

08:40:44 1

**THE TRIBUNAL RESUMED AS FOLLOWS ON**

2

**TUESDAY 17TH JULY 2007 AT 10 AM:**

3

4

MR. QUINN: Morning Sir.

10:06:48 5

6

CHAIRMAN: Morning.

7

Q. 1

8

MR. QUINN: Mr. Gilmartin.

9

10:06:52 10

**TOM GILMARTIN RETURNS TO THE WITNESS BOX.**

11

**AND CONTINUES TO BE QUESTIONED AS FOLLOWS BY MR. SREENAN:**

12

13

CHAIRMAN: Morning, Mr. Gilmartin. Now Mr. Sreenan.

14

Q. 2

Morning Mr. Gilmartin. On Thursday last when you concluded your

10:07:16 15

cross-examination on that day, you were looking at document 16000, if we have

16

that on screen, please. And this was a telephone conversation that you had

17

with Mr. Hanratty, Senior Counsel, on the 16th June 1998. It was the fifth

18

telephone contact that you had with the Tribunal that's been recorded, do you

19

remember that?

10:07:40 20

A.

Yes.

21

Q. 3

And if you go to 6 - or 16001? We see a passage that we were looking at there,

22

paragraph five, where you mention the statement that had been sent in, that

23

being the Noel Smyth statement?

24

A.

Yes.

10:08:00 25

Q. 4

And we drew attention to the fact that this conversation you had with

26

Mr. Hanratty lasted for about an hour and 50 minutes and it took place within a

27

month of the statement that you made to Mr. Smyth, isn't that so?

28

A.

That seems to be correct, yeah.

29

Q. 5

And we had established that you had not in the intervening period written into

10:08:25 30

the Tribunal, either yourself or through your solicitor, to correct anything

- 10:08:28 1 that was in the Noel Smyth statement?
- 2 A. That's correct.
- 3 Q. 6 And I think you indicated that you may or may not have got a copy of the
- 4 statement at that point in time, but that you were aware that the statement had
- 10:08:45 5 been sent in?
- 6 A. That's correct.
- 7 Q. 7 And I think you told us that in discussing the statement with Mr. Hanratty you
- 8 corrected the names of certain persons that had been misnamed or misspelled?
- 9 A. That's correct.
- 10:09:02 10 Q. 8 But otherwise you didn't correct anything in the substance of the statement?
- 11 A. No.
- 12 Q. 9 And Mr. Smyth, of course, was acting for you at the time, as your solicitor?
- 13 A. That's correct.
- 14 Q. 10 But notwithstanding the fact that Mr. Smyth was acting for you at the time you
- 10:09:19 15 were the one who personally rang up Counsel for the Tribunal, now why did you
- 16 do that and why not go through your solicitor, Mr. Smyth?
- 17 A. Simple reason, I promised the Tribunal that I would pass on any information
- 18 that I had.
- 19 Q. 11 I understand that, but there is nothing stopping you passing on the information
- 10:09:42 20 through your solicitor, was there?
- 21 A. No.
- 22 Q. 12 And was Mr. Smyth aware of the fact that you were ringing up the Tribunal and
- 23 having this lengthy conversation with counsel?
- 24 A. I am not 100 per cent sure, but I think he was.
- 10:09:57 25 Q. 13 And you would certainly have read the transcript of the Noel Smyth statement
- 26 between then and now?
- 27 A. Sorry?
- 28 Q. 14 Between the date of that telephone conversation, the 16th June 1998 and today,
- 29 nearly ten years later, certainly nine years later, you would have read the
- 10:10:17 30 statement that you gave to Mr. Noel Smyth?

10:10:23 1 A. Yes.

2 Q. 15 Many times?

3 A. I don't know about many times.

4 Q. 16 And you told us that you weren't particularly concerned about correcting

10:10:31 5 anything in the statement because it was taped and you assumed it was an

6 accurate transcription of the tape?

7 A. That's correct.

8 Q. 17 But that if you had come across any glaring inaccuracy you would have informed

9 the Tribunal?

10:10:46 10 A. Possibly, yes.

11 Q. 18 Yes. Well, you told us on Thursday last that if you had come across any

12 glaring inaccuracy in the statement you would have informed the Tribunal, do

13 you want to alter that statement in anyway?

14 A. No, I wouldn't, but I didn't pay a great deal of attention to it.

10:11:05 15 Q. 19 No. You may not have paid a great deal of attention to it at the time or so

16 you say, but between then and now I take it you would have paid a great deal of

17 attention to it?

18 A. Not necessarily.

19 Q. 20 When you read it, did you pay a great deal of attention to it?

10:11:22 20 A. Not really.

21 Q. 21 In preparing for your testimony here, did you pay a great deal of attention to

22 it?

23 A. I have read it over.

24 Q. 22 And you have told us that if there was any glaring inaccuracy and you would

10:11:35 25 have told the Tribunal about it, and we know you haven't told the Tribunal

26 about any inaccuracy apart from what you told Mr. Hanratty in relation to

27 names, isn't that correct?

28 A. That's correct, if I noticed it.

29 Q. 23 And you would have known at the time, I suggest to you, that what Mr. Smyth was

10:11:56 30 engaged in with you was a serious exercise for the Tribunal?

- 10:12:01 1 A. That's correct.
- 2 Q. 24 Yes. You arranged to meet Mr. Smyth in London?
- 3 A. Although I must point out I didn't take it too serious at the time, because I
- 4 was not 100 per cent sure whether I would bother cooperating.
- 10:12:20 5 Q. 25 Well, are you saying you are not, you weren't taking it too seriously at the
- 6 time so that you have a certain amount of wriggle room in case there is
- 7 anything there that you might have difficulty with now?
- 8 A. No.
- 9 Q. 26 Is that the same as telling the Tribunal that you don't have a great memory for
- 10:12:30 10 dates, so that you have plenty of wriggle room in your evidence?
- 11 A. No, that's a fact. I don't have - things that happened over a ten year or 20
- 12 year period, in hindsight it's difficult to remember every date, which I told
- 13 the Tribunal up front.
- 14 Q. 27 You can't remember dates, but you can remember other events, is that it?
- 10:12:59 15 A. Well, if it's relevant to what happened to me.
- 16 Q. 28 And can you tell us, you testified initially in this Tribunal, you commenced I
- 17 think if my memory serves me correctly, on the 3rd or 4th March 2004, and in
- 18 the course of your evidence on that occasion you were quite certain, indeed
- 19 adamant on certain dates, have you lost your memory on dates between 2004 and
- 10:13:28 20 the present date, Mr. Gilmartin?
- 21 A. I was never too sure of dates.
- 22 Q. 29 Look at document 15768, I just want to probe this question of the Noel Smyth
- 23 interview with you a little bit. That's the first page of the document that
- 24 was sent in by Mr. Smyth and as we saw on Thursday, its headed "This is a
- 10:13:56 25 statement of Tom Gilmartin" and it gives your address, it says was taken by
- 26 Noel Smyth 20 Upper Grosvenor Street, London on Wednesday 20th May 1998 at 12
- 27 pm. So it's headed that it's a statement by you?
- 28 A. Yeah, but I wasn't aware it was a statement.
- 29 Q. 30 And --
- 10:14:19 30 A. At the time.

- 10:14:19 1 Q. 31 If we go to 15775, do you see in bold letter there Mr. Smyth explaining to you  
2 what the purpose of the Tribunal is? The whole purpose of this Tribunal  
3 effectively is to be able to say that we have investigated the information from  
4 all the sources, from all the leads and the more detailed information you can  
10:14:53 5 give them, the more credible the actual enquiry becomes from their point of  
6 view.  
7  
8 He goes on to explain that further. Now that was at a comparatively early  
9 stage of that interview, it's only seven pages into the document. Do you  
10:15:08 10 remember being told that by Mr. Smyth?
- 11 A. Well, I assume it's recorded there, so I assume he would have advised me.
- 12 Q. 32 And you would have been well aware of the importance of being comprehensive and  
13 accurate in the evidence that you were giving?
- 14 A. On that particular day as I explained to you, Mr. Smyth asked me to run through  
10:15:37 15 what I remembered. I had no paperwork, nothing in front of me, there was a  
16 tape put on the desk in front of me and I was asked to run through what I  
17 remembered. He did not advise me that that tape was going to be used as my  
18 statement.
- 19 Q. 33 Isn't it perfectly clear from the passage that we have just looked at, on  
10:16:04 20 15775, that you were being told that the nature of the exercise that you were  
21 engaged in was to provide evidence via Mr. Smyth for the Tribunal?
- 22 A. He explained to me the purpose of the Tribunal.
- 23 Q. 34 And you --
- 24 A. But at that particular meeting he asked me to just run through what I  
10:16:30 25 remembered. What I remembered.
- 26 Q. 35 But there is no --
- 27 A. He did not state to me and I don't think it's in there, that this is going to  
28 be used as a statement to be sent into the Tribunal.
- 29 Q. 36 There is nothing in the record --
- 10:16:47 30 A. There is nothing in this record to state that he advised me to, him asking me

