
20 my defendant, who I represent, that every reasonable 19: 19
21 effort ought to be made to adjourn the matter for a
22 short period to allow the matter to continue rather
23 than he continue for a considerable period of time
24 potentially in custody. May it please the Court.

25 MR. JUSTICE BUTLER: Thank you very much, 19: 20
26 Mr. O' Hanlon.

27 MR. VAUGHAN BUCKLEY: My Lord, briefly in
28 reply... (INTERJECTION).

29 MR. JUSTICE BUTLER: Mr. Ni x.

1 MR. NIX: I agree with everything
2 my Friends have said. I
3 adopt what they say. There are a couple of matters,
4 my Lord: Your Lordship will appreciate as human
5 beings, certainly as a human being, my client has 19: 21
6 been all hyped up for the start of his trial, and now
7 to sort of suddenly doubt him, would, in my view, be
8 cruel and unusual.
9
10 I understand there are a number of potential jurors 19: 21
11 outside in the hallway who have been asked to stand
12 down. If that is the case, then perhaps on a
13 practical basis that could be ascertained. Are there
14 potential jurors in the hall? Could they be brought
15 in? Could they be sworn? And let us get on with 19: 22
16 this.
17 MR. JUSTICE BUTLER: You mean jurors from the
18 panel do you?
19 MR. NIX: Jurors from the panel,
20 members from the panel are 19: 24
21 outside in the hallway as I understand it who were
22 asked to leave this room.
23 MR. JUSTICE BUTLER: I will check that but I
24 understand there is only
25 one. 19: 24
26 MR. NIX: Is that right, my Lord?
27 Well, there is an
28 alternative to that: I panel the 12.
29 MR. JUSTICE BUTLER: Just on a point of

1 information.

2 MR. NIX: I mpanel the 12, discharge
3 two and let us get on with
4 ten, but to do this to these men... (INTERJECTION).

5 MR. JUSTICE BUTLER: So your instructions are, 19: 25
6 just to be clear on that,
7 you are happy to proceed with ten.

8 MR. NIX: I am, my Lord.

9 MR. O' HANLON: I can confirm that
10 that is the position of my 19: 27
11 client as well.

12 MR. SAMMON: Yes, my Lord, I can confirm
13 that on behalf of
14 Mr. Stanners also.

15 MR. O' CARROLL: I am in a similar 19: 28
16 position, my Lord.

17 MR. VAUGHAN BUCKLEY: Well, certainly the State
18 would not be happy to
19 proceed with ten jurors, my Lord. In fact the jurors
20 can not be discharged -- under Section 24 to 19: 28
21 discharge a jury, the jury would have to be given a
22 charge, this jury would first have to be given a
23 charge. Then an application has to be made to
24 discharge two jurors. But certainly as far as the
25 prosecution are concerned, we would not be happy to 19: 29
26 go ahead with only ten jurors, my Lord, in a case of
27 this kind. Anything could happen. If it goes on for
28 two months, another juror could get ill as happened
29 in a Chinese case I was in in Dublin a juror actually

1 died and we were down to nine jurors. What would
2 happen? The jury would then have to be discharged in
3 its entirety, my Lord. So I would certainly not
4 support going ahead with ten jurors.
5 19: 30

6 In relation to the matter, my Lord, I am not saying
7 that your Lordship should bypass Section 14. What I
8 am saying is that it is a matter for your Lordship
9 whether your Lordship wishes to apply Section 14 or
10 not. It says: 19: 30

11
12 "If it appears to a Judge of a Court
13 that a jury to try an issue before the
14 Court will or may be incomplete, the
15 Judge may require any persons being
16 referred to as qualified and liable to
17 serve as jurors in that Court to be
18 summoned by the County Registrar in
19 order to make up the number needed." 19: 31

20 That is a power and if your Lordship wishes, you
21 could do that.

22 MR. JUSTICE BUTLER: I appreciate the decision 19: 31
23 is mine, but I understood
24 you to be suggesting, and you are absolutely entitled
25 to suggest, that I do not adopt this.

26 MR. VAUGHAN BUCKLEY: That is what I suggested,
27 my Lord, because your 19: 32
28 Lordship -- it took the best part, all yesterday
29 morning quite late in fact to get 12 jurors sworn in
at all. Now all their challenges have been lost, and
if then for the purpose of swearing another two

1 jurors, there are 20 or a hundred -- hundreds of
2 jurors come here and they may all say they refuse to
3 serve or that they know the accused or something like
4 that.

5 MR. JUSTICE BUTLER: We only need one or two. 19: 32

6 MR. VAUGHAN BUCKLEY: We need two -- well, one or
7 two.

8 MR. JUSTICE BUTLER: One that we know of.

9 MR. VAUGHAN BUCKLEY: One definitely, but one or
10 two. Now, they are in 19: 33

11 custody I accept that, my Lord, and it is a bit
12 unfortunate that we cannot go ahead with the trial,
13 but in relation to Mr. O'Carroll's client, I
14 understand, now I did not appear in this Court before
15 in this case before but I understand, and I am 19: 33

16 instructed in fact, that an application was made on
17 the last occasion this matter was before the Court by
18 junior counsel on behalf of Mr. O'Carroll's client to
19 have the case transferred to Dublin.

20 19: 33

21 Now, at that time there was an application for
22 separate trials I understand, my Lord, which
23 Judge Carney refused.

24 MR. JUSTICE BUTLER: They can change their
25 minds. 19: 34

26 MR. VAUGHAN BUCKLEY: Of course they can change
27 their minds, I accept that.

28 Of course they can change their minds, but your
29 Lordship saw the difficulty in getting from hundreds

1 of jurors here yesterday, getting 12 people to act as
2 jurors in this case at all with difficulty. So it is
3 a matter for your Lordship, but I would certainly
4 suggest that the matter should be put in for mention
5 in the Central Criminal Court next Tuesday and then 19: 36
6 whatever judge is presiding on that occasion, whether
7 it is Mr. Justice Carney or any other judge, then a
8 decision can be made as to where it should be tried.
9 This is the Central Criminal Court... (INTERJECTION).
10 MR. JUSTICE BUTLER: So you want me to take the 19: 36
11 jury and discharge them and
12 transfer the matter to Dublin effectively.
13 MR. VAUGHAN BUCKLEY: Adjourn the matter for
14 mention in Dublin, my Lord,
15 on Tuesday. This is the Central Criminal Court which 19: 36
16 happens to be sitting in Limerick in relation to this
17 case, but it is still the Central Criminal Court.
18 Adjourning the matter to mention to Dublin, the judge
19 there could still say it should be tried in Limerick
20 if he wishes to. It is not a question of 19: 37
21 transferring it to Limerick. It is the Central
22 Criminal Court sitting in Limerick. The Central
23 Criminal Court can also sit in Dublin.
24 MR. JUSTICE BUTLER: Yes.
25 MR. VAUGHAN BUCKLEY: This trial could be held in 19: 37
26 Dublin. It is a matter for
27 the Trial Judge.
28 MR. MALONEY: My Lord, being the junior
29 that was referred to, what

1 Mr. Justice Carney said was he did not refer to the
2 difficulty of getting jurors to act but he referred
3 to taking members of the Garda force away out of
4 Limerick and the consequences flowing from that, but
5 to give any other reason, he did not give any other 19: 39
6 reason at that moment in time.

7 MR. NIX: My Lord, might I very
8 briefly say, there is a
9 jury panel coming here, my Lord, on 4 November.

10 MR. JUSTICE BUTLER: I am aware of that. 19: 39

11 MR. NIX: I would submit, my Lord,
12 that if your Lordship is of
13 a mind in discharge this jury, that it should be
14 adjourned to that date.

15 MR. JUSTICE BUTLER: I am aware of that. As 19: 39
16 against that, why should
17 the 4th of November be any different to yesterday?

18 MR. NIX: There no surprise in this.
19 I mean, it is the State so
20 devoid of imagination that they did not anticipate 19: 40
21 that difficulties might arise. If they are standing
22 up now and saying they are surprised by
23 this... (INTERJECTION).

24 MR. JUSTICE BUTLER: You have not a jury to
25 address now. 19: 40

26 MR. NIX: I know that, my Lord, but I
27 am asking are the state
28 saying they are they are surprised? Is Mr. Buckley
29 seriously telling the Court that he is surprised?

1 MR. VAUGHAN BUCKLEY: We are not, my Lord. We
2 would be less surprised if
3 we had a Dublin jury panel, my Lord.
4 MR. EDWARDS: Could I have one
5 further... (INTERJECTION). 19: 42
6 MR. JUSTICE BUTLER: Certainly, Mr. Edwards.
7 MR. EDWARDS: Yesterday was not a wasted
8 exercise. We did get ten,
9 so there is every reason to believe -- ten/11 in
10 fact. 19: 42
11 MR. JUSTICE BUTLER: Twelve.
12 MR. EDWARDS: Twelve indeed. Sorry, you
13 are right indeed but we
14 have 11 I understand with difficulty this morning.
15 MR. JUSTICE BUTLER: No, we have 12 unless and 19: 42
16 until I excuse, and I am
17 going to excuse Mr. O'Brien, yes.
18 MR. EDWARDS: So that we have in reality
19 11 and there might be a
20 possibility of a difficulty with another. We have a 19: 43
21 minimum of ten, so there must be a high index of
22 confidence now that all challenges are exhausted that
23 if a further group of people are brought in, that at
24 least two more could be got because out of a hundred
25 yesterday who turned up, and I gather there was about 19: 43
26 five hundred summoned -- well, a hundred
27 approximately had turned up according to the
28 newspapers at any rate this morning, 12 were got
29 which we now have ten being pessimistic about it. If

1 another hundred are brought in, the prospects of
2 getting two must be very good. One would have to
3 have a high index of confidence that the two
4 vacancies could be filled, and in those circumstances
5 I would suggest that it would be imprudent not to 19: 44
6 employ the express statutory mechanism.

