THE HIGH COURT

2009 326 SS

Between:

Paul O'Brien

Applicant

And

The Member in Charge Bridewell Garda Station

Respondent

THE HIGH COURT

2009 327 SS

Between:

Jean Cummins

Applicant

And

Superintendent, An Garda Siochána, Pearse Street Garda Station

Respondent

THE HIGH COURT

2009 328 SS

Between:

Anthony O'Brien

Applicant

And

Superintendent, An Garda Siochána, Pearse Street Garda Station

Respondent

Judgment of Mr Justice Michael Peart delivered on the 5th day of March 2009:

These applications came before me for hearing on the 2nd March 2009. I gave my decision to refuse the reliefs sought at the conclusion of the hearing, and indicated that I would give my reasons in a written judgment as soon as possible.

The three above named applicants seek orders for their release from detention pursuant to the provisions of Article 40.4.2 of Bunreacht na h-Eireann on the basis that their continued detention is unlawful. The factual basis for each application is common to all three applications.

Each applicant was arrested and detained under the provisions of s. 30 of the Offences Against the State Act, 1930, as amended on Friday 27th February 2009. The time on that date at which the first named applicant was so arrested and detained was 9.55pm. The other two applicants were arrested and detained on that date at 9.45pm.

The period of detention in respect of each applicant comes to an end at the expiration of 48 hours from the time of arrest, unless same is renewed by order of a District Judge obtained pursuant to an application under the provisions of s. 30, subs. 4 of the 1930 Act, as substituted by s. 10 of the Offences Against the State (Amendment) Act, 1998, and as

further amended by the insertion of section 4D thereto by s. 187 (a) of the Criminal Justice Act, 2006.

Those provisions provide as follows:

> (4) An officer of the Garda Siochana not below the rank of superintendent may apply to a judge of the District Court for a warrant authorising the detention of a person detained pursuant to a direction under subsection (3) of this section for a further period not exceeding 24 hours if he has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence concerned.
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> (4A) On an application under subsection (4) of this section the judge concerned shall issue a warrant authorising the detention of the person to whom the application relates for a further period not exceeding 24 hours if, but only if, the judge is satisfied that such further detention is necessary for the proper investigation of the offence concerned and the investigation is being conducted diligently and expeditiously.
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> (4B) On an application under subsection (4) of this section the person to whom the application relates shall be produced before the judge concerned and the judge shall hear any submissions made and consider any evidence adduced by or on behalf of the person and the officer of the Garda Siochana making the application.
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> (4C) A person detained under this section may, at any time during such detention, be charged before the District Court or a Special Criminal Court with an offence or be released by direction of an officer of the Garda Siochana and shall, if not so charged or released, be released at the expiration of the period of detention authorised by or under subsection (3) of this section or, as the case may be, that subsection and subsection (4A) of this section
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> (4D) If –
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> > (a) an application is made under subsection (4) of this section for a warrant authorising the detention for a further period of a person detained pursuant to a direction under subsection (3) of this section, and
> >
> > (b) the period of detention under subsection (3) has not expired at the commencement of the hearing of the application but would, but for this subsection, expire during that hearing,
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> it shall be deemed not to expire until the determination of the application". (my emphasis)

At the heart of the present applications is the time at which the applications for the extension of these applicants' detention were first commenced in the District Court on Sunday 1st March 2009. Other issues have been raised also such as whether the evidence heard on these applications was sworn evidence, and whether the form of the Warrants issued by the District Judge is sufficient to indicate the time at which the decision was made by her, as opposed to the time at which she signed the warrants.

These applicants are three of seven persons who were arrested in connection with an investigation into a robbery of a large sum of money from Bank of Ireland on Friday the 27th February 2009. All were arrested and detained in connection with this investigation. That initial detention was extended for 24 hours by order of the respective Chief Superintendents until 9.55 pm on 1st March 2009 in the case of the first named applicant, and until 9.45pm in respect of the second and third named applicants. Any further detention could only be authorised by an order of the District Court under s. 4 of the Act.

On Sunday 1st March 2009 a special sitting of the District Court was convened for the purpose of an application to that Court for a further extension of detention pursuant to s. 30 (4) of the Act in respect of each of those seven persons, including the applicants.

