

**Extemporaneous judgement in relation to the very careful
submissions made by Mr. Joe Finnegan S.C.**

8th July 1999

In the first instance, and this is an extemporaneous judgement in relation to the very careful submissions made by Mr. Finnegan. I certainly note what he says on the matter of page 33, the reference is page 33. I think it must be understood that I sit here receiving the, seeing the evidence on transcript, sorry which goes on transcript. I hope that in the course of my deliberations I would give appropriate weight, as consider it, to the evidence tendered. Under no circumstances do I consider that the Tribunal is making a case. The Tribunal is giving the findings of its investigations, with a view to seeing if they establish facts in terms to my satisfaction. That information is tested and is open to test by all parties who may be affected by it. And that it will either dilute or affirm the information which is presented to me.

I have formed no conclusion at this moment in time, and obviously I read the transcripts as they come in. I keep abreast of the transcripts, but it would be utterly ridiculous to attempt to make an

assessment of what happened until all the evidence, certainly on a particular fact, aspect, of the Tribunal's activities; and in this case that aspect which we are broadly dealing with is one, Sections 1 to 4, which what might be described as the "North Dublin lands"; and at the moment we are dealing with a module of that section.

I accept the proposition that it would not be proper to actually put the contents of the memorandum on page 33 without establishing its provenance. I accept that as correct and I will not allow that actually to be advanced without that proof. But likewise I sit here and I have ordinary common sense, I hope, and I have a sense of reality. And if I raise my eyebrows it is simply my sense of reality testing on the moment, by momentary reaction, the evidence I have heard. It is a matter to, it may well be addressed in another way, as to whether or not I should require further evidence to be advanced as to whether that incredulity is right or wrong, and the section, and the actual section that is referred to yesterday was, I was listening to the evidence of these large sums of money in cash and calculating in my own mind what size of parcel it was, and to work it out I happened to have a €50 note in my wallet, and I put it up on the lap top and compared it in terms of the laptop and worked out that it would take four hundred of those to equal the

packet; and obviously that much more if they were £20 notes or as the case may be.

So that taking a £50 note is more than a likely sort of coinage that the bank would give you that sort of money in. £50, £100 it seemed to me to be a very substantial packet, that's all. And they were being discussed and I just raised my eyebrows, but one would certainly to my mind be interested in a packet of that size to see what it contained. Nothing more than that. Nothing more pejorative than that, nothing more judgemental. I don't make judgements in matters of fact. I haven't sat down to in anyway come to a conclusion in relation to any of the Gogarty evidence as at this moment in time. I have listened to it. Sometimes with equal incredulity as I may have expressed on this occasion, but certainly I do not regard Mr. Gogarty as a Tribunal witness. He is a witness before the Tribunal, as is Mr. Burke. I test everybody's evidence with a simple consideration of could that be real? Could it be, is it likely to happen in ordinary life? That's one of the things on evidence has been given that passes through my mind. Is that likely? I make no apology for that whatsoever. And if I smile or otherwise, I don't think it is a matter which I am likely to get serious criticism for. It doesn't necessarily illustrate a final judgement.

The second thing is this, that my policy, well I certainly hope that I have illustrated it, is that any evidence which is germane to the subject before the Tribunal has been religiously and conscientiously distributed to all parties which may be adversely affected. There is a reference here to sight of documents unseen. Mr. Gallagher I think has dealt with that. And I don't propose certainly, I would not certainly, I would not consciously allow use documents where it was sight unseen if it was brought to my attention.

The allegations in relation to Shanowen Road have been clearly demonstrated from the transcript as to what actually occurred. I do not see that there was anything improper in that whatsoever. I do not know what the information which has been, which he has been enjoined from. I don't know what that reference is. I will find out if there is anything in it. I will certainly adjust it and adjust it very rapidly. I don't know what that is. I don't know what it refers to. I don't accept whatsoever that Mr. Burke is a person. Mr. Burke is a participant on a sequence of events which I am inquiring into and which I will inquire into in relation to Mr. Bailey and/or I appreciate there is a question mark as to whether Mr. Murphy Jnr. was there.

But I certainly will inquire into it. I will look at the end product, distill, I hope accurately, and fairly the essence of the evidence which is tendered before me and reach a conclusion on the balance of probabilities as to what took place.