- 10:16:54 1 to recount what I remember.
- 2 Q. 37 There is nothing in the --
- 3 A. That on that, that it was going to be used as a statement to be sent to the
- 4 Tribunal. So if it's there pointed out to me, Mr. Sreenan.
- 10:17:08 5 Q. 38 There is nothing in this record to say that he told you that you were simply to
- 6 run through what you remembered?
- 7 A. There is nothing on there to say that I am going to use what you say today as a
- 8 statement to provide a statement to the Tribunal.
- 9 Q. 39 No, that wasn't --
- 10:17:28 10 A. He asked me just to recount what I remember, off-the-cuff.
- 11 Q. 40 No, that wasn't the question, Mr. Gilmartin. There is not much point in
- 12 answering a question by reformulating a different question and then answering
- 13 it. There is nothing in this record where Mr. Smyth is recorded as telling you
- 14 to just run through what you have, what you could remember?
- 10:17:50 15 A. Mr. Smyth, before he put the tape on the table, said to me, "now tell me what
- 16 you remember."
- 17 Q. 41 And we saw on Thursday, that you were apologising to Tribunal Counsel before
- 18 that statement was taken for the delay in the provision of the statement saying
- 19 it was your fault and not Mr. Smyth's. So you knew well what you were doing,
- 10:18:11 20 Mr. Gilmartin?
- 21 A. No, I apologised for the delay because the Tribunal was pressurising me and
- 22 pressurising Noel Smyth for a statement.
- 23 Q. 42 Can we go to --
- 24 A. What I assumed happened is Noel Smyth just took the tape and copied it.
- 10:18:29 25 Q. 43 Can we go to page 15781? Mr. Smyth is recorded there as saying "What we want
- 26 to do is to get the picture so that we can at least put the leads in place up
- 27 to the Tribunal". So you knew perfectly well what you were doing in the course
- 28 of that interview was putting material together so that it could be submitted
- 29 to the Tribunal?
- 10:19:02 30 A. He wanted to get the picture, that's exactly what he said, "can you run through

10:19:09 1 what you remember."

2 Q. 44 And isn't that --

3 A. And he did not, he did not at any time tell me, what I was saying into a tape

4 sitting for an hour in front of a tape, was going to be actually just copied

10:19:26 5 and sent as my statement to the Tribunal. My statement would have taken days,

6 actual days, not an hour, talking into a tape.

7 Q. 45 Mr. Gilmartin, we know that Mr. Smyth is a highly professional and careful

8 solicitor, you can take it from me, and we can read through the entire

9 transcript of this if necessary, there is nothing in this document which is

10:19:52 10 consistent with any view by Mr. Smyth that he was to do anything between

11 interviewing you and submitting this to the Tribunal?

12 A. Well, in this instance, in this instance the, to take the statement, or my

13 statement, would have taken days, not an hour talking into a tape of the,

14 off-the-cuff.

10:20:21 15 Q. 46 Providing accurate information to the Tribunal is quite inconsistent, isn't it,

16 with not really cooperating with the Tribunal, which is it that you were doing

17 at this point in time?

18 A. At the beginning I was not cooperating with the Tribunal, fully cooperating

19 with the Tribunal.

10:20:35 20 Q. 47 Well, at this point in time --

21 A. But I did agree to pass on any information that would be helpful to them.

22 Q. 48 At this point in time, 20th May 1998, were you really cooperating with the

23 Tribunal?

24 A. I'm not sure whether I was. It was after, whenever Mr. Flynn went on The Late

10:20:58 25 Late Show, I only truly cooperated after that date.

26 Q. 49 Even though you had retained a solicitor and he was taking a tape recording of

27 what you had to say for the purposes of assisting the Tribunal, is that your

28 evidence?

29 A. He was taking a tape recording, as I remember, he advised me, or asked me to

10:21:24 30 try and recount, try and recount what I felt happened.

- 10:21:30 1 Q. 50 But --
- 2 A. He did not advise me that that was going to be used as a statement to the
- 3 Tribunal. And neither did I review it or proof read it.
- 4 Q. 51 Did he not make it clear to you that what you were doing was providing your
- 10:21:48 5 evidence for the Tribunal?
- 6 A. I was providing - I was providing to him a recount of what I felt at the time
- 7 happened.
- 8 Q. 52 Yes, but it was your evidence, Mr. Gilmartin that you were providing to him,
- 9 isn't that so.
- 10:22:05 10 A. No, it was not my evidence. I was recounting my experience in Dublin.
- 11 Q. 53 Would you go to page 15834 please, in this transcript? And you were asked by
- 12 Mr. Smyth at the top of this page "Why was the 11th March a significant day?"
- 13 And this is the day when Mr. O'Callaghan was supposed to have met with
- 14 Mr. Reynolds down in Cork. And you didn't tell him it was your birthday or
- 10:22:39 15 anything you told us "Because I knew Albert Reynolds was in Noel O'Callaghan's
- 16 house that night. I also know that the previous year Albert was making his
- 17 collections.
- 18
- 19 And Mr. Smyth said, who was he making his collections from and for what
- 10:22:53 20 purpose, what is your suspicion. And your answer was: you were in Dublin the
- 21 same as I was, you know more about Dublin than I will ever learn. Mr. Smyth:
- 22 This is not my evidence". In other words he is telling you that the exercise
- 23 you are engaged in is giving your evidence, the Tribunal is not interested in
- 24 Mr. Smyth's evidence, it's your evidence that Mr. Smyth is gathering here for
- 10:23:17 25 the Tribunal.
- 26
- 27 Now do you want to withdraw your earlier answer that you gave just a moment ago
- 28 that you weren't giving your evidence to the Tribunal?
- 29 A. No, I am not withdrawing, at all.
- 10:23:28 30 Q. 54 Were you taking the Tribunal seriously at this point?

- 10:23:33 1 A. Well, I assume the Tribunal was set up to investigate planning and other  
2 matters and initially, initially while I didn't, as I said earlier the Tribunal  
3 set up by Oireachtas to investigate what they were doing and report back to  
4 them, I didn't take that too serious, initially.
- 10:24:01 5 Q. 55 Well, were you taking it seriously by the 20th May 1998?
- 6 A. Well, I'm not too sure if I was.
- 7 Q. 56 Did Mr. Smyth advise you --
- 8 A. But, sorry?
- 9 Q. 57 Did Mr. Smyth advise you that you should take it seriously?
- 10:24:17 10 A. I didn't have to be involved at all at the time, I was out of the jurisdiction.
- 11 Q. 58 Would you go to --
- 12 A. So Mr. Smyth couldn't advise me one way or the other, it was told - totally my  
13 decision as to whether I cooperated or not.
- 14 Q. 59 Could we go to 15839 in that interview? Down at the bottom of that page Mr.  
10:24:48 15 Smyth is saying "Again as far as I am concerned, they" and that's the Tribunal,  
16 "Have a job to do, they are charged under a piece of legislation. They have do  
17 to do the job and it should be taken very seriously?"
- 18 A. Yeah.
- 19 Q. 60 Now didn't Mr. Smyth advise you it should be taken seriously?
- 10:25:06 20 A. Yeah, but I was outside the jurisdiction.
- 21 Q. 61 The question I asked you a moment ago was whether Mr. Smyth advised you it  
22 should be taken very seriously and you indicated not so?
- 23 A. I said he couldn't advise me one way or the other. I did not say he did not  
24 advise me, I said he couldn't advise me one way or the other because I was  
10:25:25 25 outside the jurisdiction and it didn't apply to me at the time.
- 26 Q. 62 Mr. Gilmartin, don't we all know that's nonsense, you were giving sitting down  
27 with Mr. Smyth giving an interview for the purposes of giving it to the  
28 Tribunal?
- 29 A. No.
- 10:25:38 30 Q. 63 The fact that you were -- let me finish please.

- 10:25:40 1 A. I was recounting to Mr. Smyth as I said from the beginning, I had a meeting  
2 with Mr. Smyth for an hour or so, 12 o'clock on whatever day it was in London,  
3 he put a tape on the table and he said now tell me, what you remember.
- 4 Q. 64 Again we know that --
- 10:25:56 5 A. Did he not advise me that this was a serious statement that I was going to be  
6 copied and sent to the Tribunal, at any time during that day.
- 7 Q. 65 Yes. Mr. Gilmartin, we know that what you have just said on oath again is  
8 untrue. This was not a statement taken over an hour between 12 and 1.00?
- 9 A. It was -- there was a statement taken.
- 10:26:15 10 Q. 66 The statement continued at the beginning of lunch, then the tape was stopped,  
11 we can see that from the record, and it was recontinued after lunch?
- 12 A. We started at 12, we went to lunch and came back. So in all the speaking into  
13 the thing was not much more than an hour, hour and a half or something like  
14 that. And it was only recounting to Mr. Smyth what I could remember offhand of  
10:26:41 15 my experience in Dublin.
- 16 Q. 67 And there are 96 pages of the record submitted by Mr. Smyth of that  
17 conversation?
- 18 A. Well, I don't know, just all of that conversation, but --
- 19 Q. 68 Mr. Gilmartin, we're interested here and the Tribunal is interested in the  
10:27:02 20 accuracy of your recall of events and in your truthfulness as a witness. Now  
21 have you just told the Tribunal something that was untrue, that this was a one  
22 hour statement taken between 12 and 1, do you now want to withdraw that?
- 23 A. It was a statement taken, more or less started before lunch, went to lunch,  
24 come back and whatever length is on the thing is the time it was taken. I  
10:27:33 25 can't recall at this distance exactly whether it was an hour and a half, one  
26 hour or what it is. But it was still a conversation with Mr. Smyth who asked  
27 me to, for me to let him know what I remembered.
- 28 Q. 69 Who was paying Mr. Smyth to sit down with you for this time in order to take  
29 your statement?
- 10:28:00 30 A. I don't know, I presume I was.