The evidence has been that the Court sat at about 7pm on the 1st March 2009 in order to hear those applications. All seven persons, including the applicants were conveyed to the District Court and were held at first in the cells below the District Court at the Bridewell, Dublin.

According to the affidavit sworn on behalf of the first named applicant by his solicitor she states that the court commenced at 7pm on the 1st March 2009 and that seven applications for warrants were before the presiding judge. She states that the first such application (in respect of a person other than these three applicants) began at 7pm and concluded at 9.12pm. She then states that the judge enquired at that stage whether it would be possible or practicable to deal with the remaining six applications together, and that the legal representatives appearing on behalf of those detainees (which include the present applicants) "made it clear to the court that the application in respect of each detainee would have to be heard in turn". She then states:

> *"I say that the remaining detainees including the [first named] applicant, were called before Judge Watkins and applications for warrants extending the detention of each were indicated by Detective Superintendent Seamus Kane at 9.15pm. However, I say that following the indication of applications to be made, each detainee was led from the courtroom and returned, one by one, when the hearing of their individual application commenced".(my emphasis)*

She goes on to say that the hearing of the application in respect of her client, the first named applicant herein commenced at approximately 10.45pm and concluded at 11.07pm, and that the warrant authorising further detention was made. She states that from these facts she believes that the period of lawful detention of her client had expired by the time the application for the extension in respect of this applicant had commenced.

It would appear that the application to the District judge in respect of the first named applicant herein had been preceded by an application in respect of three other detainees, including the first such application which took from 7pm to 9.12pm, hence the fact that the application in respect of the first named applicant herein was not concluded until 11.07pm. The question is whether the application should have been seen as having been commenced only at 10.45pm or whether it

commenced for the purpose of the section at about 9.15pm when, as stated, by the solicitor, Detective Superintendent "indicated" to the judge that there were six such applications as outlined above.

I will come to the oral evidence given before me as to what occurred in the District Court.

The solicitor for the second and third named applicants herein has sworn an affidavit also to ground their applications for release. She states that she arrived at the District Court at 7.20pm while the first application for an extension of detention was in progress and which concluded at 9.12pm. She then states in each of her grounding affidavits in respect of her clients' applications:

> *"… that at 9.15pm the gardai asked that the other respondents be produced before the Court and that at that time it was indicated to the Court that applications for an extension of time would be made in respect of these respondents". (my emphasis)*

She goes on to state that the application in respect of the second named applicant herein commenced at 11.08pm and that the application in respect of the third named applicant herein commenced at 10.03pm, and that by these times the period of detention in respect of each such applicant herein had already expired. She also states that at 10.03pm and 11.08pm she indicated to the Court that the period of detention had already expired in respect of each such applicant, but that the judge "proceeded to hear the application", and granted the orders sought.

I should at this stage refer to the fact that on the original warrants which were signed in respect of each applicant herein, the District Judge has noted the time at which the application for each of these applicants was called. In respect of the first named applicant this note states "9.17pm". In respect of the second named applicant herein this note reads "before the ct 9.15pm". The note in respect of the third named applicant reads "called 9.15pm" though this may read "9.18pm". The writing is somewhat unclear in that regard.

The evidence of Detective Superintendent Seamus Kane:

D/Supt Kane gave evidence and stated that at 7pm the seven persons who had been arrested and detained under s. 30 of the Act were brought to the District Court which had been convened for the purpose of these applications for extension of detention. He stated that the first application commenced shortly after 7pm, and that it took some time to complete, and did not conclude until after 9pm. He stated that while this first application was proceeding the remaining detainees were in the precincts of the court. It appears from his evidence that during the course of that application the remaining detainees were in the cell area below the court itself. He went on to say that at all times he was conscious of the fact that the periods of detention would end at about 9.45/9.55pm, and was conscious that the applications would have to be moved within the existing periods of detention, and that at about 9.15pm he therefore "moved the applications for all the remaining prisoners", that all were brought up to the court from the cell area at that moment, and the cases were called by the District Court Clerk.

He staTed in his evidence that he believed at that time that he had moved those applications. In that regard he referred to the fact that, as I have already referred to, the judge noted the time at which this occurred on each of the warrants which had been given to the judge, and which were later signed by her. He went on to say that when the cases were called in this way, each detainee, including the above named applicants were produced before the court, and that when the judge enquired if all applications could then be taken together, the respective solicitors all informed the judge that each application would have to be argued and dealt with separately. The judge then proceeded with each application in turn.