It may be part of Mr. Burke's version, it may be wholly Mr. Burke's version. It may be partially Mr. Burke's version, it may be partially somebody else's version, or it may be a version which is affected by some piece of circumstantial evidence which guides me into one or other direction. That is a matter for the future and I will do it conscientiously. That is, I reject that premises. Obviously when somebody is giving an account, giving an account which is presumably tinged to say the least in their favour, and that tinge comes through and one raises and looks at it in relation to what you have already heard and what you may hear.

I note what is said about the situation of cheques, cash and benefit in kind. As to whether they constitute corruption. That is entirely a matter, they in themselves, not one of those items in themselves constitute corruption. But a given circumstance, but given circumstances they may. Again, I have to hear all the circumstances and it would be quite wrong of me to react to that

statement in anyway other than to note that; yes, don't necessarily follow that they are corrupt. But they may in particular circumstances, and that's the function that I have to do, to find the facts and to come to a conclusion about what facts happened and whether I actually go on to say a matter is corrupt or not, depends on a number of factors which I am not going to discuss at the moment.

Finally, I do not consider and never could consider that Mr. Finnegan comes in the second grade. I would have thought he was in the very top grade. He is a man who I personally respect very greatly. He is a man of sure judgement, of courtesy and of aptitude, to present his case accurately and fully and he has done so to date, and I have no doubt that he is no less worthy of my consideration and my esteem than any other members of the bar who happen to have represented his client, and I don't know and I don't care why the change happened. That has nothing to do with me. I am here to listen to the evidence, insofar as it is presented by Mr. Finnegan it has been presented with courtesy, with acumen and with clarity and I look forward to his continued cooperation with the Tribunal.

Finally, in relation to the cost and expense of the Tribunal to the individuals concerned. This is a matter on which I have statutory restraints. I don't have an actual copy of the 1997 Act in front of me. But I think I have, I am on record, I am fairly certain that I am on record as saying that while I make no promise and have no statutory right or no authority, no inherent authority to make a promise that costs will be paid, as far as I know it is in the context of the actual section, I have said that in, that persons who have cooperated with the Tribunal are unlikely not to get their costs. I think that is what I have actually said. I would need the actual quotation and it is based on the premise that in a negative sort of way, under section I think it is Section 7 of the Act, of the most recent Act, there is a right in the Tribunal that in certain circumstances to either not award costs or to charge the costs of the Tribunal on to an individual or an entity in particular circumstances.

Now I have drawn attention to that fact, indicated without giving any promise whatsoever, because I couldn't do so until the entire matter is concluded, that persons who have honestly and openly assisted the Tribunal and cooperated with the Tribunal and thereby incurred expense, will be granted their costs. That is not a

promise. In each occasion, individual instance will have to be considered in its own right. That is my situation in relation to and I would hope that - I am sure we will take on board the censures which may well have justification in particular instances.

It is certainly not the policy of the Tribunal, it is always possible to error, and if error has occurred we will bring into account that scene and endeavour to make certain that any suggestion of bias will be removed from our approach to life. I have just been handed the preliminary hearing on the 14th of January. I said this: "Without fettering". "Parties who are granted representation, should note that the granting of representation is not a guarantee that such party will be awarded costs at the conclusion of the inquiry. Without fettering my discretion in anyway, I would indicate that in general where a person or body, whether represented before the Tribunal or not, has realistically and reasonably incurred any legal expense in fully and promptly assisting the Tribunal in its work, I would be favourably disposed to providing for indemnity in respect of such expense".

That was the view that I expressed at the very outset and I think that accords with the --. I think I have dealt with the matter in

relation to this, on another occasion, on the opening statement on the 15th of September, 1998.

Dealing with decisions to grant or refuse representation, and saying they are not final and can be reviewed by the Tribunal at any time. "In cases where representation is granted this does not imply any guarantee that costs will be awarded to the person to whom representation was granted. In addition, the Tribunal wishes to clearly indicate that, save in exceptional circumstances, where the Tribunal decides to make an order granting costs to a person the Tribunal will only certify the costs of one solicitor, one junior counsel and one senior counsel. Persons who are granted limited representation will be required to confine their participation to any sittings to matters which effect their own interests".

So I have outlined, I think, in principle my approach to the question of expense. I do appreciate that expense is incurred but that's the statutory remit within which I can operate. And that is what I am going to do. With those few words I hope I have dealt with Mr. Finnegan's objections as far as I have noted them, and if on reading the transcript I find that I have not fairly dealt with them, I will come back on them tomorrow morning, but I would have to

have the actual transcript in front of me, because I have only my own shorthand written notes here before me at the moment. Thank you Mr. Finnegan. I can assure you that I have listened to you with care and attention and with every courtesy, I hope.