- 10:28:02 1 Q. 70 Did you pay him?  
2 A. I don't know.  
3 Q. 71 You don't know whether you paid him or not?  
4 A. No, I don't remember paying him actually.
- 10:28:09 5 Q. 72 Now Mr. Gilmartin, if you cannot remember Mr. Smyth at this very serious event,  
6 this interview, that you are giving of evidence for the Tribunal, if you cannot  
7 remember him in 1998 telling you it was a very serious matter and could be,  
8 should be taken seriously. If you cannot remember who was to pay his fees or  
9 whether you paid them or not, how can you remember things that happened ten  
10:28:38 10 years prior to this and expect the Tribunal to rely on that evidence when it's  
11 uncorroborated?  
12 A. There was special circumstances with regard to Mr. Smyth because he had told  
13 me, any help I needed at any time, he was only too willing to help me, from my  
14 initial involvement with him.
- 10:29:05 15 Q. 73 You were aware of the fact at that stage that although you were outside the  
16 jurisdiction you clearly had been giving evidence to the Tribunal, you had been  
17 promising the Tribunal a statement and you were speaking to Mr. Smyth for the  
18 purposes of providing that statement, isn't that so?  
19 A. I was speaking to Mr. Smyth to inform -- he asked me to recount for him what I  
10:29:29 20 remembered.
- 21 Q. 74 Would you answer the question now, Mr. Gilmartin. Were you meeting Mr. Smyth  
22 for the purpose of providing a statement to the Tribunal?  
23 A. Not really. I met Mr. Smyth to talk over exactly, as to whether I would give a  
24 statement, quite frankly.
- 10:29:49 25 Q. 75 So when you told Mr. Hanratty about a month prior to that, that you were  
26 apologising for the delay in delivery of the statement, that it wasn't Mr.  
27 Smyth's fault it was your own, you were only coding him at that point in time,  
28 is that it?  
29 A. No, I wasn't coding him, but we had not sat down to put a proper statement  
10:30:07 30 together, at any time. As it happened it took days, weeks, actually months to

10:30:15 1 put my statement together.

2 Q. 76 Did you --

3 A. Which, which I think is proven by the fact there are, from I got involved with

4 Mr, with A & L Goodbodys.

10:30:30 5 Q. 77 You are referring your statement of May 2001?

6 A. Whatever, yeah.

7 Q. 78 That's the one that has all the bizarre stuff edited out of it that we've got

8 in this statements, isn't that so?

9 A. Yeah well, that's your statement, bizarre is your words, Mr. Sreenan. What

10:30:46 10 happened was quite bizarre.

11 Q. 79 Would you go to page 15786? Did you bring maps with you or a map with you to

12 your meeting with Mr. Smyth?

13 A. No, I did not.

14 Q. 80 Just going to read a passage to you now starting at the bottom of 15786?

10:31:08 15 A. I don't remember bringing a map.

16 Q. 81 "He was the councillor, the County Manager. He used to go in and use Paddy

17 Morrissey and do cosy deals with me simply because I would not pay him

18 anything. He used to mess up any meetings with the executive road people and

19 all that. We had arranged a meeting because we were sorting out the roads and

10:31:22 20 the access to the sites and all that and we had come to an agreement with Flynn

21 because I was told I was supposed to have some form of approval from Flynn if I

22 wanted access for the new roads."

23

24 MS. DILLON: I don't want to interrupt Mr. Sreenan, but I think the

10:31:37 25 stenographer is having just a little difficulty keeping up with Mr. Sreenan

26 when he is reading from a document.

27 Q. 82 Sorry. "While we had to agree it we had to discuss it with Flynn and we were

28 talking about that and how we would put access to the new motorway, we

29 discovered it was too near the roundabout, we needed another access between

10:31:56 30 that and the proposed new Naas Road, which was further up past the Irish Town

10:32:01 1 road which was back here somewhere because there had to be a mile between the  
2 two."  
3  
4 That reference to back here somewhere I ask you to note that ."We were  
10:32:09 5 proposing to come into the site off here coming from the south and there would  
6 be a bridge from the Northside across which would be a flyover back from here  
7 but we were too close to this roundabout. You need to be further away. So we  
8 come in on this roundabout and you come into the site here". That suggests you  
9 have some sort of map?

10:32:27 10 A. No, I had a brochure.

11 Q. 83 You brought the brochure to the meeting?

12 A. Yes, I had the brochure in my briefcase.

13 Q. 84 Why did you tell the Tribunal earlier this morning that you brought no  
14 documents to the meeting?

10:32:36 15 A. I had my briefcase with me, I didn't bring any documents as any proof, any  
16 documents connected with anything, just a brochure.

17 Q. 85 Mr. Gilmartin, let's get back to basics. You hold yourself out as being a  
18 businessman of tremendous acumen?

19 A. No, I never did.

10:32:52 20 Q. 86 Hold it a second.

21 A. No, I never did Mr. Sreenan at any time to anybody.

22 Q. 87 Who could put this deal together, do you know whether or not a brochure is a  
23 document?

24 A. Pardon?

10:33:04 25 Q. 88 Did you hear me?

26 A. The brochure - you said did I bring maps, the question you asked me first, did  
27 I bring maps, I did not bring maps I just had a brochure in my briefcase.

28 Q. 89 You testified --

29 A. I was pointing out to where I had a bridge.

10:33:21 30 Q. 90 You testified, Mr. Gilmartin to this Tribunal, on oath this morning that you

10:33:28 1 brought no documents to this meeting?

2 A. No, I didn't.

3 Q. 91 Is a brochure a document or not?

4 A. The brochure was my brochure of what I was proposing to do.

10:33:40 5 Q. 92 Mr. Gilmartin --

6 A. It's not a document in connection with the Tribunal or any evidence to the

7 Tribunal.

8 Q. 93 Has --

9 A. Other than the fact that it was the brochure that I prepared as the proposal

10:33:54 10 for Quarryvale.

11 Q. 94 Is this the brochure that we have heard so much evidence about that refers to

12 the one and a half million square feet?

13 A. Yes.

14 Q. 95 And this is the brochure that you now tell the Tribunal has nothing to do with

10:34:05 15 the evidence before the Tribunal, is that what you expect them to believe?

16 A. No, I'm not expecting -- I don't regard the brochure as documents, as actual

17 documents, it was just a brochure, an illustration of what I was -- I was asked

18 to do something for Quarry - not Quarryvale, but Clondalkin, and I set about

19 putting the scheme together and the brochure together.

10:34:39 20 Q. 96 How big a brochure was this, how many pages in it?

21 A. The brochure? I forget, about 20, I suppose.

22 Q. 97 What else did you have in your briefcase?

23 A. I had nothing else, well, I'm not quite sure what other papers I had in my

24 briefcase.

10:34:55 25 Q. 98 You hardly brought a briefcase to the meeting with nothing in it except a 20

26 page brochure?

27 A. But what is this got to do with anything?

28 Q. 99 You told --

29 A. I had a briefcase with me, so what?

10:35:06 30 Q. 100 Mr. Gilmartin, do you understand that your credibility has a lot to do with

- 10:35:10 1 this Tribunal, do you understand that?
- 2 A. Yes, because my credibility is in the best of health, Mr. Sreenan.
- 3 Q. 101 But do you understand that your credibility is of interest to the Tribunal?
- 4 A. Credibility, I know it is.
- 10:35:25 5 Q. 102 Now you testified earlier on that you brought no documents to that meeting, you  
6 have now told us that you brought a 20 page document?
- 7 A. I brought a brochure. If you call that a document in legal terms well.
- 8 Q. 103 Mr. Gilmartin, you realise you are on oath and if you say something on oath  
9 which is untrue it's perjury. Now can you be careful about your evidence  
10:35:51 10 please. We'll go back to document 16000, this is as we say the 16th June 1998  
11 and it's less than a month after the statement that we have been talking about.  
12 And this was the occasion we know when you discussed the statement with  
13 Mr. Hanratty, isn't that correct?
- 14 A. Yes.
- 10:36:33 15 Q. 104 And I think if we can then go to document 16012, we have a draft of an  
16 affidavit there, and the affidavit is sworn on the 2nd October 1998, you  
17 remember swearing that affidavit?
- 18 A. Is this the one taken in Luton.
- 19 Q. 105 Yes.
- 10:37:17 20 A. Yes, I remember that.
- 21 Q. 106 And were you really cooperating with the Tribunal then, when you swore that  
22 affidavit?
- 23 A. Well, they asked me for it, so they wanted to get something more tangible than  
24 they had up to then.
- 10:37:34 25 Q. 107 Was Mr. Smyth acting for you at that stage?
- 26 A. I'm not sure.
- 27 Q. 108 If he wasn't acting for you who would be acting for you?
- 28 A. There was nobody I believe, I had no legal advice, I believe, on that day. I  
29 think that in the evening we, the affidavit was sworn by a notary from Machen  
10:37:59 30 and Company which is a Luton firm of solicitors.