Under cross-examination he stated that he had been sworn in when commencing to give his evidence in relation to the first application which had commenced at shortly after 7pm, but that he was not again sworn in for the purpose of each subsequent application. In that regard he stated also that as each application was heard it was noted that he had already been sworn. But he accepted that the present applicants would not have been present in the court when he was sworn in on the first application, because their applications were not being dealt with at that time. He also stated that at this time no objection was raised about the him not being separately sworn for each application.

He confirmed also that while each application was being made only the applicant whose application was being heard was actually present in the court arena, the remainder being kept below the court in the cell area. He again confirmed that at 9.15pm when the remaining cases were called by the District Court Clerk, all remaining detainees were brought up to the court and were present at that point in time. The first named applicant herein then remained in the court while the application for him proceeded, and the remaining persons were again taken down to the cell area. He agreed that because he had already given evidence for the purpose of the first application, which had taken from 7pm to 9.15 to complete, the evidence which he gave in respect of the applicants herein had been less – hence these applications took less time to complete.

He was asked whether he took issue with the statement by the solicitor for the second and third named applicants herein that when he stood up and informed the District Judge at 9.15pm that he had six other applications that he stated that "applications for an extension order would be made in respect of these respondents". In his answer he stated that this may have been stated but he could not recall the exact words which were used. However he was clear in his own mind that he was moving these applications at that time since he was very conscious of the time aspect of the applications. He referred to the fact that the judge enquired at that point if all could be taken together and that the respective solicitors had informed the court that each would have to be taken individually and separately. He stated also that in his view the judge was of a mind to take all the remaining applications together, and that the judge noted the time of the commencement of each application as noted on each warrant. He believes that these are the times at which each application was regarded by the District Judge as having commenced.

Submissions on behalf of first named applicant:

Eanna Molloy SC for the first named applicant has referred to the fact, as deposed to by his solicitor, that following the enquiry by the District Judge as to whether the remaining six applications could be dealt with together, each solicitor made it clear to the court that "the application in respect of each person would have to be heard in turn". He refers also to s. 30 (4A) of the Act which provides that a warrant shall be issued "if, but only if, the judge is satisfied that such

further detention is necessary for the proper investigation of the offence concerned and that the investigation is being conducted diligently and expeditiously". He refers also to s. 30(4B) of the Act which provides that on an application under s. 4 the person to whom the application relates shall be produced before the judge and the judge shall hear any submissions made and consider any evidence adduced by or on behalf of the person and the officer of the Garda Siochana making the application. It is submitted therefore that the hearing of the application cannot have commenced merely by the case being mentioned or called in the manner done by D/Supt Kane at 9.15pm because while the applicant was produced before the judge there were no submissions made or evidence adduced at that time. He refers also to the fact that nowhere on the warrant granted in respect of the applicants is there any express reference to the time at which the hearing of the applications commenced for the purpose of section 30(4D) of the Act.

He submits that there is a distinction to be drawn between "the commencement of the hearing" and the court being simply informed that there were six further applications. In his submission the "hearing" of the application did not commence in respect of the first named applicant herein until 10.45 pm, when evidence was adduced and submissions were made, and that the period of detention had by then expired, with the result that the District Judge had no jurisdiction to authorise the further detention of the first named applicant.

Mr Molloy has submitted that the fact that D/Supt Kane himself believed that by mentioning the remaining six applications at 9.15pm that he was commencing the applications is neither here nor there, and in that regard has referred to the judgment of O'Neill J. in Finnegan v. Member in Charge (Santry Garda Station) [2007] 4 IR. 62. That was a case in which an application for an extension of detention had commenced before the expiry of the existing detention, but was no completed until sometime after that period had expired. The learned judge held that it was not possible for the statutory time limit to be extended by the court or by anybody else, and that an express statutory provision would be required to enable that to occur. That case was decided before the amendment made to s. 30(4) of the Act by the insertion of subsection (4D) by s. 187 of the Criminal Justice Act, 2006 which has provided, as set out above, that if the period of detention has not expired "at the commencement of the hearing …… it shall be deemed not to expire until the determination of the hearing".