7 MR. JUSTICE BUTLER: All right. Well, I will
8 not keep the jury in the
9 dark but what I propose to do -- first of all, I am
10 not happy about proceeding with ten. That is my 19: 44
11 decision but I want to defer my decision, I want to
12 consider the practicalities of the matter of
13 summonses, so I am going to adjourn the matter. I am
14 going to discharge certainly Mr. O'Brien, possibly
15 another person. I do not know if somebody else says 19: 45
16 something, and I want to defer the matter until
17 Friday morning. Keep the jury until then and I will
18 rule on Friday morning.

19 MR. VAUGHAN BUCKLEY: May it please your
20 Lordship. 19: 45

21 MR. JUSTICE BUTLER: So thank you, can we have
22 the jury back, please.

23 MR. NIX: My Lord, before you bring
24 the jury out, I understand
25 there are two members, my Lord, from the jury panel 19: 46
26 outside. I do not know what your Lordship's attitude
27 to those people would be. Will you bring them back
28 on Friday or what?

29 REGISTRAR: I am only aware of one

1 juror who was excused
2 attendance yesterday and he had turned up this
3 morning and I asked him to wait. I am only aware of
4 one.

5 MR. JUSTICE BUTLER: Mr. Nix, if there are two, 19: 47
6 I can see -- let us assume
7 we are missing two, we do not know yet, but I really
8 do not know, I have no idea, but on that assumption
9 if there are two, yes, I see no reason why, if they
10 are here now, why we should not seek to impanel them 19: 47
11 now and see can we.

12 MR. NIX: Yes, my Lord. I wonder
13 could an inquiry be made as
14 to whether there is one or two. I have been told by
15 two different sources that there are actually two 19: 48
16 outside.

17 MR. JUSTICE BUTLER: Well, I will get the jury
18 back first and I will deal
19 with Mr. O'Brien, and then I ask -- but perhaps
20 somebody could be finding out in the meantime, and 19: 48
21 those people are entitled to return to court who were
22 asked to leave court now, is that right? Yes. Okay.

23
24 IN THE PRESENCE OF THE JURY
25 11: 03

26 REGISTRAR: Members of the jury, I will
27 ask you once again to
28 answer as I call your names.
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JURY ROLE CALL

REGISTRAR: Now, members of the jury,
each accused is indicted on
Count 1 that on the 29 day of January 2003 in 11:04
Limerick City, he falsely imprisoned Keane;
Count 2 charges each accused that on the 29th day of
January 2003 in Limerick City he falsely imprisoned
Owen Tracey; Count 3 charges each accused that on the
29th day of January 2003 at Drombana, otherwise 11:04
known as Bushy Island, County Limerick, that he
murdered Kieran Keane; Count 4 charges each accused
that on the 29th day of January 2003 at Drombana,
otherwise known as Bushy Island, County Limerick,
attempted to murder Owen Tracey. 11:05

Upon this indictment each accused has been arraigned
and has pleaded not guilty. I now give them in
charge to you for trial and the issue you have to try
is as to whether each accused be guilty or not guilty 11:05
of the offences with which he is charged.

Mr. Blaise O'Carroll of senior counsel with
Mr. Maloney of counsel instructed by Mr. Keane,
solicitor, appears for the accused Dundon -- 11:05
instructed by Mr. Devane, solicitor, appears for the
accused Dundon.

Mr. O'Hanlon of senior counsel with Mr. O'Li deadha

1 instructed by Mr. Hanahoe, solicitor, appears for
2 Anthony McCarthy.

3 Mr. Edwards of senior counsel with Mr. Sexton of
4 counsel instructed by Mr. McCarthy, solicitor,
5 appears for the accused James McCarthy. 11:06
6

7 Mr. Nix of senior counsel with Mr. McInerney of
8 counsel instructed by Mr. McCarthy, solicitor,
9 appears for the accused Christopher Costello.
10 11:07

11 Mr. Sammon of senior counsel with Mr. Bowman of
12 counsel instructed by Mr. McCarthy, solicitor,
13 appears for the accused Stanners.
14

15 Mr. Dennis Vaughan Buckley of senior counsel appears 11:07
16 for the prosecution in this case with Ms. McNamara,
17 solicitor, and Mr. O'Sullivan, junior counsel appears
18 for the Director of Public Prosecutions in this case.
19 Thank you very much.

20 MR. JUSTICE BUTLER: Ladies and gentlemen, thank 11:07
21 you for the patience. I
22 want to apologise profusely and to explain what has
23 been happening. In your absence I have heard
24 evidence in an application to excuse one juror or to
25 find one juror to be ineligible in fact and I heard 11:08
26 that evidence. I am discharging that juror, that is
27 Mr. O'Brien is discharged.

28 REGISTRAR: Mr. Joseph O'Brien.

29 MR. JUSTICE BUTLER: Thank you, Mr. O'Brien,

1 witness and of the accused in case they ring any
2 bell. Thank you, Mr. Vaughan Buckley.

3 MR. VAUGHAN BUCKLEY: The name of the deceased is
4 Kieran Keane and his
5 address is Garyowen House, Greenhills road, Garyowen, 11:11
6 Limerick. The Chief prosecution witness in the case
7 and the most important prosecution witness in the
8 case is Owen Tracey of 96 St. Munchin's Street,
9 St. Mary's Park, Limerick. He is also the person in
10 respect of whom there is an allegation of an attempt 11:12
11 to murder him.

12

13 The accused, there are five accused. The first-named
14 accused is Desmond Dundon who lives at 80 Pine Road,
15 Limerick; the second accused is David Stanners who 11:12
16 lives at 120 Pineview Gardens, Moyross, Limerick; the
17 third accused is Anthony McCarthy who lives at
18 5 Fair Green, Limerick; the fourth accused is
19 James McCarthy of 110 Delmege Park, Moyross,
20 Limerick; and the fifth accused is 11:13
21 Christopher Costello of 1 Moylish Avenue, Ballynanty
22 Limerick.

23 MR. JUSTICE BUTLER: Thank you very much,
24 Mr. Vaughan Buckley.

25 REGISTRAR: Is there any other juror 11:13
26 present in court? There is
27 not, there is just the one.

28 MR. JUSTICE BUTLER: Sorry, the other thing I
29 forgot to mention to the

1 panel of one as it is now is that the case is likely,
2 I am told, to last about eight weeks. In other words
3 up to Christmas, and any particular with anyone who
4 is called has they should brick it to my attention.
5 REGISTRAR: 1753, Michael Cleary, could 11:14
6 you come forward, please.
7
8 12TH JUROR SWORN
9
10 MR. JUSTICE BUTLER: Thank you all very much, 11:14
11 ladies and gentlemen.
12 Subject to what counsel have to say, we are now ready
13 to go. It is half 12. I might send the jury to
14 lunch now and sit when they can get back I think
15 would be more suitable, would it not? Sorry, I beg 11:15
16 your pardon.
17 MR. VAUGHAN BUCKLEY: Before the jury go, I
18 thought the
19 registrar... (INTERJECTION).
20 MR. JUSTICE BUTLER: Before you say anything, I 11:15
21 think a juror has something
22 to say.
23 JUROR: In relation to work, I was
24 informed yesterday we are
25 -- where I work is going through redundancies, so 11:16
26 there is actually meetings tomorrow and Friday and in
27 the month of November for two days.
28 MR. JUSTICE BUTLER: Meetings concerning that?
29 JUROR: Redundancy, yeah.

1 MR. JUSTICE BUTLER: I mean, tomorrow is not a
2 problem because we are not
3 sitting tomorrow because of another juror, but I
4 mean, can you not get around the other meetings?
5 Everybody has problems. As I say I have dental 11:17
6 appointments too, but can that not be got around?
7 JUROR: I would find it hard to
8 concentrate on what is
9 going on here while my own livelihood is at stake as
10 well. 11:17
11 MR. JUSTICE BUTLER: I think gentlemen that
12 creates a problem.
13 MR. NIX: My Lord, specifically no
14 juror is to be put at any
15 risk. 11:25
16 MR. JUSTICE BUTLER: All right, you need not say
17 anything. I think that
18 creates a problem. Thank you, you are excused, thank
19 you.
20 JUROR: I have college examinations 11:26
21 and also I am scheduled to
22 go to the US in November.
23 MR. JUSTICE BUTLER: I am not too worried about
24 the US but are the exams
25 compulsory exams? 11:28
26 JUROR: Yes, well, they are
27 university exams.
28 MR. JUSTICE BUTLER: Yes, but you must sit them,
29 you could not continue

1 there would be a break if you did not sit them; is
2 that right?