- 10:38:02 1 Q. 109 Would you look at the handwriting on top of that which is as we understand it,  
2 in the handwriting of Mr. Gallagher, Senior Counsel for the Tribunal. It says,  
3 "Final draft with my handwritten amendments as specified by Tom Gilmartin on  
4 2nd October 1998 in hotel room pre meeting in his solicitor's office."
- 10:38:25 5 A. That's Machen and Co, Luton who had nothing to do with Dublin or the Tribunal.
- 6 Q. 110 Why did you tell the Tribunal just now that you had no legal advice at this  
7 time?
- 8 A. I had no legal advise in the hotel room when the affidavit was drawn up, we  
9 went, we organised and a Mr, I think it was a Greek name, Magadopolous.
- 10:38:59 10 Q. 111 But this was --
- 11 A. We arranged a meeting and went there just for him to witness my signature.
- 12 Q. 112 Now Mr. Gilmartin, Mr. Gallagher, Counsel for the Tribunal is very careful in  
13 this note, he doesn't say pre meeting in a solicitor's office or pre meeting  
14 with a notary, he says pre meeting in his solicitor's office, in other words in  
10:39:21 15 your solicitor's office?
- 16 A. No, the statement was signed in - the statement was taken in the hotel bedroom  
17 by Mr. Gallagher and Mr. Hanratty and we went in the evening to get a notary,  
18 to witness this, the --
- 19 Q. 113 And I suggest to you that you are wrong in saying you had no legal advice at  
10:39:48 20 the time of this affidavit?
- 21 A. I had no, on that day I had, there was no legal advice present, that is an  
22 absolute, one hundred percent fact.
- 23 Q. 114 And you would have got legal advice I put it to you, before you swore this  
24 affidavit?
- 10:40:03 25 A. Whatever legal advice I had was, if Mr. Smyth was still acting at the time, I  
26 don't know.
- 27 Q. 115 Did Mr. Smyth know that you were meeting the Tribunal on the 2nd October 1998?
- 28 A. I don't know.
- 29 Q. 116 Did he know that you were planning to give them an affidavit?
- 10:40:16 30 A. I don't know, I don't think so.

- 10:40:17 1 Q. 117 Did you tell him?
- 2 A. I don't know whether I told him or not.
- 3 Q. 118 But this is 1998, if you can't remember a simple detail like whether you had
- 4 told your solicitor that you were taking such a serious step as to provide the
- 10:40:34 5 Tribunal with a sworn statement that would expose you to the criminal charge of
- 6 perjury if what was in that statement was incorrect?
- 7 A. No, no Mr. Sreenan --
- 8 Q. 119 How can you remember things back in 1998?
- 9 A. You have to look closer to home if you want perjurers, not me.
- 10:40:51 10 Q. 120 Mr. Gilmartin, whatever about you being in England you are now taking a step of
- 11 swearing an affidavit, if you swear an affidavit to an Irish Tribunal you
- 12 commit perjury, you can be extradited for that offence?
- 13 A. Yeah, but I didn't commit perjury.
- 14 Q. 121 You were taking --
- 10:41:07 15 A. And at the time I didn't see any reason for needing solicitors or legal advise.
- 16 Q. 122 If you didn't see any need for needing solicitors or legal advise why did you
- 17 go to Mr. Smyth in May?
- 18 A. Mr. Smyth offered to help me in anyway, from my previous dealings with him.
- 19 Q. 123 Well, if he offered to help you in anyway from your previous dealings why
- 10:41:30 20 didn't but to him about this affidavit, seeing it was a much more serious step,
- 21 it was a sworn statement?
- 22 A. When I met the Tribunal on that day I wasn't aware that we were going to, that
- 23 an affidavit was going to be drawn up.
- 24 Q. 124 But Mr. Gilmartin, you are not a babe in arms, when the affidavit was being
- 10:41:45 25 discussed and when you were being brought through it line by line, you
- 26 certainly knew then that there was an affidavit being prepared for you to
- 27 swear?
- 28 A. Yeah.
- 29 Q. 125 Why not go to Mr. Smyth then?
- 10:41:55 30 A. I didn't think it necessary.

- 10:41:56 1 Q. 126 Well, if it wasn't necessary then why was it necessary in May of that year?
- 2 A. Because the Tribunal had approached me, Mr. Smyth volunteered his services to
- 3 me, to help me.
- 4 Q. 127 Yes. But you know that's not a good answer Mr. Gilmartin, why did you do it in
- 10:42:14 5 May and not in October?
- 6 A. It's a fact. It's a fact.
- 7 Q. 128 You can't remember whether you told Mr. Smyth you were going to do this or not?
- 8 A. I don't remember if I told him. I didn't know when I went to the meeting that
- 9 day with the Tribunal, that an affidavit, that they would be looking for an
- 10:42:35 10 affidavit.
- 11 Q. 129 Did you ring up --
- 12 A. But I couldn't see the point in bringing Mr. Smyth, I didn't think it was
- 13 necessary.
- 14 Q. 130 Did you tell Mr. Smyth that you had sworn the affidavit?
- 10:42:44 15 A. I possibly did afterwards.
- 16 Q. 131 Possibly, do you remember?
- 17 A. I don't remember to tell you the truth. I don't know whether he was acting for
- 18 me at that particular time, because he had taken over Dunloe House and he was
- 19 involved in the running of Dunloe House. As a matter of fact he had cut down
- 10:43:08 20 on his legal, his legal work or his legal practice.
- 21 Q. 132 But sure Mr. Gilmartin, we know he was involved in Dunloe House even at the
- 22 time of the litigation, we saw from the evidence that was adduced that there
- 23 was a back-up arrangement put in place with Dunloe House?
- 24 A. I am not aware of that.
- 10:43:25 25 Q. 133 So again your testimony in relation to this, to the Tribunal is simply untrue?
- 26 A. Sorry?
- 27 Q. 134 Your testimony to this, on this issue to the Tribunal is simply untrue?
- 28 A. It's not untrue.
- 29 Q. 135 Where you simply suggest that you didn't go to Mr. Smyth about this affidavit
- 10:43:40 30 because he was involved in Dunloe House?

- 10:43:42 1 A. No. No. You are trying to make two and two make five.  
2  
3 CHAIRMAN: Wait now, Mr. Gilmartin. He didn't say that. He said it was his  
4 understanding that Mr. Smyth had become less involved in his legal work because  
10:43:57 5 of his involvement in Dunloe House.  
6 Q. 136 If I misheard the witness, Chairman, I apologise.  
7  
8 CHAIRMAN: All right.  
9 Q. 137 If Mr. Smyth had become less involved in his legal business because of his  
10 involvement in Dunloe House, how did you understand that, had you been in  
11 contact with him?  
12 A. He was talking to me.  
13 Q. 138 When?  
14 A. I talked to him on a number of occasions.  
10:44:19 15 Q. 139 Between May and October?  
16 A. Yes, we were talking, as a matter of fact we discussed some of the business  
17 proposals he had, as a matter of fact he at one stage offered to see if I would  
18 work for him.  
19 Q. 140 And nevertheless in the, notwithstanding these various --  
10:44:45 20 A. It had nothing to do with the Tribunal.  
21 Q. 141 Notwithstanding these various conversations you never confided in him or you  
22 can't remember whether did you or not, that you were asked by the Tribunal to  
23 provide an affidavit?  
24 A. The affidavit, that particular affidavit, given to the Tribunal was spontaneous  
10:45:03 25 on the day, I had a meeting with the Tribunal in the Thistle Hotel in Luton and  
26 later in that day the Tribunal was looking for something more than, you know.  
27 Q. 142 I don't know, sorry Mr. Gilmartin, you better say, more than what?  
28 A. What? The Tribunal was looking for something more concrete.  
29 Q. 143 More concrete?  
10:45:31 30 A. Than, you know bits and pieces that I had given to them in conversation.

- 10:45:37 1 Q. 144 More concrete than the 90 pages of transcript of tapes, more concrete than the  
2 five telephone conversations you had with them?
- 3 A. The transcript of those tapes was just more or less a recount or a - a recount  
4 off the top of my head of the things that went wrong over a ten year period, to  
10:46:00 5 Mr. Smyth.
- 6 Q. 145 Go to 16004, this is a meeting which you had with the Tribunal on the 30th  
7 September 1998 and it's the second meeting between you and the Tribunal, it's  
8 at Luton and Mr. Gallagher, Mr. Hanratty and Mr. O'Neill, Junior Counsel then  
9 for the Tribunal, were present at that meeting, isn't that so?
- 10:46:42 10 A. I assume that's correct.
- 11 Q. 146 And over the course of that meeting a record of some seven pages of what you'd  
12 said was kept by the Tribunal?
- 13 A. Yeah.
- 14 Q. 147 And that was the meeting when you asked for immunity?
- 10:47:03 15 A. That's correct.
- 16 Q. 148 And then if we go to document 16025 a couple of days later, on the Friday the  
17 2nd October you are back meeting Mr. Gallagher and Mr. Hanratty, and it's on  
18 that occasion it seems that your draft affidavit was gone through and  
19 amendments were made to it, isn't that so?
- 10:47:39 20 A. Well, that would seem to be --
- 21 Q. 149 You made an appointment I think according to that record to meet the Tribunal  
22 counsel at 10.30 am, but you didn't turn up until 11.15 am?
- 23 A. That's correct.
- 24 Q. 150 Then you said you could only stay for an hour because you had pressing  
10:47:55 25 commitments at home?
- 26 A. That's correct.
- 27 Q. 151 Now in the course of that hour did you go through the whole of that affidavit,  
28 making amendments, have it corrected and then swear it?
- 29 A. I don't know whether it was that particular day or not.
- 10:48:08 30 Q. 152 Well, the note of the affidavit that we saw at 16012 is dated 2nd October 1998,

- 10:48:22 1 so it must have been that date. And if we go through the next page, which is  
2 16013, 16014 and further down to the very end of that document, the last pages,  
3 we can see there are extensive amendments made to it. You are aware of the  
4 fact that extensive amendments were made to your affidavit?
- 10:48:51 5 A. Sorry?
- 6 Q. 153 You are aware of the fact that extensive handwritten amendments were made by  
7 you to your affidavit, isn't that correct? Its' a 13 page affidavit. If we go  
8 to the last page, which should be 16024 perhaps.  
9
- 10:49:21 10 JUDGE FAHERTY: 23 I think, Mr. Sreenan?
- 11 A. That's not my writing for a start.  
12
- 13 JUDGE FAHERTY: 23.
- 14 Q. 154 Sorry thank you, Judge. 16023 the handwriting there, we see the same on 16021,  
10:49:36 15 whose handwriting is that?
- 16 A. I don't know. It's not mine.
- 17 Q. 155 Would you have called out those amendments?
- 18 A. I assume if it was, I assume that if we were reading through the documents  
19 those amendments would have been made by whoever was taking notes at the time.
- 10:50:19 20 Q. 156 Mr. Gilmartin, this is less than ten years ago, is your memory so bad for  
21 something less than ten years ago that you have got to assume? This was an  
22 important occasion, Counsel for the Tribunal were going through a draft  
23 affidavit, making changes, you were about to go to your solicitor's office to  
24 swear it, and you cannot remember who made the changes to the affidavit, is  
10:50:41 25 that what you are telling the Tribunal?
- 26 A. Well, it's not my writing.
- 27 Q. 157 Can you not remember who was writing it out on the document?
- 28 A. Well, it was either Mr. Hanratty or Mr. Gallagher.
- 29 Q. 158 Do you know that for a fact, can you remember it?
- 10:50:53 30 A. Pardon?