Mr Molloy submits that D/Supt Kane acted under a misapprehension that by mentioning to the Court at 9.15pm that he had six further applications he had actually commenced those applications, and that this misapprehension cannot be sufficient to confer jurisdiction upon the District Judge where the statute provides otherwise. In that regard Mr Molloy has referred to Director of Public Prosecutions v. Finn [2003] IR.372. In replying submissions he referred also to the dissenting judgment of Walsh J. in Director of Public Prosecutions v. Walsh [1980] IR 294. The particular facts of that case are not relevant on this application, but Mr Molloy relies on a passage from the judgment of Walsh J. at p. 317 in support of his submission that the fact that D/Supt Kane believed that he had commenced the application by mentioning the six other applications at 9.15pm is of no weight. The passage in question is as follows:

> *"In the present case there are no extraordinary excusing circumstances nor, indeed, were any alleged. The onus is upon the prosecution to establish that there are such extraordinary excusing circumstances where there has been established that there has been a breach of a constitutional right. If a man is consciously and deliberately kept in a garda station or anywhere else without a charge being preferred against him and without being brought before a court as soon as reasonably possible, he has been in unlawful custody and there has been a deliberate and conscious violation of his constitutional right to be at liberty. That this was the position in the present case is abundantly clear from the evidence given by the police officer at the trial. The fact that the officer or officers concerned may or may not have been conscious that what they were doing was illegal or that, even if they did know it was illegal, they did not think it was a breach of the Constitution, does not affect the matter. They were conscious of the actual circumstances which existed." (my emphasis)*

In all these circumstances, it is submitted that the period of detention had expired before the District Judge commenced hearing the application for an extension thereof.

Legal submissions on behalf of the second and third named applicants:

Michael O'Higgins SC has made submissions under three headings. Firstly, as Mr Molloy did, as to the commencement of the hearing after the period of detention had expired; secondly, that since D/Supt Kane did not take the oath before giving his evidence in the cases of these applicants, the District Judge heard no 'evidence' before making her decision to authorise the further detention; and thirdly, that the form of the warrant signed by the District Judge is defective in that while the form signed by the judge indicates in respect of the second named applicant that it was signed at 11.35pm, and in respect of the third named applicant at 10.42pm, there is no indication given thereon as to the time at which the decision was actually pronounced and from which therefore the further extension of detention actually commenced.

1. Time of commencement of application:

Mr O'Higgins emphasises that D/Supt Kane in his evidence to this Court could not recall precisely what words he used when mentioning to the judge at 9.15pm that he had a further six applications, and that he had not specifically challenged what was stated by the solicitor, namely that he had stated that such applications "would be made". Mr O'Higgins submits that this is of critical importance to the issue in this case, since any belief that by so mentioning these matters he was "commencing" the applications cannot of itself be sufficient to elevate that mention into a commencement of the hearing for the purpose of the subsection. He submits that since at 9.15pm there was no evidence called, no cross-examination of evidence took place, and no submissions were made at 9.15 pm what occurred cannot on any reasonable interpretation be regarded as a hearing or even a commencement of a hearing.

2. Unsworn evidence:
Under this head the point is made, as confirmed by uncontroverted evidence, that the witnesses giving evidence on all these applications were sworn in on the occasion when they first entered the witness box on the first such application shortly after 7pm, but that as each case was dealt with thereafter they gave evidence without again taking the oath or affirming. Mr O'Higgins and Mr Molloy reject the idea that simply because a witness is sworn in or affirms in relation to one case before the court, he can be deemed to be sworn for the purpose of any subsequent case. A distinction is drawn between what happened in these cases to what may often occur in a criminal trial where a witness sworn in one day of a trial is then recalled to give further evidence in the same case on a subsequent day, on which occasion the witness will

be informed that he "is already sworn".

The distinction being made is that in the present cases there were seven individual cases rather than a resumption or continuation of a single case. In circumstances where what the judge was told was in the form of unsworn testimony, it is submitted that the judge made the order without hearing 'evidence' in the sense of sworn testimony.