3 JUROR: I would have to wait a
4 year.

5 MR. JUSTICE BUTLER: Yes, some exams are 11: 29
6 optional. Okay. I have to
7 excuse that juror. So you are excused. So we are
8 back to square one and, Ladies and gentlemen, this is
9 a problem that I have already anticipated and it was
10 discussed to some extent. We are now down to at the 11: 29
11 moment to ten jurors. I can see this trial going in
12 a particular direction, but I want to consider the
13 matter and the practicalities of how it can be dealt
14 with further, Ladies and gentlemen, so I am afraid I
15 am going to ask you to return at 11.00 o'clock on 11: 29
16 Friday. We cannot sit tomorrow because of one juror
17 anyhow but it will give us the extra time. If you
18 would return at 11.00 o'clock on Friday morning and
19 we should have a definitive position by then. Thank
20 you very much indeed, Ladies and gentlemen. 11: 30

21
22 Finally, and once again, Ladies and gentlemen, I just
23 want to say, and it is not just because of this
24 trial, it is in every single trial, you are not to
25 discuss this case or the evidence in it, which you 11: 30
26 have not heard of course, or any opinions about it
27 with anybody other than amongst yourselves. I want
28 to profusely thank you for your great patience, so
29 11.00 o'clock Friday morning, thank you very much,

1 Ladies and gentlemen

2

3 IN THE ABSENCE OF THE JURY

4

5 MR. JUSTICE BUTLER: We tried. 11: 30

6 MR. VAUGHAN BUCKLEY: Just before your Lordship
7 rises.

8 MR. JUSTICE BUTLER: Yes, certainly.

9 MR. VAUGHAN BUCKLEY: Before your Lordship rises,
10 my Lord. 11: 31

11 MR. JUSTICE BUTLER: There is no hurry.

12 MR. VAUGHAN BUCKLEY: Would it be possible at
13 all to be able to indicate
14 tomorrow whether -- tomorrow rather than Friday, for
15 counsel to be present tomorrow here to mention 11: 33

16 tomorrow whether you think there may be some way of
17 getting the other jurors in for next week or
18 whatever, or next Wednesday or whatever so that we
19 know whether we are going to go ahead or not, my Lord
20 in other words. 11: 33

21 MR. JUSTICE BUTLER: I would love to oblige but
22 that in effect means saying
23 I am making the ruling tomorrow.

24 MR. VAUGHAN BUCKLEY: Rather than Friday.

25 MR. JUSTICE BUTLER: I do not want to make it 11: 33
26 tomorrow. I want to
27 consider the matter. I want to consider the
28 practicalities of the matter, where geographic
29 locations and so forth.

1 MR. VAUGHAN BUCKLEY: Yes, my Lord.
2 MR. JUSTICE BUTLER: Where jurors come from and
3 that, and I gather it is
4 going to take me a day to do that. I am very sorry.
5 I have an opinion that this case is going one way and 11:34
6 I have said it but I am not ruling yet. I want to
7 try everything that is possible and I need that time.
8 I have considered that. I even considered that to
9 some extent before I sat, and I am sorry to say that
10 I need that time. 11:34
11 MR. VAUGHAN BUCKLEY: May it please your
12 Lordship.
13 MR. JUSTICE BUTLER: Thank you very much, Ladies
14 and gentlemen.

15
16 THE HEARING WAS THEN ADJOURNED TO FRIDAY,
17 24 OCTOBER 2003
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'summoning [1] -
16:18

1

1 [2] - 35:5, 38:21
11 [7] - 15:5, 17:9,
18:28, 19:11, 32:14,
32:19, 37:2
11-11 [1] - 3:13
11.00 [3] - 41:15,
41:18, 41:29
110 [1] - 38:19
12 [9] - 15:6, 17:12,
26:28, 27:2, 28:27,
30:1, 32:15, 32:28,
39:13
120 [1] - 38:16
12th [1] - 39:8
13-14 [1] - 3:16
14 [7] - 16:17, 20:25,
23:10, 24:16, 24:28,
28:7, 28:9
14-14 [1] - 3:17
14-16 [1] - 3:20
16-20 [1] - 3:21
1753 [2] - 37:7, 39:5
1976 [3] - 16:18,
18:22, 20:25

2

2 [1] - 35:7
20 [1] - 29:1
2003 [7] - 1:19, 4:2,
35:5, 35:8, 35:10,
35:13, 43:17
22 [2] - 1:19, 4:2
22-24 [1] - 3:22
24 [2] - 27:20, 43:17
24-24 [1] - 3:23
24-25 [1] - 3:24
26-27 [1] - 3:25
27-30 [1] - 3:26
29 [1] - 35:5
29th [3] - 35:7,
35:10, 35:13

3

3 [1] - 35:9
35-36 [1] - 3:28

4

4 [2] - 31:9, 35:12
42-43 [1] - 3:30

4th [1] - 31:17

5

5 [4] - 13:22, 13:27,
14:15, 38:18

6

6-8 [1] - 3:8
61/2003 [1] - 4:4

8

8-9 [1] - 3:9
80 [1] - 38:14

9

9-11 [1] - 3:12
96 [1] - 38:8

A

abandoned [1] -
18:28
able [3] - 19:21,
24:29, 42:13
above-named [1] -
1:25
absence [3] - 4:29,
5:3, 36:23
Absence [3] - 3:19,
3:30, 42:3
absent [1] - 5:11
Absolutely [1] - 22:2
absolutely [1] -
28:22
accept [2] - 29:11,
29:27
according [1] - 32:27
accurate [1] - 1:24
accused [28] - 4:8,
5:17, 6:13, 11:6,
12:14, 12:15, 13:20,
29:3, 35:4, 35:7, 35:9,
35:12, 35:17, 35:20,
35:25, 35:27, 36:5,
36:9, 36:13, 38:1,
38:13, 38:14, 38:15,
38:17, 38:18, 38:20
accused's [1] - 12:11
act [3] - 6:20, 30:1,
31:2
Act [10] - 16:13,
16:18, 17:13, 18:22,
20:25, 22:24, 23:10,
23:17, 23:28, 24:6
acting [1] - 7:2

action [1] - 17:25
Action [1] - 1:17
added [1] - 17:5
address [5] - 7:14,
11:4, 12:11, 31:25,
38:5
addresses [3] -
11:17, 37:12, 37:29
adjourn [2] - 25:21,
33:13
Adjourn [1] - 30:13
adjourned [3] - 16:5,
24:27, 31:14
Adjourned [1] -
43:16
Adjourning [1] -
30:18
Adjournment [2] -
22:12, 22:16
adopt [4] - 24:12,
24:21, 26:3, 28:23
afraid [2] - 37:13,
41:14
afternoon [2] - 7:5,
8:25
agree [1] - 26:1
agreed [3] - 6:20,
6:22, 6:23
agreeing [1] - 21:4
ahead [5] - 14:29,
27:26, 28:4, 29:12,
42:19
allegation [1] - 38:10
allow [1] - 25:22
allowed [3] - 15:26,
21:7, 21:11
alternative [1] -
26:28
Andrew [3] - 2:22,
2:25, 2:26
announced [1] -
11:18
answer [2] - 11:22,
34:28
Anthony [8] - 1:13,
2:10, 4:6, 13:23,
13:24, 24:20, 36:2,
38:17
anticipate [1] - 31:20
anticipated [1] - 41:9
anxious [2] - 16:4,
24:24
anyhow [2] - 5:1,
41:17
anyway [1] - 4:24
apologise [1] - 36:22
appear [3] - 24:10,
24:19, 29:14
Appearances [1] -
2:1

application [10] -
4:16, 20:27, 23:28,
24:1, 24:22, 25:2,
27:23, 29:16, 29:21,
36:24
applied [3] - 19:3,
24:29, 25:4
apply [2] - 6:18, 28:9
appointments [1] -
40:6
appreciate [3] - 21:8,
26:4, 28:20
apprehension [2] -
10:7, 15:17
area [2] - 17:3, 17:4
arise [1] - 31:21
arises [1] - 16:15
arraigned [1] - 35:17
ascertained [1] -
26:13
assume [1] - 34:6
assumption [1] -
34:8
attempt [1] - 38:10
attempted [1] - 35:15
attendance [1] - 34:2
attention [2] - 10:22,
39:4
attitude [2] - 7:2,
33:26
authorise [2] - 8:2,
8:5
availability [1] -
25:16
available [7] - 9:5,
22:25, 23:11, 23:16,
24:16, 25:9, 25:17
availed [1] - 17:21
Avenue [1] - 38:21
aware [16] - 8:26,
9:2, 10:22, 11:15,
13:10, 13:15, 13:16,
20:7, 23:1, 23:5,
23:20, 25:14, 31:10,
31:15, 33:29, 34:3