- 10:50:54 1 Q. 159 Can you remember that or are you simply assuming?
- 2 A. Well, the only people I was talking to was either Mr. Hanratty or
- 3 Mr. Gallagher.
- 4 Q. 160 So you are assuming it, you can't remember it, is that it?
- 10:51:05 5 A. I can't remember exactly.
- 6 Q. 161 You can't remember it at all, the word exactly adds nothing to the answer. Can
- 7 you remember who made these changes?
- 8 A. I'm not 100 per cent sure which one made the changes.
- 9 Q. 162 But can you remember any one of them doing it, have you a memory of it?
- 10:51:20 10 A. There was two of them there.
- 11 Q. 163 I know there were two of them.
- 12 A. There was two of them taking notes so.
- 13 Q. 164 If we go to the document which is the sworn document, which is 16027, this is
- 14 the affidavit that you ultimately swore and with the changes incorporated into
- 10:51:51 15 it. Now, on the 2nd October when you turned up to meet with Tribunal counsel,
- 16 three quarters of an hour late, when you said you only had an hour to be there,
- 17 was the affidavit, the first draft of the affidavit, was that already typed out
- 18 and before you?
- 19 A. Well, that's possible. At this distance I don't remember exactly which date
- 10:52:19 20 that was.
- 21 Q. 165 You can't remember that either, whether the document was already typed out when
- 22 you arrived on the 2nd October?
- 23 A. It would have been, I assume it would have been.
- 24 Q. 166 You assume?
- 10:52:30 25 A. If - but you are saying the 2nd October, I haven't got a clue whether it was or
- 26 not.
- 27 Q. 167 When these changes were made in handwriting, who then generated the next copy
- 28 of the affidavit that you would have to swear?
- 29 A. It would have been either Mr. Hanratty or Mr. Gallagher.
- 10:52:52 30 Q. 168 Do you remember them doing it?

- 10:52:54 1 A. Pardon? I remember going to my, when I said Machen's office in Luton, which  
2 was not too far from my house.
- 3 Q. 169 Well, did they go to Machen's office with a document with all these handwritten  
4 changes on it for Machen's to make the changes to it and then for to you wait  
10:53:15 5 while --
- 6 A. No, Machen's didn't make any change to it, as far as I remember.
- 7 Q. 170 O.k. but --
- 8 A. Mr. Magadopolous, or some name like that.
- 9 Q. 171 Yes, you told us a notary?
- 10:53:27 10 A. Pardon?
- 11 Q. 172 You told us already he was a notary, not a solicitor?
- 12 A. Yeah, who witnessed my signature.
- 13 Q. 173 So when you went to Machen's the changes had already been incorporated into a  
14 new draft of the affidavit?
- 10:53:41 15 A. I'm not too sure.
- 16 Q. 174 Who did it, this didn't appear this, would have taken quite some time to make  
17 these changes and print it out?
- 18 A. Well, it's possible that the lawyers or barristers for the Tribunal had already  
19 made the alterations if we had gone through it.
- 10:54:00 20 Q. 175 No -- but they hadn't made the alterations by the time you arrived on the 2nd  
21 October because you gave them the changes then?
- 22 A. I cannot recall the 2nd October or the 10th October, 8th October, I cannot  
23 recall what date exactly.
- 24 Q. 176 I'm not asking you to recall the exact date, you needn't take refuge in your  
10:54:26 25 inability to remember dates, Mr. Gilmartin, I am asking you to recall the  
26 event, which was a very important event?
- 27 A. I recall the event of the Tribunal taking a statement and I recall going to  
28 Machen's office to have my signature witnessed.
- 29 Q. 177 Well, now do you recall what happened in between, how your handwritten changes  
10:54:46 30 managed to make it into a finished affidavit?

10:54:49 1 A. I assume --

2 Q. 178 No, don't assume, do you recall?

3 A. No, I assume that the Tribunal would have gone through whatever and if there

4 was amendments needed, that would, it would have been made.

10:55:03 5 Q. 179 Mr. Gilmartin, your memory for events only nine years ago really is very bad,

6 isn't it?

7 A. Well, it's not -- how many, number 1, at the moment, I'm 73 but I'm not hiding

8 behind that. Number 2, I had serious heart surgery just a couple of years ago

9 and it, you know, those events wouldn't be prominent in my mind.

10:55:34 10

11 CHAIRMAN: Mr. Gilmartin, do you know who typed up the finished product?

12 A. I assume, I'm only assuming Mr. Gallagher had a laptop, he had some form of a

13 laptop.

14

10:55:51 15 CHAIRMAN: Do you remember him, do you remember seeing him type up the --

16 A. I do, yes. I remember him typing something into some form of laptop but I am

17 not 100 per cent sure, you know, what exactly.

18 Q. 180 Did he have a printer?

19 A. Pardon? I don't know.

10:56:16 20 Q. 181 Well, you seem to have had a remarkable recovery of memory within the past

21 minute or two Mr. Gilmartin, you now remember that it was Mr. Gallagher --

22 A. Mr. Gallagher had a laptop, but Mr. Hanratty also had one.

23 Q. 182 And that it was Mr. Gallagher was making the changes?

24 A. It was -- I don't know one hundred percent, I cannot at this point in time

10:56:44 25 remember exactly who made the changes.

26 Q. 183 Well, if they --

27 A. Or whose handwriting is on there.

28 Q. 184 Well, if they had a laptop and they could make the changes, why the need for

29 the handwriting which isn't your handwriting?

10:56:57 30 A. Sorry?

- 10:56:58 1 Q. 185 If they had a laptop with the affidavit, the draft of the affidavit on it, why  
2 the need for the handwriting, which isn't your handwriting, they could simply  
3 make the changes once by typing them in as you were making the changes?  
4 A. I don't know. I cannot answer.
- 10:57:13 5 Q. 186 Do you have any memory at all of it?  
6 A. I have a vague memory of the day, vague.
- 7 Q. 187 Go to the very end of the sworn affidavit, I think it should be 16040 at a  
8 guess.  
9
- 10:57:35 10 JUDGE FAHERTY: No 39, I think.
- 11 Q. 188 Sorry. 39. Just look at the sworn part of the affidavit there the lower half  
12 if we can highlight that please? It says - that's your signature there  
13 firstly, isn't it?  
14 A. Yes.
- 10:57:47 15 Q. 189 It says "sworn this 2nd October 1998 by Thomas Gilmartin at Victoria Street,  
16 Luton, before me a solicitor empowered to administer oaths." It's signed  
17 solicitor empowered to administer oaths. A moment ago you were keen to draw a  
18 distinction between a solicitor and notary, you said you didn't see a solicitor  
19 at all, you said it was a notary who in fact testified to your signature, do  
10:58:16 20 you want to correct that now?  
21 A. No, I want to - I assume they wanted, they needed some form of notary to  
22 witness my signature.
- 23 Q. 190 Mr. Gilmartin, you said it was a notary, not a solicitor that you went to see  
24 and you were giving that by way of evidence to suggest you had no legal advice  
10:58:33 25 when you swore this affidavit?  
26 A. Is a notary not a solicitor?  
27
- 28 CHAIRMAN: Wait now, Mr. Gilmartin. My understanding of what Mr. Gilmartin  
29 said earlier is that it had been sworn in the solicitor's office.
- 10:58:46 30 Q. 191 Before a notary, Judge.