As to the absolute requirement that sworn evidence be given, Mr O'Higgins has referred to the judgment of Finlay CJ in Mapp v. Gilhooley [1991] ILRM 695 in which the learned Chief Justice set forth a number of principles which emerged from the authorities to which he referred, including:

> *"It is a fundamental principle of the common law that for the purpose of trials in either criminal or civil cases viva voce evidence must be given on oath or affirmation. To this principle there are statutory exceptions contained in the Childrens Act 1908, as extended by the Criminal Justice (Administration) Act 1914, which apply to criminal cases only".*

In Mapp, at first instance before Barr J. no objection had been taken at the trial to the minor plaintiff being permitted to give his evidence in unsworn form, and Mr O'Higgins relies upon the conclusions of the learned Chief Justice in that regard, namely that acquiescence by a party could not be relied upon in a matter so fundamental to the nature of a trial, since D/Supt Kane in his evidence made reference to no objection being made by the applicants' solicitors in relation to his not having been separately sworn in for each of these separate matters.

3. Form of warrant:
For his submission under this heading Mr O'Higgins refers to the wording of s.30 (4D) of the Act which is set forth above, and to the fact that where the period of detention has not expired at the commencement of the hearing, that detention shall "be deemed not to expire until the determination of the application". He draws a distinction between the time of the "determination of the application" and the time at which the order was signed by the judge. He submits that the warrants in these cases lack proper form since it is not stated on the face of the warrants the time at which the application was "determined", and therefore it is impossible to know from the face of the warrant the time up to which the detention of the applicants remained lawful. This constitutes in his submission a fundamental defect.

Even though Mr O'Higgins accepted that the evidence given by D/Supt Kane on the present applications was that before coming to court he had prepared the warrant forms in advance and had handed them to the judge for signature upon the making of any such orders, he nevertheless submits that while it may be inferred that the warrants were signed very soon after the determination of each application by the judge, the time appearing below her signature cannot be taken as the time at which her determination was made, and must be confined only to the time at which she signed the form. This is insufficient in his submission to enable a party to know the time after which detention becomes unlawful.

In support of this submission, and it can refer also to the previous submission as to the nature of the evidence given to the District Judge, Mr O'Higgins has referred to the judgment of O'Higgins CJ (dissenting) in Director of Public Prosecutions v. Kemmy [1980] IR. 160. Although a dissenting judgment in that case, Mr O'Higgins refers to the following passage at p. 164 which, it is submitted, is nevertheless persuasive and one which has been often quoted subsequently:

> *"Where a statute provides for a particular form of proof or evidence on compliance with certain conditions, in my view it is essential that the precise statutory provisions be complied with. The Courts cannot accept something other than that which is laid down by the statute, or overlook the absence of what the statute requires. To do so would be to trespass into the legislative field. This applies to all statutory requirements; but it applies with greater understanding to penal statutes which create particular offences and then provide a particular method for their proof."*

The respondent's legal submissions:
Ronan Kennedy BL for the respondents has submitted that the amendment to s. 30 of the Act which was made by the Oireachtas when it enacted subs. (4D) in the aftermath of the judgment of O'Neill J. in Finnegan v. Member in Charge (Santry Garda Station) [supra] was intended to cover the situation which has arisen on the present application, and that the core of the issue is whether the hearing of the applications for an extension of detention commenced at 9.15pm, or whether each hearing commenced only at 10. 45pm, 10.03pm, and 11.08pm respectively. If they commenced at 9.15pm then the lawful detention continued, by virtue of s. 30 (4D) of the Act until the application was determined.

Mr Kennedy submits that the evidence on this application does not support the submission that what occurred at 9.15pm was simply that the cases were mentioned or called-over. He refers to the fact that at 9.15pm all the remaining applicants were produced to the court by being brought up from the cell area into the court arena, and that s. 30 (4B) of the Act provides that "on an application under subsection (4) of this section the person to whom the application relates hall be produced before the judge concerned …". He refers to the fact also that upon that production each application was called, and that the judge herself wrote on the warrant the time at which this occurred. He asks rhetorically why, if that time was of no importance, did the judge note the time that this occurred on each warrant form. He suggests that it can only be because she knew that this was an issue, and that it was important that the time of the application be noted. He refers to the fact also that at that point in time she enquired if all applications could be dealt with together, but there was no agreement to that course, so each was dealt with separately thereafter. But he submits that the commencement cannot be seen as being only the time at which evidence in each case was adduced, and indeed submits also that it could be the case in applications such as this that no evidence as such would be adduced, and that the section does not mandate that evidence be given. In that regard, he refers to the fact that upon production of the person detained "the judge shall hear any submissions made and consider any evidence adduced …", but this does not mean that such evidence must be given.