B

background [1] -
23:5
balance [1] - 24:3
Ballynanty [1] -
38:21
basis [1] - 26:13
became [2] - 13:15,
13:16
become [2] - 13:10,
25:17
been...(interjection
[1] - 17:18

beg [2] - 18:1, 39:15
behalf [11] - 5:19,
5:21, 8:3, 8:7, 11:1,
13:12, 20:12, 24:13,
27:13, 29:18
beings [1] - 26:5
bell [1] - 38:2
best [1] - 28:26
better [1] - 12:18
Bill [1] - 4:4
bit [1] - 29:11
Bl [6] - 2:5, 2:11,
2:16, 2:21, 2:25, 2:29
Blaise [1] - 35:23
Bowman [2] - 2:21,
36:11
break [1] - 41:1
Brendan [1] - 2:28
brick [1] - 39:4
briefly [4] - 21:14,
21:18, 25:27, 31:8
bring [4] - 4:12,
22:25, 33:23, 33:27
brother [12] - 5:16,
5:18, 5:24, 6:7, 8:7,
10:3, 10:7, 10:10,
11:1, 11:2, 11:3,
13:11
brought [6] - 4:11,
10:22, 15:28, 26:14,
32:23, 33:1
buckley [1] - 2:4
Buckley [57] - 3:8,
3:12, 3:16, 3:20, 3:26,
4:10, 4:25, 5:8, 5:12,
6:3, 6:5, 9:16, 9:20,
9:22, 12:1, 12:19,
12:25, 13:3, 13:5,
14:25, 15:4, 15:10,
15:14, 15:23, 19:1,
21:8, 21:13, 21:18,
21:23, 21:27, 22:2,
25:27, 27:17, 28:24,
29:6, 29:9, 29:26,
30:13, 30:25, 31:28,
32:1, 33:19, 36:15,
37:13, 37:15, 37:19,
37:28, 38:2, 38:3,
38:24, 39:17, 42:6,
42:9, 42:12, 42:24,
43:1, 43:11
Buckley's [1] - 20:27
burden [1] - 7:16
Bushy [2] - 35:11,
35:14
Butler [83] - 1:17,
4:23, 5:5, 5:11, 8:12,
9:10, 11:28, 12:3,
12:13, 12:22, 14:5,
14:19, 15:1, 15:9,

15:13, 15:19, 16:11, 16:26, 17:19, 17:28, 18:2, 18:6, 18:10, 18:15, 19:29, 20:6, 20:9, 20:16, 20:29, 21:5, 21:11, 21:16, 21:21, 21:26, 21:28, 22:3, 22:7, 24:7, 24:18, 25:25, 25:29, 26:17, 26:23, 26:29, 27:5, 28:20, 29:5, 29:8, 29:24, 30:10, 30:24, 31:10, 31:15, 31:24, 32:6, 32:11, 32:15, 33:7, 33:21, 34:5, 34:17, 36:20, 36:29, 37:11, 37:17, 38:23, 38:28, 39:10, 39:20, 39:28, 40:1, 40:11, 40:16, 40:23, 40:28, 41:5, 42:5, 42:8, 42:11, 42:21, 42:25, 43:2, 43:13
bypass [2] - 25:2, 28:7

C

cannot [3] - 15:7, 29:12, 41:16
capacity [1] - 8:6
Carney [5] - 16:7, 16:8, 29:23, 30:7, 31:1
carry [2] - 18:16, 18:18
case [26] - 6:9, 7:3, 7:15, 11:18, 13:8, 19:9, 23:2, 25:7, 25:18, 26:12, 27:26, 27:29, 29:15, 29:19, 30:2, 30:17, 36:16, 36:18, 37:24, 37:27, 38:1, 38:6, 38:8, 39:1, 41:25, 43:5
Central [10] - 1:2, 16:6, 23:1, 25:17, 30:5, 30:9, 30:15, 30:17, 30:21, 30:22
certain [1] - 5:20
certainly [7] - 26:5, 27:17, 27:24, 28:3, 30:3, 33:14, 42:8
Certainly [2] - 21:13, 32:6
certify [1] - 1:23
challenge [1] - 23:23
challenges [2] - 28:28, 32:22
chance [1] - 20:11

change [3] - 29:24, 29:26, 29:28
characters [1] - 11:18
Charge [1] - 3:28
charge [8] - 5:2, 5:15, 13:7, 14:27, 15:8, 27:22, 27:23, 35:19
charged [1] - 35:21
charges [3] - 35:7, 35:9, 35:12
check [1] - 26:23
Chief [1] - 38:6
chief [3] - 6:2, 9:19, 13:2
Chinese [1] - 27:29
Christmas [1] - 39:3
Christopher [4] - 1:13, 4:8, 36:9, 38:21
circumstances [2] - 24:5, 33:4
citizens [1] - 22:26
City [2] - 35:6, 35:8
clear [1] - 27:6
Clearly [4] - 37:8, 37:9, 37:10, 39:5
client [9] - 20:4, 21:3, 22:19, 24:13, 24:24, 26:5, 27:11, 29:13, 29:18
client's [4] - 19:24, 19:27, 23:13, 24:6
clients [3] - 17:15, 18:23, 19:19
clients' [1] - 20:20
close [1] - 11:5
clue [1] - 12:17
cognisant [1] - 9:2
college [1] - 40:20
coming [4] - 11:29, 12:4, 12:9, 31:9
commence [1] - 15:7
Commenced [1] - 4:1
commencement [1] - 25:11
common [1] - 20:20
Company [1] - 2:13
completely [1] - 25:3
compulsory [1] - 40:25
concentrate [1] - 40:8
concern [2] - 11:3, 13:10
concerned [4] - 7:13, 12:15, 27:25, 37:23
concerning [3] - 5:21, 10:7, 39:28
concerns [2] - 9:3,

11:2
condition [1] - 7:1
confidence [2] - 32:22, 33:3
confirm [2] - 27:9, 27:12
connection [1] - 37:23
consequences [1] - 31:4
consequently [1] - 7:17
consider [4] - 33:12, 41:12, 42:27
considerable [4] - 25:7, 25:9, 25:15, 25:23
considered [2] - 43:8
Constitution [1] - 18:16
constitutional [2] - 19:20, 23:13
contact [7] - 6:27, 7:19, 7:25, 8:21, 10:6, 10:15, 10:17
contacted [5] - 5:18, 5:20, 7:21, 8:26, 8:29
contacts [1] - 8:6
continue [3] - 25:22, 25:23, 40:29
convenient [1] - 19:7
copy [1] - 16:26
correct [8] - 6:7, 6:8, 6:15, 7:29, 9:24, 9:25, 10:13, 13:9
Costello [5] - 1:14, 2:28, 4:8, 36:9, 38:21
counsel [14] - 29:18, 35:23, 35:24, 35:29, 36:3, 36:4, 36:7, 36:8, 36:11, 36:12, 36:15, 36:17, 39:12, 42:15
Count [4] - 35:5, 35:7, 35:9, 35:12
county [1] - 19:5
County [4] - 17:2, 28:15, 35:11, 35:14
couple [1] - 26:3
course [8] - 15:5, 20:6, 21:26, 21:29, 23:7, 29:26, 29:28, 41:26
court [11] - 4:15, 4:16, 4:19, 4:21, 7:29, 10:2, 34:21, 34:22, 37:6, 37:9, 38:26
Court [26] - 1:2, 7:1, 8:2, 8:5, 16:6, 16:21, 16:22, 17:1, 17:4, 22:25, 22:26, 23:1,

25:17, 25:24, 28:12, 28:13, 28:14, 29:14, 29:17, 30:5, 30:15, 30:17, 30:22, 30:23, 31:29, 37:25
Court..(interjection) [1] - 30:9
courts [4] - 18:14, 19:3, 22:1
creates [2] - 40:12, 40:18
Criminal [10] - 1:2, 16:6, 23:1, 25:17, 30:5, 30:9, 30:15, 30:17, 30:22, 30:23
Cross [9] - 3:9, 3:13, 3:17, 8:16, 9:8, 11:12, 11:26, 14:9, 14:17
Cross-examination [3] - 9:8, 11:26, 14:17
Cross-examined [3] - 8:16, 11:12, 14:9
crow [1] - 14:1
cruel [1] - 26:8
custody [5] - 17:16, 18:23, 24:25, 25:24, 29:11

D

dark [1] - 33:9
date [2] - 16:8, 31:14
David [12] - 1:13, 2:20, 3:11, 4:7, 7:26, 7:27, 7:28, 9:18, 11:12, 20:5, 24:11, 38:15
days [2] - 15:28, 39:27
deal [5] - 5:23, 7:23, 15:21, 23:11, 34:18
dealt [2] - 23:3, 41:13
deceased [2] - 37:29, 38:3
decision [4] - 28:20, 30:8, 33:11
defendant [1] - 25:20
Defendants [1] - 1:11
defendants [2] - 23:22, 25:19
defending [1] - 20:20
defer [2] - 33:11, 33:16
deferment [1] - 25:11
deficiency [1] - 17:14
deficiency' [1] - 16:19

definitely [1] - 29:9
definitive [1] - 41:19
Delmege [1] - 38:19
Denis [1] - 2:4
Dennis [1] - 36:15
dental [1] - 40:5
desires [1] - 24:14
Desmond [5] - 1:13, 2:15, 4:6, 22:20, 38:14
Devane [2] - 2:18, 35:26
developed [1] - 23:12
devoid [1] - 31:20
died [1] - 28:1
different [2] - 31:17, 34:15
Difficulties [1] - 18:27
difficulties [1] - 31:21
difficulty [7] - 17:10, 24:2, 29:29, 30:2, 31:2, 32:14, 32:20
direct [2] - 4:28, 19:5
Direct [6] - 3:8, 3:12, 3:16, 8:10, 11:9, 14:3
Direct-examination [3] - 8:10, 11:9, 14:3
direction [2] - 5:7, 41:12
Director [4] - 1:8, 2:7, 23:25, 36:18
directs [2] - 4:14, 16:9
discharge [9] - 17:26, 19:10, 24:1, 27:2, 27:21, 27:24, 30:11, 31:13, 33:14
discharged [10] - 6:18, 15:11, 16:5, 17:15, 18:29, 20:28, 22:28, 27:20, 28:2, 36:27
discharging [2] - 16:16, 36:26
discuss [1] - 41:25
discussed [1] - 41:10
Discussion [1] - 3:30
disqualified [2] - 37:22, 37:26
distance [1] - 13:27
distracted [1] - 7:8
distressed [1] - 7:8
District [1] - 37:25
done [2] - 18:21, 19:10
doubt [1] - 26:7

down [7] - 15:24,
19:3, 19:18, 26:12,
28:1, 37:2, 41:10
Dpp [1] - 25:1
drastic [1] - 17:25
Drombana [2] -
35:10, 35:13
Dublin [11] - 16:6,
16:9, 19:1, 27:29,
29:19, 30:12, 30:14,
30:18, 30:23, 30:26,
32:3
Dublin...
interjection [1] - 17:27
due [1] - 11:4
Duly [3] - 6:1, 9:18,
13:1
Dundon [9] - 1:13,
2:15, 4:6, 22:20,
22:21, 23:2, 35:25,
35:27, 38:14
duress [1] - 6:24
during [1] - 23:20