- 10:58:48 1
- 2 CHAIRMAN: Well, I mean a notary and a commissioner for oaths, Mr. Gilmartin
- 3 can't really be expected to know the difference. But I mean his evidence, as
- 4 we understand it was that he was, that the finished product was sworn in a
- 10:59:05 5 solicitor's office in Luton.
- 6 Q. 192 That's correct, Judge. That wasn't being challenged in cross-examination, but
- 7 what, the purpose of the cross-examination was initially addressing the issue
- 8 of legal advice, it was Mr. Gilmartin who drew the distinction between a
- 9 solicitor and notary.
- 10:59:26 10
- 11 CHAIRMAN: Well if Mr. Gilmartin, my understanding is that he calls the person
- 12 who swears, who witnesses his signature on the document, a notary. Now that
- 13 may be, that mightn't be 100 per cent accurate description, but that's my
- 14 understanding of what he says. And that this occurred, whatever, that whenever
- 10:59:49 15 that event occurred, it occurred in the office of the solicitor in Luton.
- 16 Anyway.
- 17 Q. 193 I'll leave that point, Chairman and move on. Can I ask you to look at document
- 18 16041? On the 5th October 1998, this is only three days after swearing that
- 19 affidavit, you have another telephone conversation with Mr. Hanratty, isn't
- 11:00:22 20 that correct?
- 21 A. I assume so, yes.
- 22 Q. 194 And presumably it's you telephoned Mr. Hanratty, is that correct?
- 23 A. That's, possibly, yes.
- 24 Q. 195 Do you remember?
- 11:00:41 25 A. I don't remember exactly, I had that many, I had numerous phone calls, so I
- 26 don't remember, I cannot distinguish, you know, off the record or offhand which
- 27 one is which.
- 28 Q. 196 And you, again you gave Mr. Hanratty further information there that he
- 29 recorded?
- 11:01:00 30 A. Yeah.

- 11:01:02 1 Q. 197 And that was your sixth telephone conversation with Counsel for the Tribunal?
- 2 A. I promised, yeah I did promise --
- 3 Q. 198 And if we can have document 16043, there is a memorandum of a telephone
- 4 conversation between you and Mr. Hanratty again on the 6th October 1998 and
- 11:01:28 5 that's only the following day, and again you give him further information that
- 6 you hadn't given him the previous day?
- 7 A. That's correct.
- 8 Q. 199 Did you ring him on that occasion?
- 9 A. Possibly, yes. I assume so.
- 11:01:40 10 Q. 200 The whole of the first page of that document bar two lines, is redacted, so we
- 11 don't know what you told him there, but that was your sixth, sorry that was
- 12 your seventh telephone conversation with counsel for the Tribunal?
- 13 A. Yeah.
- 14 Q. 201 And then if we go to document 16045? We have another note of a telephone
- 11:02:11 15 conversation on Wednesday, 13th October 1998, so that's only a week later, you
- 16 again telephone counsel to the Tribunal?
- 17 A. Yeah.
- 18 Q. 202 And on that occasion you provide them with further information which is
- 19 recorded over the next six pages of that document, you can take it that that's
- 11:02:40 20 correct, Mr Gilmartin?
- 21 A. I assume so, yes.
- 22 Q. 203 That was your eight telephone contact with the Tribunal?
- 23 A. Yes.
- 24 Q. 204 And then if we go to document 16051, on the 22nd October 1998 you are again in
- 11:03:11 25 telephone contact with the Tribunal with Mr. Hanratty, Senior Counsel, that was
- 26 your ninth telephone call with the Tribunal?
- 27 A. Yeah.
- 28 Q. 205 And again you provide them on this occasion with further information, which
- 29 runs again to some six pages a lot of which is redacted and which we can't see?
- 11:03:30 30 A. Yeah.

- 11:03:31 1 Q. 206 Was it you telephoned Mr. Hanratty on that occasion?  
2 A. Possibly, yes.  
3 Q. 207 But you can't remember?  
4 A. I can't remember whether he contacted me or I contacted him.
- 11:03:44 5 Q. 208 And --  
6 A. If something came to mind or some information or back-up information, I would  
7 telephone and let him know.  
8 Q. 209 And if, again a week later at document 16057, on the 30th October 1998 you  
9 again telephone Mr. Hanratty, Senior Counsel and on this occasion we have some  
11:04:12 10 five pages of information, again additional information that you provide to the  
11 Tribunal?  
12 A. Yeah.  
13 Q. 210 This is five months after your original statement through Noel Smyth?  
14 A. Yeah.
- 11:04:24 15 Q. 211 Are you simply drip feeding information through to the Tribunal?  
16 A. No, I told them, I promised I would give them whatever information that I got,  
17 so I pass it on, whether it was hearsay or whether it was directly connected  
18 with me.  
19 Q. 212 And on the 6th November 1998 at document 16062, you have your 11th telephone  
11:04:54 20 conversation with the Tribunal, again just another week after your previous  
21 call?  
22 A. That's correct.  
23 Q. 213 And on this occasion we have seven pages of information recorded from you and  
24 if we go to 16064, we find that the whole of that page of information is  
11:05:20 25 redacted. So again we can't see it and there are other redacted portions in  
26 that conversation as well, and that was your 11th telephone call to the  
27 Tribunal?  
28 A. Yeah.  
29 Q. 214 Then going to --  
11:05:32 30 A. Well if, you haven't actually, should I say read who telephoned who, whether

11:05:45 1 they were all one way telephone calls from me or whether there was intermittent  
2 calls from the Tribunal.

3 Q. 215 Well, insofar as we can tell from the documents we have identified of  
4 Mr. Gilmartin, it's not always possible, but the one we were looking at 16062  
11:06:06 5 starts off by saying Thomas Gilmartin telephoned?

6 A. Yeah. I assume that's correct.

7 Q. 216 And --

8 A. But I am not 100 per cent sure if all of them were one way.

9 Q. 217 And began the conversation by enquiring whether the Tribunal was going to get  
11:06:20 10 anywhere and whether the recent comments at the public hearing by counsel would  
11 mean that Tribunal would not be able to proceed?

12 A. Yeah.

13 Q. 218 Why were you asking questions like that?

14 A. Pardon?

11:06:33 15 Q. 219 Why were you asking questions like of that of Tribunal counsel?

16 A. Well, I thought it was relevant to whether I should bother or not.

17 Q. 220 Did you think you had a vested interest in the Tribunal that you might for  
18 example be able to sue Mr. O'Callaghan and the bank on foot of it?

19 A. No.

11:06:51 20 Q. 221 Go to document --

21 A. I should have been able to actually, but that wasn't on my mind.

22 Q. 222 Would you go to document 16069, again another record of a telephone  
23 conversation, this is on the 27th November 1998, it's your 12th telephone  
24 conversation with the Tribunal, and again it starts off "Mr. Gilmartin  
11:07:24 25 telephoned me today?"

26 A. Yeah.

27 Q. 223 That's only three weeks after your previous call to the Tribunal?

28 A. That's correct.

29 Q. 224 And again if we go to document 16072, only three days later, on the 30th  
11:07:39 30 November, "Mr. Gilmartin," It says "Telephoned me again today" that me being

- 11:07:47 1 Mr. Hanratty. And again you provide further information to Mr. Hanratty on  
2 that occasion, two pages of notes on it?
- 3 A. That's what I had promised, yes.
- 4 Q. 225 That was your 13th call?
- 11:07:59 5 A. Whatever.
- 6 Q. 226 Then going to document 16074, again you telephone Mr. Hanratty, your 14th  
7 telephone call on the 1st December 1998, only two days later?
- 8 A. Yeah, that's possible.
- 9 Q. 227 Provide him with further information?
- 11:08:20 10 A. Yeah.
- 11 Q. 228 And at document 16075, your 16th telephone call on the 18th December 1998,  
12 again you telephone Mr. Hanratty and give him further information, isn't that  
13 correct?
- 14 A. That's correct.
- 11:08:43 15 Q. 229 And at that stage I think you say you ended your involvement with the Tribunal,  
16 isn't that right?
- 17 A. Yeah, possibly.
- 18 Q. 230 If we go to the next telephone call, it's 16071, sorry 16077, my apologies.  
19 The 18th December 1998, this is your 17th call and you say, it says  
11:09:24 20 "Mr. Gilmartin telephoned me" the me being Mr. Hanratty again, "At 12.10 pm.  
21 He said that he had decided to end his involvement with the Tribunal?"
- 22 A. Yeah.
- 23 Q. 231 And that you had given the matter a lot of thought, you had a family meeting  
24 and it was their view that you were making a spectacle of yourself and that it  
11:09:47 25 would achieve nothing and we discussed that on Thursday?
- 26 A. Yeah.
- 27 Q. 232 But then if we go to the next document, 16078, by the 26th January 1999, a  
28 month later, the Tribunal is telephoning you on this occasion, looking for  
29 certain documents, isn't that correct?
- 11:10:15 30 A. Yeah, well I assume that's correct.

- 11:10:19 1 Q. 233 So can we take it that your episode of not cooperating with the Tribunal had  
2 now ended over the Christmas period and you were back cooperating with the  
3 Tribunal again?
- 4 A. No, I promised the Tribunal I'd pass on any information, that didn't mean to  
11:10:37 5 say that I actually was cooperating or coming to Dublin to give evidence.
- 6 Q. 234 No, we seem to be going backwards, Mr. Gilmartin. On the previous document  
7 that we looked at, 16077, if we look at it again, it starts off by saying,  
8 after saying you had telephoned Mr. Hanratty "He said that he had decided to  
9 end his involvement with the Tribunal?"
- 11:11:01 10 A. Yes.
- 11 Q. 235 Now, it doesn't say I have decided not testify, it says "I am going to end my  
12 involvement" and we find you back involved with the Tribunal again the  
13 following month. So my question is, has your decision to end your involvement  
14 altered over the Christmas period?
- 11:11:21 15 A. Well, it depends.
- 16 Q. 236 On?
- 17 A. Sometimes - I don't know whether it was that January, but Mr. Flynn went on  
18 television changed all that.
- 19 Q. 237 And in --
- 11:11:38 20 A. Whether it was that Christmas or the following Christmas.
- 21 Q. 238 In document 16078 that we were looking at, your 18th telephone conversation,  
22 Mr. Hanratty records that he telephoned you in connection with the letters that  
23 he had previously asked you to send to the Tribunal. Now what letters had he  
24 previously asked you to send to the Tribunal?
- 11:12:05 25 A. I can't remember exactly.
- 26 Q. 239 Eight years ago, less than eight years ago and you can't remember?
- 27 A. No, I can't remember what letters he was referring to.
- 28 Q. 240 And he goes on to say --
- 29 A. If you were able to remind me then I will be able to enlighten you a bit  
11:12:25 30 further, but at the moment I don't remember which letters he is referring to.