Mr Kennedy rightly accepts that the statutory provisions must be given a literal interpretation, but submits that the interpretation contended for by the applicants in relation to 'commencement of the hearing of the application' would lead only to absurdity whereby in a situation where there are a number of applications as in this case, the detention of persons other than that whose application is first in line would depend only on how long the first application took to be

determined. He submits that this is the very situation which the insertion of subs. (4D) was intended to address and prevent from happening.

Mr Kennedy also accepts that what D/Supt Kane may have intended by stating at 9.15pm that he had six other applications to make is not of great importance, but that it is important to understand what the District Judge believed was happening at that point in time. He submits that the fact that the judge wrote the time on each warrant is clearly indicative that this was the time at which she considered the hearing to have commenced for the purpose of subs. (4D) as this was important to her jurisdiction to make the orders being sought.

In response to these submissions, Sean Gillane BL on behalf of the second and third applicants has submitted in this regard that if the judge was intent on noting the time at which the hearing of the application commenced she could have done so clearly by noting "application commenced at 9.15pm", rather than simply making the note of 9.15pm with no context for that note. He notes that there has been no evidence given that the judge stated in any way that the applications were being deemed to have commenced at 9.15pm, and that the Court should not simply infer that this was the purpose of the note made on each warrant. He submits that if she was deeming the applications to have so commenced at that time she would have indicated that she was then adjourning them until they could each be dealt with later that night as each one was completed, and that there is no evidence that she did that.

In answer to Mr Kennedy's submission that it would not always be the case, or necessary that evidence would be given in applications of this kind, Mr Gillane has referred to a passage from Criminal Procedure by Dermot Walsh, Thompson Roundhall, 2002 at para 5-60 as to the necessity for evidence to be given as follows:

> *"……. Although the provision is expressed in subjective terms it can be deduced from the case law on analogous provisions that there must be some objective evidence upon which the judge can be satisfied. It will not be sufficient, for example, for the officer to state on oath that he or she believes that the detention is necessary for the proper investigation of the offence and that the offence is being conducted diligently and expeditiously. Moreover, on any such application the person concerned must be brought before the judge and the judge shall hear any submissions made and consider any evidence adduced by or on behalf of the person and the officer making the application.*
>
> *Ultimately, the judge must be satisfied that the extended period is "necessary" for the proper investigation of the offence, as well as that the investigation is being conducted diligently and expeditiously. The use of the term "necessary" suggests that an extension should not be lightly granted. Presumably mere convenience or desirability would not be sufficient ……".*

Conclusions:

Time of commencement of hearing of the applications:
I can agree that what was in the mind of D/Supt Kane when he brought to the attention of the District Judge at 9.15pm the fact that there were six further applications before the Court, is not itself determinative of the question as to whether by so doing he was commencing those applications. But the context in which he brought those applications to the attention of the judge is important in determining the issue. The fact is that at 7pm a Court had been specially convened in order to deal with all these applications. All persons whose detention was to be the subject of these applications for further extension were brought to the Courthouse for that purpose and were being held in the cells below the court to await the applications. There was no particular order in which these applications were to be heard. D/Supt Kane was acutely conscious of the time factor pertaining to the applications. The first case was called and dealt with. That hearing took about two hours to complete, which meant that by the conclusion thereof, there was only about 45 minutes to run on the detention periods of the remaining persons. It was essential that he have these further applications commenced before the expiration of those periods of detention. It would be unthinkable to presume that the District Judge was not aware of the necessity that these applications be commenced by 9.45pm. What occurred is simply that when these six applications were mentioned by D/Supt Kane, the judge directed that the persons be brought up to the court from the cells below. It is significant that s. 30 (4B) of the Act requires that on the application the person "shall be produced before the judge concerned". That occurred. The applications could not have commenced without that occurrence. When they were produced following upon D/Supt Kane calling the cases to the attention of the District Judge, she enquired of the legal representatives as to whether or not all cases could be dealt with as one. Had the answer been in the affirmative the applications would simply have continued. Since the answer was in the negative, it was necessary to continue each application by the evidence in respect of each application being called separately. The District Judge took the very prudent step of noting on the pro forma warrant in each case which was handed in by D/Supt Kane the time at which the applications were mentioned by him. The only possible meaning to be given to given to the fact that this note was made is that the District Judge regarded the applications as having "commenced" at the time indicated. There was a particular reason why the time of commencement was noted.