E

earliest [1] - 19:7
early [2] - 18:24,
19:22
eat [1] - 7:10
Edwards [25] - 2:24,
3:21, 12:8, 13:18,
16:13, 16:28, 17:21,
18:1, 18:4, 18:8,
18:12, 18:18, 20:9,
20:11, 20:13, 20:18,
21:4, 21:15, 21:19,
32:4, 32:6, 32:7,
32:12, 32:18, 36:3
effect [1] - 42:22
effectively [1] -
30:12
effort [1] - 25:21
eight [1] - 39:2
either [1] - 16:9
eligibility [1] - 5:22
embark [1] - 19:14
empanelled [1] -
25:6
empanelling [1] -
18:25
employ [1] - 33:6
employed [9] -
17:25, 17:29, 18:3,
18:7, 19:4, 19:21,
19:23, 20:25, 24:17
encountered [1] -
18:27
End [6] - 8:10, 9:8,
11:9, 11:26, 14:3,

14:17
endeavour [1] - 19:8
engaged [1] - 20:19
ensure [1] - 23:27
entirely [1] - 24:12
entirety [1] - 28:3
entitled [6] - 12:22,
17:16, 17:19, 18:23,
28:22, 34:21
entitlement [1] -
19:24
establishing [1] -
23:7
evening [1] - 13:15
event [1] - 37:25
evidence [8] - 1:25,
5:23, 10:3, 14:26,
14:28, 36:24, 36:26,
41:25
Examination [1] - 3:5
examination [6] -
8:10, 9:8, 11:9, 11:26,
14:3, 14:17
examinations [1] -
40:20
Examined [3] - 6:2,
9:19, 13:2
examined [3] - 8:16,
11:12, 14:9
Examined-in-chief
[3] - 6:2, 9:19, 13:2
exams [4] - 40:24,
40:25, 40:27, 41:5
exceeding [1] -
20:27
excluded [1] - 4:15
excuse [4] - 32:16,
32:17, 36:24, 41:7
excused [3] - 34:1,
40:18, 41:7
exercise [3] - 23:16,
24:5, 32:8
exercised [1] - 23:22
exhausted [1] -
32:22
exigency [1] - 23:11
experienced [1] -
24:2
explain [2] - 7:20,
36:22
express [2] - 19:17,
33:6
expressed [2] - 5:21,
15:17
expressly [1] - 16:14
extent [3] - 20:18,
41:10, 43:9
extent...
interjection [1] - 20:15
extra [2] - 23:17,

41:17
extraordinary [1] -
20:21

F

fact [9] - 5:5, 10:6,
13:11, 27:19, 28:27,
29:16, 32:10, 36:25,
37:6
fair [4] - 19:20,
19:25, 23:14, 23:15
Fair [4] - 13:22,
13:27, 14:15, 38:18
fairness [4] - 19:19,
23:14, 25:19
falsely [2] - 35:6,
35:8
family [2] - 7:12,
7:17
far [4] - 12:15, 13:25,
15:19, 27:24
fifth [1] - 38:20
fill [2] - 19:8, 37:4
filled [1] - 33:4
Finally [1] - 41:22
finer [1] - 37:24
finish [1] - 20:12
firm [2] - 9:26, 9:29
firmly [1] - 22:21
first [6] - 15:1, 17:24,
27:22, 33:9, 34:18,
38:13
first-named [1] -
38:13
five [3] - 22:4, 32:26,
38:13
fix [1] - 16:8
fixed [1] - 18:24
flies [1] - 14:1
flowing [1] - 31:4
following [1] - 1:23
Follows [8] - 4:1, 6:2,
8:16, 9:19, 11:12,
13:2, 14:10, 22:15
force [1] - 31:3
forgot [1] - 38:29
form [2] - 10:29, 43:2
forth [1] - 42:29
forward [2] - 4:9,
39:6
four [3] - 7:6, 8:22,
13:28
fourth [1] - 38:18
framework [2] -
18:14, 18:20
Friday [10] - 33:17,
33:18, 33:28, 39:26,
41:16, 41:18, 41:29,
42:14, 42:24, 43:16

friend [1] - 7:21
Friend [1] - 19:1
Friends [4] - 19:28,
20:14, 20:21, 26:2
fully [1] - 9:2
further...
interjection [1] - 32:5

G

Garda [5] - 10:15,
10:23, 10:25, 10:26,
31:3
Garda [9] - 5:19,
5:20, 7:19, 8:26, 9:2,
10:19, 10:20, 13:12,
16:3
Gardens [1] - 38:16
Garyowen [2] - 38:5
gather [2] - 32:25,
43:3
gentlemen [10] -
36:20, 37:2, 39:11,
40:11, 41:8, 41:14,
41:20, 41:22, 42:1,
43:14
geographic [1] -
42:28
Gerard [3] - 3:15,
13:1, 14:9
given [5] - 5:2,
14:27, 15:8, 27:21,
27:22
great [2] - 24:2,
41:28
Green [4] - 13:22,
13:27, 14:15, 38:18
Greenhills [1] - 38:5
ground [1] - 19:22
group [1] - 32:23
guard [1] - 10:18
guilty [3] - 35:18,
35:20

H

half [2] - 8:22, 39:13
hall [1] - 26:14
hallway [2] - 26:11,
26:21
Hanahoe [2] - 2:13,
36:1
happy [7] - 22:23,
24:25, 24:27, 27:7,
27:18, 27:25, 33:10
hard [1] - 40:7
heading [1] - 16:18
heard [3] - 36:23,
36:25, 41:26

Heard [1] - 1:17
Hearing [3] - 4:1,
22:15, 43:16
held [1] - 30:25
helpful [1] - 12:17
hereby [1] - 1:23
high [2] - 32:21, 33:3
highly [1] - 14:28
himself [2] - 6:18,
7:18
home [1] - 7:5
honest [1] - 6:26
hope [1] - 19:26
hour [1] - 7:10
House [1] - 38:5
house [1] - 13:25
human [2] - 26:4,
26:5
hundred [6] - 13:28,
29:1, 32:24, 32:26,
33:1
hundreds [2] - 29:1,
29:29
hurry [1] - 42:11
hyped [1] - 26:6

I

idea [1] - 34:8
ill [1] - 27:28
imagination [1] -
31:20
Immediately [1] -
8:29
Impanel [2] - 26:28,
27:2
impanel [1] - 34:10
impaneled [1] -
24:26
important [1] - 38:7
imposed [1] - 37:24
imprisoned [2] -
35:6, 35:8
imprudent [1] - 33:5
incomplete [2] -
16:22, 28:13
indeed [8] - 9:12,
12:3, 14:20, 16:3,
32:12, 32:13, 37:1,
41:20
Index [1] - 3:2
index [2] - 32:21,
33:3
indicate [2] - 6:11,
42:13
indicted [1] - 35:4
indictment [3] -
14:14, 24:21, 35:17
ineligible [3] - 36:25,

37:22, 37:26
information [3] - 9:4,
10:25, 27:1
informed [2] - 10:26,
39:24
innocence [1] - 23:7
inquiry [1] - 34:13
instance [1] - 17:24
instructed [8] - 5:13,
29:16, 35:24, 35:26,
36:1, 36:4, 36:8,
36:12
Instructed [5] - 2:7,
2:13, 2:18, 2:22, 2:26
instruction [1] - 20:4
instructions [9] -
21:3, 21:6, 21:7, 22:7,
22:9, 22:20, 24:6,
24:24, 27:5
interest [2] - 23:6,
37:27
interesting [1] -
18:15
Interjection [2] -
12:21, 16:25
intimately [1] - 23:5
investigation [1] -
5:15
investigations [1] -
13:7
involved [1] - 7:15
Island [2] - 35:11,
35:14
issue [4] - 12:11,
16:21, 28:12, 35:19