- 11:12:28 1 Q. 241 He goes on to say "I told him that we urgently required him to inform the  
2 Tribunal by letter that Noel Smyth & Partners were no longer acting as his  
3 solicitors. He had previously informed me that this was the case. I also told  
4 him that we were anxious to obtain his documents from Noel Smyth & Partners?"
- 11:12:48 5 A. Well, there you are, that's probably what he needed was confirmation that Mr.  
6 Smyth was no longer acting.
- 7 Q. 242 But you never sent the letter saying that Mr. Noel Smyth was no longer acting?  
8 A. I don't know whether I did or not. I don't remember if I did or whether Noel  
9 Smyth notified them.
- 11:13:06 10 Q. 243 Is this your idea of cooperating with the Tribunal, that when counsel asks you  
11 for a simple letter to confirm what you said orally that you have not to this  
12 date sent in the letter saying that Noel Smyth is no longer acting, a simple  
13 one line letter?  
14 A. I assumed that Mr. Smyth would have notified them.
- 11:13:25 15 Q. 244 And what's this about --  
16 A. Which would have been satisfactory as far as the Tribunal, I assume would have  
17 been satisfactory as far as the Tribunal was concerned.
- 18 Q. 245 Well, the Tribunal also wanted your documents from the Noel Smyth, what were  
19 those documents?  
20 A. I'm not quite sure what they are referring to.
- 21 Q. 246 Well, did you say to Mr. Hanratty that you weren't sure what they were  
22 referring to, because if you did this record doesn't note it?  
23 A. Mr. Hanratty would have told me at the time, at this point I don't remember  
24 what you're talking about.
- 11:13:58 25 Q. 247 Well, what documents had you given Noel Smyth?  
26 A. I had very little documents to give anybody at the time.
- 27 Q. 248 So why didn't you say back to Mr. Hanratty here that --  
28 A. Mr. Hanratty already knew that the previous, '96, long before the Tribunal that  
29 we had destroyed nearly, used the, all the Dublin papers on a Guy Fawkes  
11:14:31 30 bonfire in '96.

- 11:14:32 1 Q. 249 I see. That's why Mr. Hanratty so was asking you for the documents because you  
2 had destroyed them all, is that it?
- 3 A. Yeah, bits and pieces that I found, small bits and pieces.
- 4 Q. 250 There are four pages of information that you then proceed to give Mr. Hanratty  
11:14:48 5 in this your 18th telephone conversation on the 26th January 1999, is that  
6 somebody who is not cooperating with the Tribunal at this point?
- 7 A. I was quite happy to pass on any information to the Tribunal that I had,  
8 whether I was cooperating with them legally or not.
- 9 Q. 251 Now, you didn't write the letter telling the Tribunal that Noel Smyth was no  
11:15:14 10 longer acting for you, but if we have 16082, you send in a handwritten letter  
11 to the judge receiving, referring to a telephone call that you received from a  
12 newspaper reporter on the 21st November, and this letter is dated the 15th  
13 February 1999, isn't that correct?
- 14 A. That's correct.
- 11:15:45 15 Q. 252 So that's essentially the second statement that you produced, the first being  
16 the Noel Smyth statement, together with the affidavit. And if you then go to  
17 document 16083, on the 15th February 1999 you are back in telephone contact  
18 again with Mr. Hanratty, Counsel for the Tribunal, that's your 19th telephone  
19 conversation with the Tribunal. And on this occasion you provide another three  
20 pages of information, isn't that correct?
- 11:16:17 20 A. Well, I assume it is, if it's --
- 21 Q. 253 And then document 16086 some four months later, on the 1st June 1999 you seem  
22 to have telephoned Mr. Hanratty the previous week and presumably he wasn't able  
23 to take your telephone call because he records in this, your 20th telephone  
24 conversation, that he telephoned you, returning your call of the week before  
11:16:50 25 last. And there then follows a page of information that you provide to  
26 Mr. Hanratty.  
27  
28  
29 Then at document 16088, there is a telephone conversation only two days later  
11:17:21 30 in which Mr. Hanratty again telephones you and you provide further information

11:17:28 1 to him that runs over that and the next page?

2 A. Yeah.

3 Q. 254 And again on the following day, the 4th June 1999 on page 16029, sorry 16090 it

4 says "I had two long telephone conversations today with Tom Gilmartin" and

11:18:07 5 that's Mr. Hanratty writing. Do you remember was it you rang Mr. Hanratty on

6 that occasion, those occasions, or was it he rang you?

7 A. I don't remember.

8 Q. 255 And there follows a two page record of what you said in those conversations,

9 and even if we call those one telephone contact, that was your 22nd telephone

11:18:29 10 contact with the Tribunal?

11 A. Yeah.

12 Q. 256 Then on page 16093, three weeks later, and it's described as Wednesday 26th

13 June, but that seems to be a typographical error because Wednesday we are told

14 is the 23rd June, and again it's you telephoned Mr. Hanratty on that occasion

11:18:54 15 giving him a further piece of information, this time about a meeting in

16 relation to Joe Burke?

17 A. That's correct.

18 Q. 257 And then at page 16094 is a memorandum of a telephone conversation that you had

19 this time with Mr. Gallagher, and it appears to be on Monday and again that's

11:19:26 20 seems to be a typographical error it should be 28th June, Mr. Gallagher records

21 that he received a telephone call from you?

22 A. Yeah.

23 Q. 258 So that's only some two or three days after your two telephone conversations

24 with Mr. Hanratty, you are now ringing Mr. Gallagher?

11:19:48 25 A. Yeah.

26 Q. 259 Giving him further information?

27 A. Yeah.

28 Q. 260 Which he records over that and the next page. And there is then a meeting that

29 you attend on the 8th July 1999 and it can be found at document 16096, you have

11:20:11 30 new solicitors acting for you now, isn't that correct?

- 11:20:14 1 A. That's correct.
- 2 Q. 261 Eugene F Collins Solicitors?
- 3 A. That's correct.
- 4 Q. 262 When did you retain them?
- 11:20:19 5 A. I can't remember exactly what date, but I assume it was around the July period.
- 6 Q. 263 Well, presumably it must have been well in advance of the meeting of the 8th
- 7 July if they were to have the opportunity of meeting with you, getting
- 8 information and reading themselves into the material?
- 9 A. Sorry?
- 11:20:39 10 Q. 264 Presumably it must have been well before the 8th July that you retained them if
- 11 they were in a position to turn up to a meeting on the 8th July 1999, they
- 12 would have had to prepare themselves for that meeting?
- 13 A. I'm not, I can't recall exactly whether I met them first time on the 8th July
- 14 or not.
- 11:20:58 15 Q. 265 So you cannot recall whether or not, having retained a new firm of solicitors,
- 16 Eugene F Collins in Dublin, whether or not you met them and gave them
- 17 instructions before you turned up to a meeting with the Tribunal on the 8th
- 18 July?
- 19
- 11:21:14 20 CHAIRMAN: No, no, he said before that day. You will see the meeting starts at
- 21 1 pm.
- 22 Q. 266 That's correct, Judge. Can you recall whether or not you turned up to a
- 23 meeting with Eugene F Collins and gave them instructions before the day when
- 24 you met Tribunal counsel?
- 11:21:33 25 A. I can't recall exactly whether I met them prior to that or not, at this point
- 26 in time.
- 27 Q. 267 Eugene F Collins had their offices in Dublin, isn't that so?
- 28 A. That's correct.
- 29 Q. 268 Before you turned up to a meeting in Luton, can you recall whether you attended
- 11:21:49 30 the offices of Eugene F Collins in Dublin?

11:21:53 1 A. No, I never attended the offices of Eugene F Collins, I was never there. They  
2 came, a Ms. Susan Ryan came to Luton.  
3 Q. 269 And where did she meet you in Luton?  
4 A. She would have met me at the Strathmore Hotel.  
11:22:12 5 Q. 270 Is that different to the Thistle Hotel?  
6 A. Same one, Thistle.  
7 Q. 271 Did she meet with you there on the morning of the meeting with Tribunal  
8 counsel?  
9 A. It's more than likely, yes.  
11:22:21 10 Q. 272 And are you saying that a meeting was set up with the Tribunal without you  
11 having even met your solicitors before setting up that meeting?  
12 A. I just told you that I don't remember whether Ms. Collins came to see me in  
13 Luton, I can't recall exactly, she may well have done, prior to that meeting.  
14 Q. 273 O.k. That was a lengthy meeting that you had with the Tribunal?  
11:22:45 15 A. Yeah.  
16 Q. 274 Lasted four and a half hours?  
17 A. Pardon?  
18 Q. 275 It lasted four and a half hours?  
19 A. Yeah.  
11:22:53 20 Q. 276 With your solicitors there?  
21 A. Correct.  
22 Q. 277 And you had in fact two solicitors at that meeting on your behalf, not one,  
23 isn't that correct?  
24 A. Two solicitors from Eugene F Collins.  
11:23:12 25 Q. 278 Yes.  
26 A. Yes, it's possible. Yes, there was some body with Ms, I can't recall the name,  
27 but with Ms. Ryan.  
28 Q. 279 And it was the two solicitors, yourself and Mr. Hanratty who were present at  
29 that meeting?  
11:23:29 30 A. That's correct.