In my view, to conclude that the commencement of the hearing was not until the evidence in each case was commenced would be to recreate the very mischief that the amendment to s.30 (4) of the Act by the introduction of subs. (4D) was intended to prevent.

If the matters had not been mentioned to the judge in the way they were, and the applications were simply taken one at a time, then any such application that was first called only after the time at which the previous period of detention expired, then the District Judge would not have been entitled to proceed to authorise a further period of detention. Section 30 (4D) of the Act would not be complied with in such a circumstance.

To find in favour of the applicants on the basis that these applications were not commenced by them being produced to the Court and by the Court being told in their presence that these further applications were before the Court would produce an absurd situation whereby, where there are two or more such applications, the ability to grant an authorisation in those cases would be entirely dependent upon how long the evidence and legal submissions took to complete in respect of the first or any prior application. Not only would such a situation be an absurd one, and one which in my view subs. 4(D) was designed to prevent and provide for, but it could indeed lend itself to assisting the deliberate frustration of the criminal process by a deliberate prolongation of a hearing in order to prevent orders being made in the other subsequent

case or cases. I should immediately state that in the case of the present applications there is absolutely no suggestion or room for suggestion that such an unworthy motive was behind the fact that the first application which commenced at 7pm did not conclude until some two hours had elapsed, or behind the fact that, as they were entitled to, each person required his/her case to be dealt with individually, even though there must inevitably have been much commonality in the evidence to be given in respect of each case and the legal submissions to be made.

I am satisfied that each application in respect of these applicants should be deemed to have commenced at the time noted by the District judge on each of the warrants given to her at 9.15pm.

Unsworn evidence:
What happened in these cases is simply that the witnesses were sworn in for the first case that was heard, and when each subsequent case was called, the same witnesses again gave evidence relating to those cases but without being sworn in again in respect of each case. The applicants submit therefore that there was no 'evidence' in the sense of sworn evidence before the District Judge to enable her to be satisfied as to the matters upon which she is required to be satisfied before making the orders sought.

The evidence before me has been that in each subsequent case and in respect of each such witness it was noted by the Court that the witness was already sworn. I should also add that no objection was taken to the fact that the witnesses did not make a further oath for each case being heard.

It is quite clear to me that not only did the Court regard the witnesses as being already sworn and that the evidence given was sworn evidence, but the witnesses themselves were aware of that given that it was noted by the Court that they were already sworn.

In any event it is a matter for the District Judge to control how matters proceed during the course of a case or cases, and conduct the hearing in accordance with law. If any technical objection had been taken by any of the solicitors present to the way in which evidence was given, no doubt the District Judge could have addressed the matter in some way. I am completely satisfied that the manner in which this evidence was given does not entitle the applicants or any of them to an order for their release.

I prefer to express no conclusion on the fall-back position adopted by the respondent, namely that in any event the section does not require sworn evidence to be given to the Court on an application of this kind. The remarks of Prof. Dermot Walsh in his work referred to, and also the remarks of Kearns J. in his recent judgment in Dunne v. The Governor of Cloverhill Prison, unreported, Supreme Court, 18th February 2009, touch upon the question, but in my view a conclusion on that issue should await another case in which the matter is raised.

Form of the warrant:
In these cases there is no evidence that there was any lapse of time between the time at which the determination was made by the District Judge signed the warrants. In fact, if anything the evidence shows that the forms of warrant had been prepared in advance of the hearings, and had been handed to the judge no later that 9.15 since she was in apposition to place the time at which these cases were first called at around that time. She therefore had them before her at the actual time at which the determination was made in each case, and it is reasonable to infer that they were each signed immediately thereafter. If there was evidence that there was a material passage of time between the time at which the determination was made and the time at which the form was actually signed, the position could be different given that it would be necessary to know the time of the determination in order to compute the time from which the further detention ran.

I am satisfied that the warrants in this case are not defective on their face in this regard, and this ground of argument dies not disclose any reason for declaring the detention to be unlawful.

For these reasons I have concluded that the detention of the applicants herein was lawful.