J

James[5] - 1:13,
2:24, 4:7, 36:5, 38:19
January[4] - 35:5,
35:8, 35:10, 35:13
John[7] - 2:5, 2:18,
2:24, 3:7, 6:1, 10:29,
11:2
Joseph[2] - 11:4,
36:28
Judge[8] - 13:28,
16:21, 16:22, 17:2,
28:12, 28:13, 29:23,
30:27
judge [3] - 30:6,
30:7, 30:18
junior [3] - 29:18,
30:28, 36:17
juries [1] - 18:21
Juries[9] - 16:13,
16:18, 18:22, 20:25,
22:24, 23:10, 23:17,
23:28, 24:6

juror [26] - 5:17,
5:19, 5:24, 6:9, 6:22,
6:28, 7:2, 10:8, 11:16,
13:20, 14:29, 15:6,
15:18, 17:10, 27:28,
27:29, 34:1, 36:24,
36:25, 36:26, 38:25,
39:21, 40:3, 40:14,
41:7, 41:16
Juror[8] - 37:7, 39:8,
39:23, 39:29, 40:7,
40:20, 40:26, 41:3
juror...(interjection
[1] - 15:12
Jurors[1] - 26:19
jurors [36] - 4:15,
4:20, 5:16, 6:7, 10:4,
13:11, 15:6, 15:25,
15:28, 15:29, 16:19,
17:1, 17:6, 17:11,
17:23, 18:28, 23:23,
26:10, 26:14, 26:17,
27:19, 27:24, 27:26,
28:1, 28:4, 28:14,
28:27, 29:1, 29:2,
30:1, 30:2, 31:2,
41:11, 42:17, 43:2
Jury[6] - 3:19, 3:28,
3:30, 34:24, 35:1,
42:3
jury [56] - 4:10, 4:19,
5:1, 5:11, 5:22, 6:12,
6:20, 6:23, 7:7, 11:3,
11:19, 14:26, 15:4,
15:10, 16:4, 16:16,
16:21, 17:15, 17:17,
17:23, 17:26, 18:26,
20:28, 22:10, 22:23,
22:28, 23:4, 23:21,
24:1, 24:26, 25:5,
25:8, 25:12, 27:21,
27:22, 28:2, 28:12,
30:11, 31:9, 31:13,
31:24, 32:3, 33:8,
33:17, 33:22, 33:24,
33:25, 34:17, 34:26,
35:3, 37:4, 37:22,
39:13, 39:17
Justice[87] - 1:17,
4:23, 5:5, 5:11, 8:12,
9:10, 11:28, 12:3,
12:13, 12:22, 14:5,
14:19, 15:1, 15:9,
15:13, 15:19, 16:7,
16:8, 16:11, 16:26,
17:19, 17:28, 18:2,
18:6, 18:10, 18:15,
19:29, 20:6, 20:9,
20:16, 20:29, 21:5,
21:11, 21:16, 21:21,

21:26, 21:28, 22:3,
22:7, 24:7, 24:18,
25:25, 25:29, 26:17,
26:23, 26:29, 27:5,
28:20, 29:5, 29:8,
29:24, 30:7, 30:10,
30:24, 31:1, 31:10,
31:15, 31:24, 32:6,
32:11, 32:15, 33:7,
33:21, 34:5, 34:17,
36:20, 36:29, 37:11,
37:17, 38:23, 38:28,
39:10, 39:20, 39:28,
40:1, 40:11, 40:16,
40:23, 40:28, 41:5,
42:5, 42:8, 42:11,
42:21, 42:25, 43:2,
43:13

K

Keane[4] - 35:6,
35:12, 35:24, 38:4
keep [2] - 22:10, 33:8
Keep[1] - 33:17
Kieran[2] - 35:12,
38:4
kind [1] - 27:27
know...(interjection
[1] - 11:21
known [2] - 35:11,
35:14

L

Ladies[1] - 36:20
ladies [8] - 37:2,
39:11, 41:8, 41:14,
41:20, 41:22, 42:1,
43:13
laid [2] - 19:2, 19:18
last [7] - 6:29, 7:9,
13:13, 22:27, 25:7,
29:17, 39:2
late [2] - 13:14, 28:27
Late[1] - 13:16
law [1] - 18:13
Leahy[7] - 3:11,
7:26, 7:27, 7:28, 7:29,
8:2, 8:5, 9:16, 9:18,
9:22, 9:27, 9:28,
11:12, 11:15, 13:13
least [3] - 4:25,
16:17, 32:24
leave [3] - 18:19,
26:22, 34:22
left [1] - 37:3
length [1] - 25:16
less [1] - 32:2
liable [2] - 17:1,

28:14
liberty [2] - 19:26,
19:27
light [2] - 14:25,
14:28
likelihood [1] - 21:3
likely [2] - 25:7, 39:1
Limerick[21] - 1:3,
16:9, 22:22, 23:2,
24:15, 30:16, 30:19,
30:21, 30:22, 31:4,
35:6, 35:8, 35:11,
35:14, 38:6, 38:9,
38:15, 38:16, 38:18,
38:20, 38:22
list [2] - 37:11, 37:15
listen [1] - 37:18
live [4] - 6:13, 6:14,
13:21, 13:25
lived [2] - 5:17, 6:12
livelihood [1] - 40:9
lives [6] - 13:22,
13:23, 13:26, 38:14,
38:16, 38:17
living [1] - 7:5
locations [1] - 42:29
Lord[59] - 4:10, 4:13,
4:17, 4:26, 5:10, 5:18,
5:22, 6:11, 12:12,
13:14, 14:27, 15:26,
16:10, 16:13, 18:1,
18:12, 18:18, 18:20,
20:1, 20:24, 21:1,
21:13, 21:15, 22:6,
22:18, 22:21, 23:6,
23:25, 24:3, 24:20,
25:27, 26:4, 26:26,
27:8, 27:12, 27:16,
27:19, 27:26, 28:3,
28:6, 28:25, 29:11,
29:22, 30:14, 30:28,
31:7, 31:9, 31:11,
31:26, 32:1, 32:3,
33:23, 33:25, 34:12,
40:13, 42:10, 42:19,
43:1
Lordship[23] - 4:28,
19:4, 20:3, 20:27,
22:28, 23:1, 23:9,
23:15, 23:20, 25:14,
26:4, 28:7, 28:8, 28:9,
28:18, 28:26, 29:29,
30:3, 31:12, 33:20,
42:6, 42:9, 43:12
Lordships [3] - 4:12,
16:2, 33:26
Lordship..(
interjection [2] -
21:10, 21:25
lost [2] - 28:28,

37:11
love [1] - 42:21
lunch [1] - 39:14

M

Mahon [6] - 3:15,
5:14, 12:1, 13:1, 13:5,
14:9
Maloney [3] - 2:16,
30:28, 35:24
Mary's [1] - 38:9
matter [3] - 1:25,
4:12, 4:27, 5:23, 6:25,
7:24, 16:2, 16:5,
18:29, 19:12, 23:3,
24:25, 24:27, 25:14,
25:21, 25:22, 28:6,
28:8, 29:17, 30:3,
30:4, 30:12, 30:13,
30:18, 30:26, 33:12,
33:13, 33:16, 41:13,
42:27, 42:28
matters [1] - 26:3
Mccarthy [18] - 1:13,
1:13, 2:10, 2:22, 2:24,
2:26, 4:6, 4:7, 13:23,
13:24, 24:20, 36:2,
36:4, 36:5, 36:8,
36:12, 38:17, 38:19
Mcinerney [2] - 2:29,
36:7
Mcnamara [1] -
36:16
mean [4] - 26:17,
31:19, 40:1, 40:4
means [1] - 42:22
meantime [1] - 34:20
mechanism [8] -
16:16, 17:13, 17:24,
18:5, 19:2, 19:17,
24:28, 33:6
mechanisms [1] -
24:16
meetings [2] - 39:26,
40:4
Meetings [1] - 39:28
member [2] - 10:15,
22:27
Members [1] - 34:26
members [6] - 4:18,
6:12, 26:20, 31:3,
33:25, 35:3
men...(interjection
[1] - 27:4
mention [7] - 19:2,
19:12, 30:4, 30:14,
30:18, 38:29, 42:15
method [1] - 17:4
metres [1] - 13:28

Michael ^[4] - 2:13, 37:8, 37:9, 39:5
might ^[7] - 19:9, 21:16, 31:7, 31:21, 32:19, 37:20, 39:13
mind ^[1] - 31:13
minds ^[3] - 29:25, 29:27, 29:28
mine ^[2] - 7:21, 28:21
minimum ^[1] - 32:21
minutes ^[1] - 22:4
missing ^[1] - 34:7
moment ^[7] - 4:21, 8:1, 15:22, 17:9, 19:11, 31:6, 41:11
month ^[1] - 39:27
months ^[2] - 19:24, 27:28
morning ^[8] - 28:27, 32:14, 32:28, 33:17, 33:18, 34:3, 41:18, 41:29
most ^[1] - 38:7
mother ^[4] - 7:4, 7:5, 7:16, 7:18
Moylish ^[1] - 38:21
Moyross ^[2] - 38:16, 38:19
Munchin's ^[1] - 38:8
murder ^[2] - 35:15, 38:11
murdered ^[1] - 35:12
must ^[9] - 16:16, 17:24, 17:28, 18:2, 18:7, 19:18, 32:21, 33:2, 40:28

N

name ^[2] - 10:18, 38:3
named ^[2] - 1:25, 38:13
names ^[3] - 11:17, 17:5, 34:28
need ^[7] - 4:22, 17:12, 29:5, 29:6, 40:16, 43:7, 43:10
needed ^[2] - 17:2, 28:15
never ^[1] - 7:7
newspapers ^[1] - 32:28
next ^[8] - 15:29, 16:7, 19:6, 19:22, 23:25, 30:5, 42:17, 42:18
night ^[3] - 6:29, 7:9, 7:11

nine ^[1] - 28:1
Nix ^[20] - 2:28, 3:13, 3:25, 11:13, 11:15, 25:29, 26:1, 26:19, 26:26, 27:2, 27:8, 31:7, 31:11, 31:18, 31:26, 33:23, 34:5, 34:12, 36:7, 40:13
nobody ^[1] - 18:6
Noddy ^[1] - 13:24
notes ^[1] - 1:24
nothing ^[1] - 11:20
notice ^[3] - 4:13, 12:12, 17:5
noting ^[1] - 25:5
November ^[4] - 31:9, 31:17, 39:27, 40:22
Number ^[1] - 14:15
number ^[6] - 4:4, 14:13, 17:2, 17:23, 26:10, 28:15

