**Re: Peter Creighton v. Ireland, Attorney General, The Minister for Justice, Equality and Law Reform and The Governor of Wheatfield Prison**

**1. Introductory:**

(1) An extraordinary feature of modern life is that in countries such as ours, there is no more enlightened retribution for crime in many cases, than to commit the accused to prison. Many prisons are akin to schools for crime, and recidivist inmates will emerge with third level education in that regard. The effect of prison life was described by Oscar Wilde one hundred and fifteen years ago in “The Ballad of Reading Gaol”: “The vilest deeds, like poison weeds, bloom well in prison air, it is only what is good in man, that wastes and withers there.” It is sad to hear of plans for greater numbers of prison cells, when, in reality, prison should be replaced by positive training, work and education. If the trouble with Irish prisons had to be summed up in one word, the word is “idleness.” It can be predicted that in future times, people will be aghast at the harmful and ineffective results of imprisonment in the distant past. The question is, how distant is that future?

(2) The present situation in this State appears to be that it often happens that part of the punishment suffered by a prisoner is imposed by the Court, while the other part is imposed by his fellow prisoners. It must be remembered that by being imprisoned, a person is intended to be deprived only of their liberty. All of their other rights should be preserved. Part of the effect of being deprived of liberty is that a prisoner is also deprived to a considerable extent, of his ability to defend himself. It may be that the Courts have given too much priority to the dignity of prisoners as an excuse for not properly protecting them.

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(3) The significance of the Creighton case is that it appears to be the first case in the State in which, after a contested hearing, judgment was given in favour of one prisoner against the State in respect of an attack on that prisoner by another prisoner. There may, of course, have been several such cases which were settled.

**2. Facts of the Creighton Case:**

(1) On 19.1.03, at Wheatfield Prison, Peter Creighton was queuing, with about fourteen other prisoners, in the “cage area”, awaiting prescribed medication. Without warning, a fellow prisoner attacked the plaintiff from behind, cutting the plaintiff severely on his face and head, and after the plaintiff fell to the ground, his abdomen and left flank. He suffered horrific injuries. However, it should be noted that this occurred over ten years ago.

(2) The weapon used in the attack was a proprietary weapon, like a Stanley knife, with a retractable blade approximately the same length as the handle. It was clear that the knife was wrongly introduced into the prison.

(3) At the time of the attack, there was a totally inadequate system in the prison, to prevent contraband being introduced. Visitors to the prison were neither searched, nor scanned, and were merely requested to deposit articles being carried by them before entering the prison. There was no X-ray machine, or wands used.

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Furthermore, the prison authorities appeared to adopt a *laissez faire* attitude in that there was no netting over the yard of the prison, the wall of which was accessible to members of the public from the outside. Discovery of documents indicated that twelve prior assaults involving the use of weapons by prisoners, had occurred in the six months prior to the assault on the plaintiff. In respect of each assault, the prison officer had to fill in a form, which included a box for suggested steps to be taken to prevent a recurrence. In none of these cases was anything suggested to prevent a recurrence. The cage area was an ideal area for such assaults, and two prior assaults using weapons in the cage area had occurred on 8.7.02, and 30.8.02.

(4) An extraordinary feature of the Creighton case was that after the assault on the plaintiff, not only was the weapon not found, but, quite incredibly, the assailant and another prisoner (quite likely his accomplice), pushed past prison officers in exiting from the cage area, and the assailant went back of his own accord into his cell area. Another highly unimpressive feature of the case was the fact that the assailant was never prosecuted, though he admitted to a prison officer the fact that he had assaulted the plaintiff.

(5) A prison officer’s report on the assault indicated, quite untruthfully, that the plaintiff had been fighting with the assailant. A plea of contributory negligence on the part of the plaintiff was made by the defendants, who then failed, in spite of requests, to supply an affidavit of verification of the defence, and withdrew the allegation of contributory negligence at the hearing.

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(6) In 2009, the case was heard by Mr. Justice Barry White, who found for the plaintiff, and awarded the plaintiff €40,000, on the basis that, whereas the prison authorities could not have been expected to prevent the first part of the assault (on the plaintiff’s head), they ought to have been able to prevent the second part of the assault on his trunk. The defendants appealed, and the plaintiff cross-appealed. On 27.10.10, the Supreme Court allowed both the appeal (on the basis that the trial judge had not correctly addressed the issues), and the cross-appeal, and ordered a retrial.