O

O'Brien ^[15] - 3:7, 5:16, 5:24, 6:1, 6:5, 8:16, 10:3, 10:29, 11:4, 32:17, 33:14, 34:19, 36:27, 36:28, 36:29
O'carroll ^[10] - 2:15, 3:22, 20:29, 21:1, 22:5, 22:18, 24:8, 24:13, 27:15, 35:23
O'carroll's ^[2] - 29:13, 29:18
o'clock ^[4] - 7:6, 41:15, 41:18, 41:29
Ohanlon ^[12] - 2:10, 3:9, 3:17, 3:24, 8:17, 8:19, 14:10, 14:12, 24:19, 25:26, 27:9, 35:29
O'leadaha ^[2] - 2:11, 35:29
O'sullivan ^[2] - 2:5, 36:17
objections ^[1] - 17:20
objective ^[1] - 20:22
obligation ^[2] - 21:23, 23:27
oblige ^[1] - 42:21
obviously ^[1] - 19:24
occasion ^[3] - 23:25, 29:17, 30:6
occasions ^[3] - 6:15, 6:16, 6:17
occur ^[1] - 19:26
occurs ^[1] - 12:10

October ^[3] - 1:19, 4:2, 43:17
offences ^[1] - 35:21
officer ^[3] - 5:14, 10:25, 13:7
officers ^[1] - 10:23
Oireachtas ^[3] - 18:4, 19:2, 19:18
once ^[2] - 34:27, 41:22
one ^[3] - 4:12, 4:24, 4:25, 5:16, 6:7, 7:14, 8:19, 10:1, 10:3, 11:5, 13:11, 18:8, 18:26, 19:8, 23:29, 26:25, 29:5, 29:6, 29:9, 32:4, 33:29, 34:4, 34:14, 36:24, 36:25, 37:20, 38:27, 39:1, 41:8, 41:16, 43:5
One ^[4] - 10:2, 29:8, 29:9, 33:2
opened ^[1] - 25:6
operate ^[1] - 18:14
opinion ^[1] - 43:5
opinions ^[1] - 41:26
opportunity ^[3] - 19:7, 20:3, 23:3
optional ^[1] - 41:6
order ^[4] - 17:2, 24:17, 24:28, 28:15
otherwise ^[3] - 17:5, 35:10, 35:14
ought ^[4] - 23:16, 23:29, 25:4, 25:21
outside ^[5] - 4:20, 26:11, 26:21, 33:26, 34:16
Owen ^[3] - 35:9, 35:15, 38:8
own ^[5] - 7:1, 7:12, 20:12, 37:16, 40:9

P

Page ^[1] - 3:5
panel ^[19] - 4:19, 6:12, 7:7, 11:19, 15:28, 17:6, 18:21, 19:6, 26:18, 26:19, 26:20, 31:9, 32:3, 33:25, 37:3, 37:5, 37:17, 37:20, 39:1
Pardon ^[1] - 6:21
pardon ^[2] - 18:1, 39:16
parish ^[1] - 7:20
Park ^[2] - 38:9, 38:19
part ^[1] - 28:26
particular ^[5] - 11:4,

13:8, 25:19, 39:3, 41:12
particularly ^[1] - 7:18
partners ^[2] - 10:1, 10:2
Partners ^[4] - 7:26, 7:28, 9:27, 9:28
pass ^[1] - 24:17
patience ^[2] - 36:21, 41:28
peers ^[2] - 17:17, 23:4
penalties ^[1] - 37:24
People ^[1] - 4:6
people ^[8] - 7:14, 15:25, 21:5, 23:4, 30:1, 32:23, 33:27, 34:21
perfectly ^[1] - 6:26
Perhaps ^[1] - 37:17
perhaps ^[2] - 26:12, 34:19
period ^[6] - 24:28, 25:7, 25:10, 25:15, 25:22, 25:23
permission ^[1] - 18:20
person ^[2] - 33:15, 38:9
personally ^[1] - 7:19
persons ^[4] - 16:22, 17:3, 17:5, 28:13
pessimistic ^[2] - 17:11, 32:29
phone ^[2] - 7:4, 8:29
Pine ^[1] - 38:14
Pineview ^[1] - 38:16
place ^[3] - 7:15, 25:8, 25:11
pleaded ^[1] - 35:18
point ^[3] - 19:15, 20:26, 26:29
position ^[5] - 20:24, 21:1, 27:10, 27:16, 41:19
possibility ^[1] - 32:20
possible ^[3] - 16:4, 42:12, 43:7
possibly ^[3] - 17:9, 19:23, 33:14
potential ^[4] - 4:15, 4:20, 26:10, 26:14
potentially ^[1] - 25:24
power ^[5] - 22:25, 23:10, 23:16, 24:5, 28:18
powers ^[1] - 18:10

practical ^[1] - 26:13
practicalities ^[3] - 33:12, 41:13, 42:28
practise ^[1] - 9:26
precipitous ^[1] - 19:13
prefer ^[1] - 22:22
Presence ^[1] - 34:24
present ^[5] - 8:1, 23:24, 37:9, 38:26, 42:15
presiding ^[1] - 30:6
press ^[2] - 4:29, 5:8
principal ^[2] - 9:28, 11:18
principle ^[1] - 37:29
problem ^[4] - 40:2, 40:12, 40:18, 41:9
problems ^[1] - 40:5
procedure ^[2] - 25:2, 25:4
procedures ^[2] - 23:14, 23:15
proceed ^[4] - 24:25, 24:26, 27:7, 27:19
proceeding ^[1] - 33:10
process ^[2] - 18:25, 18:28
profusely ^[2] - 36:22, 41:28
proper ^[1] - 24:4
propose ^[1] - 33:9
Prosecution ^[2] - 1:8, 2:4
prosecution ^[5] - 27:25, 36:16, 37:29, 38:6, 38:7
Prosecutions ^[4] - 1:8, 2:8, 23:26, 36:18
prospects ^[1] - 33:1
provided ^[1] - 18:5
provides ^[2] - 16:14, 17:13
provision ^[1] - 23:28
provisions ^[2] - 22:24, 23:9
proximity ^[4] - 7:14, 11:5, 12:16, 14:13
proximity-wise ^[1] - 11:5
Public ^[4] - 1:8, 2:7, 23:25, 36:18
purely ^[1] - 11:1
purport ^[1] - 20:13
purpose ^[5] - 20:20, 22:9, 22:26, 28:29, 37:27
put ^[4] - 4:8, 25:10, 30:4, 40:14

putting [1] - 19:11

Q

qualified [3] - 9:23,
17:1, 28:14
quarter [1] - 8:22
questions [2] - 8:20,
9:11
quite [3] - 7:13,
22:22, 28:27

R

raise [1] - 4:27
rang [1] - 7:23
rate [2] - 5:4, 32:28
Rather [1] - 42:24
rather [2] - 25:22,
42:14
react [1] - 6:25
read [3] - 16:27,
21:21, 37:28
ready [2] - 22:8,
39:12
reality [1] - 32:18
really [3] - 8:14,
9:10, 34:7
reason [4] - 31:5,
31:6, 32:9, 34:9
reasonable [1] -
25:20
reasons [1] - 25:1
received [1] - 10:29
received...(
interjection [1] - 10:27
reduce [1] - 15:4
redundancies [1] -
39:25
Redundancy [1] -
39:29
refer [1] - 31:1
referred [5] - 16:23,
20:2, 28:14, 30:29,
31:2
reflection [1] - 12:13
refuse [1] - 29:2
refused [1] - 29:23
regard [9] - 15:17,
19:19, 23:9, 23:13,
24:1, 24:4, 25:4, 25:9,
25:18
regard...(
interjection [1] - 18:9
Registrar [12] - 4:4,
4:18, 4:24, 17:2,
28:15, 33:29, 34:26,
35:3, 36:28, 37:7,
38:25, 39:5

registrar [4] - 4:14,
15:15, 19:6, 37:5
registrar...(
interjection [1] - 39:19
relation [8] - 4:27,
13:18, 22:19, 24:23,
28:6, 29:13, 30:16,
39:23
remain [1] - 22:22
replacement [1] -
22:27
reply [4] - 20:3,
21:14, 21:17, 21:18
reply...(interjection
[1] - 25:28
report [1] - 5:8
reported [1] - 5:4
represent [1] - 25:20
representations [1] -
13:12
require [2] - 16:22,
28:13
reservations [1] -
5:21
respect [1] - 38:10
respectful [2] - 23:8,
23:26
respectfully [3] -
19:4, 19:5, 19:14
rest [1] - 7:17
result [1] - 10:14
Resumed [1] - 22:15
return [3] - 34:21,
41:15, 41:18
returned [1] - 19:1
rights [3] - 17:22,
19:25, 20:20
ring [1] - 38:1
rise [1] - 22:3
rises [2] - 42:7, 42:9
risk [1] - 40:15
Road [1] - 38:14
road [2] - 13:26, 38:5
Role [1] - 35:1
room [1] - 26:22
Roxborough [2] -
10:19, 10:20
rule [1] - 33:18
ruling [2] - 42:23,
43:6
run [1] - 22:1