(7) On 14.6.13, following the retrial before Mr. Justice O’Neill, the plaintiff was awarded €100,000 for injuries to his face, and €50,000 for injuries to his body. The evidence of Mr. Outram (a retired U.K. prison governor), was that there ought not to have been a large number of prisoners congregating in the cage area, and that the numbers should have been kept to four, or less, at a time. If the number of prisoners in the cage area was four or less, the attack would not, in all probability, have occurred. It was held that allowing a large number of prisoners in the cage area amounted to a breach of the defendants’ duty of care to the plaintiff.

(8) Mr. Justice O’Neill also held that, in accordance with evidence given on behalf of the defendants, it was likely that the knife in question was thrown from outside into the prison yard. Since 2007, access to the wall had been restricted from the outside, and netting erected around the yard. Mr. Justice O’Neill found that this would have prevented the knife successfully entering the prison. O’Neill, J. did not hold with all of the plaintiff’s contentions and, for example, held against the contentions of Mr. Outram that the searching of visitors was inadequate. He was

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also apparently not impressed by the failure of the prison authorities to learn from previous assaults, what should have been done to prevent later assaults.

(9) On 4.7.13, O’Neill, J. refused a stay to the defendants, who indicated that they intended to appeal the judgment of O’Neill, J., and also that they sought at least a stay until they could appeal against the refusal of O’Neill, J. on 4.7.13, to grant a stay. That was also refused. On 9.7.13, the defendants served Notice of Appeal, against the judgment of O’Neill, J. given on 14.6.13, and a motion seeking a stay on the judgment of O’Neill, J. was due to be heard by the Supreme Court on 19.7.13. On 15.7.13, the defendants gave notice that it would withdraw the said motion and appeal.

(10) The way in which this case was defended on behalf of the State was unimpressive in several respects. To mention just one of them, the defendants wrongfully claimed privilege over documents which they either knew, or ought to have known, that a claim for privilege could not have been made.

**3. Future Similar Claims:**

(1) The Creighton case is likely to lead to a considerable increase in the number of similar cases being brought. Such cases start with the disadvantage that they usually involve a claim by a plaintiff who has shown little or no regard for the rights of another, or others, seeking to have his own rights vindicated by the Court. It is not unreasonable to assume that in such cases, the Court will have at least a subconscious prejudice against vindicating the rights of one who has failed to vindicate the rights of another. One would also have to take care to ensure that

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similar cases are not brought opportunistically, and that the instructions given by the plaintiff are accurate.

(2) The Creighton case appears to have been the first case in this country in which an expert retired prison governor was called on behalf of the plaintiff. It was not the last. A prison expert was also called in the case of Casey v. Governor of Midlands Prisons and Others, in which Irvine, J. gave judgment on 27.10.09. In my view it is essential, in similar cases, that a prison expert should be called on behalf of the plaintiff. Without a prison expert, the Creighton claim would have failed.

(3) Another lesson learned from the Creighton case is that discovery of documents relevant to the circumstances of the case should be sought. It is also important that when discovery is obtained against the defendants, documents in respect of which privilege is claimed should be examined and, if necessary, a motion brought to obtain better discovery.

(4) There has been a considerable number of unsuccessful similar cases, including, for example, Muldoon v. Ireland and Attorney General (1988); Kavanagh v. Governor of Arbour Hill Prison and Others (1993); Boyd and Boyd v. Ireland and Attorney General (1993); and Bates v. Minister for Justice and Others (1998);

(5) It was argued in the Supreme Court in the Creighton case that the very fact that the plaintiff had not succeeded in any similar case had likely led the prison authorities in Wheatfield Prison into a feeling that they could act with impunity, so far as preventing assaults by one prisoner on another was concerned. Mr. Justice Kevin Lynch used to refer to the “law against coincidences”. It must surely be contrary to all probabilities that in no case heard prior to the Creighton

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case, was a prisoner entitled to succeed against the State in respect of an attack on him by another prisoner.

(6) The success of a plaintiff such as Creighton was long overdue. It is to be hoped that the Creighton case will lead to similar meritorious cases succeeding, and to an end to the former “winner takes all” success of the State.

**Patrick Keane SC**

**(16.07.13)**