S

Sammon [7] - 2:20,
3:23, 20:1, 20:7,
24:10, 27:12, 36:11
sat [1] - 43:9
save [1] - 20:14

Save [1] - 20:18
saw [1] - 29:29
says...(interjection
[1] - 21:20
Sc [6] - 2:4, 2:10,
2:15, 2:20, 2:24, 2:28
scheduled [1] -
40:21
second [2] - 15:18,
38:15
section [2] - 21:19,
21:22
Section [8] - 16:17,
20:25, 23:9, 24:16,
24:28, 27:20, 28:7,
28:9
see [7] - 19:12,
19:29, 34:6, 34:9,
34:11, 37:5, 41:11
seek [1] - 34:10
seeking [1] - 22:27
seem [3] - 23:12,
24:3, 25:18
selected [3] - 7:6,
8:23, 22:23
selection [1] - 18:21
send [2] - 23:17,
39:13
sending [1] - 17:26
senior [9] - 5:14,
10:23, 13:6, 35:23,
35:29, 36:3, 36:7,
36:11, 36:15
separate [1] - 29:22
Separation [1] -
18:10
serious [1] - 5:20
seriously [1] - 31:29
serve [4] - 17:1,
28:14, 29:3, 37:21
serving [2] - 10:7,
37:25
set [1] - 18:22
Sexton [2] - 2:25,
36:3
sharing [1] - 20:22
shocked [1] - 6:24
short [4] - 8:19,
24:27, 25:11, 25:22
Short [2] - 22:12,
22:15
shorter [1] - 13:28
shortfall [1] - 23:18
shorthand [1] - 1:24
shown [1] - 23:24
similar [1] - 27:15
single [1] - 41:24
sit [6] - 5:22, 30:23,
39:14, 40:28, 41:1,
41:16

sitting [3] - 30:16,
30:22, 40:3
situation [6] - 5:12,
15:23, 15:27, 16:15,
20:8, 24:14
solicitor [15] - 5:19,
7:21, 7:25, 8:6, 8:21,
8:27, 9:23, 13:13,
35:25, 35:26, 36:1,
36:4, 36:8, 36:12,
36:17
sometime [1] - 15:29
sorry [4] - 20:1,
20:17, 43:4, 43:9
Sorry [4] - 10:29,
32:12, 38:28, 39:15
sort [1] - 26:7
sources [1] - 34:15
speaking [2] - 15:6,
20:10
special [1] - 5:6
specific [1] - 17:13
specifically [2] -
23:11, 40:13
specify [1] - 17:3
speedy [3] - 17:16,
18:24, 19:20
spoken [1] - 11:2
square [1] - 41:8
St [2] - 38:8, 38:9
stake [1] - 40:9
stand [1] - 26:11
standing [1] - 31:21
Stanners [9] - 1:13,
2:20, 4:7, 20:5, 24:11,
24:13, 27:14, 36:13,
38:15
start [2] - 22:18, 26:6
started [1] - 18:25
State [3] - 18:11,
27:17, 31:19
state [1] - 31:27
statute [2] - 18:13,
18:22
statutory [5] - 16:16,
17:24, 23:23, 24:16,
33:6
stay [1] - 14:29
stayed [1] - 7:9
step [1] - 4:20
steps [1] - 23:27
still [4] - 17:11, 22:1,
30:17, 30:19
Street [1] - 38:8
stressed [1] - 6:25
strictly [1] - 15:6
Subject [1] - 39:12
submission [4] -
23:8, 23:26, 24:12,
24:22

Submissions [1] -
3:19
submit [3] - 19:4,
19:5, 31:11
suddenly [1] - 26:7
sufficient [1] - 17:23
suggest [6] - 16:3,
19:14, 23:15, 28:23,
30:4, 33:5
suggested [2] - 25:3,
28:24
suggesting [1] -
28:22
suggests [1] - 19:1
suitable [1] - 39:15
summon [1] - 19:6
summoned [5] -
17:1, 17:3, 17:5,
28:15, 32:26
summons [1] - 17:4
summonses [2] -
23:17, 33:13
Superintendent [7] -
5:14, 12:1, 12:26,
13:1, 13:5, 14:9,
14:21
superintendent [4] -
12:9, 12:20, 12:23,
14:7
support [1] - 28:4
Supt [1] - 3:15
surprise [1] - 31:18
surprised [4] -
31:22, 31:28, 31:29,
32:2
surrounding [1] -
23:5
swearing [2] - 23:20,
28:29
sworn [11] - 5:1, 5:2,
6:9, 6:22, 6:23, 6:27,
11:17, 15:25, 15:29,
26:15, 28:27
Sworn [4] - 6:1, 9:18,
13:1, 39:8
Síochána [1] - 10:15

T

Tehn [1] - 43:16
ten [15] - 15:24,
17:11, 18:28, 19:11,
27:4, 27:7, 27:19,
27:26, 28:4, 32:8,
32:21, 32:29, 33:10,
41:11
ten/11 [1] - 32:9
tension [1] - 23:24
terms [1] - 23:7
thereafter [1] - 9:1

therefore [1] - 17:12
thinking [1] - 4:23
thinks [1] - 23:6
third [2] - 24:21,
38:17
this...(interjection)
[1] - 31:23
three [1] - 8:22
together [1] - 10:12
tomorrow [10] -
39:26, 40:1, 40:3,
41:16, 42:14, 42:15,
42:16, 42:23, 42:26
took [1] - 28:26
Tracey[3] - 35:9,
35:15, 38:8
transcript [1] - 1:24
transfer [1] - 30:12
transferred [2] -
23:2, 29:19
transferring [1] -
30:21
trial [22] - 4:5, 15:7,
16:8, 17:16, 17:17,
17:26, 18:24, 19:21,
19:25, 19:26, 22:22,
23:8, 24:15, 25:12,
26:6, 29:12, 30:25,
35:19, 41:11, 41:24
Trial[1] - 30:27
trials [1] - 29:22
tried [5] - 16:17,
19:19, 30:8, 30:19,
42:5
true [1] - 1:23
try [4] - 16:21, 28:12,
35:19, 43:7
Tuesday[3] - 16:7,
30:5, 30:15
turn [1] - 19:10
turned [3] - 32:25,
32:27, 34:2
Twelve[2] - 32:11,
32:12
two [26] - 6:15, 6:16,
6:17, 8:19, 15:29,
17:12, 19:8, 27:3,
27:24, 27:28, 28:29,
29:5, 29:6, 29:7,
29:10, 32:24, 33:2,
33:3, 33:25, 34:5,
34:7, 34:9, 34:14,
34:15, 39:27

U

unbearable [1] - 7:16
under [4] - 6:24,
16:18, 27:20
understood [1] -

28:21
underway [1] - 24:15
unfortunate [1] -
29:12
university [1] - 40:27
unless [1] - 32:15
unsatisfactory [2] -
15:27, 16:1
unsure [1] - 10:18
unusual [1] - 26:8
up [18] - 10:28,
12:10, 12:25, 16:19,
17:2, 17:12, 17:13,
17:19, 17:23, 23:17,
25:18, 26:6, 28:15,
31:22, 32:25, 32:27,
34:2, 39:3
utilised [1] - 23:29

V

vacancies [2] - 19:8,
33:4
vacancy [1] - 19:8
Vaughan [56] - 2:4,
3:8, 3:12, 3:16, 3:20,
3:26, 4:10, 4:25, 5:8,
5:12, 6:3, 6:5, 9:16,
9:20, 9:22, 12:1,
12:19, 12:25, 13:3,
13:5, 14:25, 15:4,
15:10, 15:14, 15:23,
21:8, 21:13, 21:18,
21:23, 21:27, 22:2,
25:27, 27:17, 28:24,
29:6, 29:9, 29:26,
30:13, 30:25, 32:1,
33:19, 36:15, 37:13,
37:15, 37:19, 37:28,
38:2, 38:3, 38:24,
39:17, 42:6, 42:9,
42:12, 42:24, 43:1,
43:11
Vaughan-buckley [1]
- 2:4
vicinity [5] - 5:17,
6:13, 13:20, 13:22,
17:4
view [3] - 16:2,
22:21, 26:7
vindication [1] -
19:25

W

wait [2] - 34:3, 41:3
walking [1] - 13:27
wasted [1] - 32:7
Wednesday[3] -
1:19, 4:1, 42:18

week [4] - 15:29,
19:6, 19:22, 42:17
weeks [2] - 19:23,
39:2
wholly [2] - 17:14,
19:13
wise [1] - 11:5
wish [3] - 20:3, 21:2,
24:11
wishes [5] - 24:14,
24:15, 28:9, 28:18,
30:20
wishful [1] - 4:23
Withdrew[3] - 9:14,
12:6, 14:23
Witness[4] - 3:5,
9:14, 12:6, 14:23
witness [5] - 8:13,
13:13, 38:1, 38:6,
38:7
wonder [1] - 34:12
words [3] - 7:1, 39:2,
42:20
worried [1] - 40:23
worry [1] - 20:11
worth [1] - 25:5
writing [1] - 37:16
written [1] - 17:5

Y

year [1] - 41:4
Yesterday[3] - 8:24,
8:25, 32:7
yesterday [18] - 5:15,
6:9, 7:5, 10:6, 11:17,
13:10, 13:14, 18:25,
18:26, 23:21, 24:2,
28:26, 30:1, 31:17,
32:25, 34:2, 37:21,
39:24
yourselves [1] -
41:27