- 11:23:29 1 Q. 280 And approximately, in fact 13 pages of record was kept of what you said at that  
2 meeting?
- 3 A. Yeah.
- 4 Q. 281 And again I take it you would accept that at that your very first meeting with  
11:23:44 5 the Tribunal counsel at which your new solicitors were present, it was  
6 important to give a full and accurate account of the relevant matters to the  
7 Tribunal?
- 8 A. Yes, as I recollected.
- 9 Q. 282 Then on the 25th November 1999 if we go to document 16108, there is a record of  
11:24:13 10 your 25th telephone contact with the Tribunal. On this occasion you are again  
11 telephoning Mr. Hanratty and a large part of the first page of that, two and a  
12 half page record is redacted, so we don't know what's said in it. Now were  
13 Eugene F Collins still acting for you at this stage in November 1999?
- 14 A. I assume so, yes.
- 11:24:44 15 Q. 283 Why did you make direct contact with the Tribunal and not go through Eugene F  
16 Collins?
- 17 A. I didn't see any problem with doing that.
- 18 Q. 284 Did Eugene F Collins know that you were making direct contact with the  
19 Tribunal?
- 11:24:52 20 A. Possibly, they were aware.
- 21 Q. 285 And then going to document 16111, you were back in contact with the Tribunal  
22 again, only four days later, again we can't see most of what's on the first  
23 page of that three page record, but can we take it that you would have rung  
24 Mr. Hanratty?
- 11:25:16 25 A. Sorry? I would have --
- 26 Q. 286 You would have telephoned Mr. Hanratty. Mr. Hanratty would not have --
- 27 A. Does it say that?
- 28 Q. 287 It doesn't say it but Mr. Hanratty wouldn't have been phoning you directly  
29 when you had solicitors on record?
- 11:25:32 30 A. I'm not quite sure, but I assume I possibly did ring.

11:25:35 1 Q. 288 This is the conversation in which you made the allegations about offshore  
2 accounts?  
3 A. Yeah, I had a phone call.  
4 Q. 289 And then again only two days later on the 1st of December 1999, document 16114,  
11:25:52 5 we have your 27th telephone contact with the Tribunal, again with Mr. Hanratty  
6 and again it's you telephone him?  
7 A. Yeah.  
8 Q. 290 And again on this occasion you are giving him further information and this time  
9 you are giving information about the meeting at Finnstown House?  
11:26:14 10 A. Yeah.  
11 Q. 291 And you are telling him about this meeting at which Mr. Lawlor is alleged to  
12 have turned up, talking about mad dog country?  
13 A. Yeah.  
14 Q. 292 This is the first time in your 27th telephone conversation that you tell the  
11:26:30 15 Tribunal anything about this?  
16 A. Well, it depends, as I recall, I am reasonably certain that I had told them up  
17 front in conversation.  
18 Q. 293 Is this another piece of information that you got from an anonymous caller?  
19 A. I have witnesses to that meeting, Mr. Sreenan. I have witnesses, and as a  
11:26:52 20 matter of fact there is about four, there is three anyway, witnesses that who  
21 were present.  
22 Q. 294 Why were you drip feeding --  
23 A. Other than myself.  
24 Q. 295 Why were you drip feeding information into the Tribunal in this way, is that a  
11:27:08 25 way to treat a Tribunal with which you are cooperating?  
26 A. I treated the Tribunal with respect. I promised to pass on any information  
27 that I recalled.  
28 Q. 296 Then if we go to document 16116?  
29 A. And I am reasonably certain that I did, in other conversation, talk about the  
11:27:30 30 Finnstown House debacle.

- 11:27:32 1 Q. 297 Well, if this is the first occasion when you tell the Tribunal --
- 2 A. I don't think the first occasion.
- 3 Q. 298 About Finnstown House?
- 4 A. It might be the first occasion they record it had but it's not the first
- 11:27:44 5 occasion I told them.
- 6 Q. 299 You are not suggesting now, Mr. Gilmartin that professional counsel who are
- 7 there to keep a record of things that you have told them, have heard a piece of
- 8 information like this and didn't keep a record of it, is that what you are
- 9 saying?
- 11:27:54 10 A. I don't know.
- 11 Q. 300 Document which we see on the screen 16116, this is your 28th telephone contact
- 12 with the Tribunal, and again it's you telephone and it's a week later, the 8th
- 13 December 1999, and again you give additional information to the Tribunal, isn't
- 14 that correct?
- 11:28:22 15 A. That's correct.
- 16 Q. 301 And it's information going back to 1991 that you are giving them on that
- 17 occasion?
- 18 A. I assume so.
- 19 Q. 302 And then if we go to document 16118, your 29th telephone contact, again it's
- 11:28:48 20 you telephone and again it's Mr. Hanratty that you telephone and you give
- 21 further information that's now recorded over the next two pages?
- 22 A. That's correct.
- 23 Q. 303 If we go to document 16120, again it seems you are in telephone contact with
- 24 Mr. Hanratty on the 21st February 2000, this is your 30th telephone contact,
- 11:29:19 25 and again you are giving him further information which runs for the next two
- 26 and a half pages, isn't that correct?
- 27 A. That's correct.
- 28 Q. 304 Did your solicitors know that you were in this regular telephone contact with
- 29 Mr. Hanratty?
- 11:29:38 30 A. I am not aware, I am not sure if they were, I certainly didn't ask them to.

- 11:29:49 1 Q. 305 When was it that A and L Goodbody were retained on your behalf and that you  
2 ceased to have Eugene F Collins acting for you?
- 3 A. Yeah, Susan Ryan, Susan Ryan was appointed Registrar at the time of the Harry  
4 Whelehan affair or whatever that was, and she was appointed Registrar and she  
11:30:16 5 was no longer able to act.
- 6 Q. 306 What do you mean she was appointed at the time of the Harry Whelehan affair?
- 7 A. It was something to do with someone had to resign and she was appointed  
8 Registrar.  
9
- 11:30:33 10 CHAIRMAN: She was appointed County Registrar in Dublin.
- 11 Q. 307 She was appointed County Registrar?
- 12 A. As far as, I think so.
- 13 Q. 308 But Ms. Ryan was not the only solicitor in Eugene F Collins?
- 14 A. Pardon? Well, Ms. Ryan was acting for me.
- 11:30:59 15 Q. 309 But there were plenty other solicitors?
- 16 A. She was the one that was involved, for the brief period that Eugene F Collins  
17 acted.
- 18 Q. 310 So you then went to, you then went to A & L Goodbodys?
- 19 A. No, I didn't.
- 11:31:03 20 Q. 311 Well, what happened?
- 21 A. Eugene F Collins sent another gentleman called McCormack to meet with me.
- 22 Q. 312 Yes.
- 23 A. And his advice to me, I didn't take too kindly to it.
- 24 Q. 313 Right.
- 11:31:23 25 A. So I decided that I would no longer use Eugene F Collins.
- 26 Q. 314 Right. And was Mr. McCormack a solicitor with Eugene F Collins?
- 27 A. Yes, I believe so, I think it was Mr. McCormack, yes. I had only one meeting  
28 with him and I didn't like what I was hearing so I decided I would --
- 29 Q. 315 What did you hear that you didn't like?
- 11:31:50 30 A. I'm not going to repeat it here.

11:31:52 1  
2 CHAIRMAN: That could be advice from a solicitor.

3 Q. 316 Well, it's a matter that the witness has chosen to enter into Chairman, I would  
4 submit I'm entitled to --

11:32:03 5 A. It's a reason.  
6  
7 CHAIRMAN: Wait now. He said the reason why he didn't stay with Eugene F  
8 Collins was that he didn't like what Mr. McCormack was telling him.

9 Q. 317 Yes.

11:32:12 10  
11 CHAIRMAN: Now he can't be forced to disclose what advice, if it was advice, he  
12 was receiving from his solicitor.

13 Q. 318 Can I just press this or make a little submission to you Chairman, firstly  
14 there is no evidence so far that what Mr. McCormack said to him was legal  
11:32:36 15 advice, he simply didn't said he didn't like what he was hearing from his  
16 solicitor. Secondly, if there is privilege attached to it on the basis it was  
17 legal advice the privilege is that of a witness and it's his to waive and he  
18 should be given the opportunity to decide whether or not he is going to waive  
19 it.

11:32:55 20  
21 Thirdly, on previous occasions this witness has testified to legal advice that  
22 he has been given by other solicitors.  
23

24 CHAIRMAN: All right. Well Mr. Gilmartin the, what Mr. McCormack told you, was  
11:33:06 25 that advice or was it - was it legal advice?

26 A. No, it was a suggestion he made to me.  
27

28 CHAIRMAN: Well, it wasn't legal advice?  
29

11:33:17 30 MR. RYAN: Judge, may I make a comment? It may be an appropriate time to take

11:33:23 1 a break at the moment in order for me to assess and advise my client on the  
2 waiver of professional legal privilege which he is being asked to do at this  
3 moment.

4  
11:33:34 5 MR. SREENAN: I don't think it would be an appropriate time to take a break  
6 until we establish whether or not this is legal advice. If it is legal advice  
7 then certainly Mr. Burke can have the opportunity of advising on --

8  
9 CHAIRMAN: Mr. Gilmartin, was this legal advice that you were being given or  
11:33:47 10 was it something other than legal advice, even though it was coming from a  
11 solicitor?

12 A. He introduced himself, we had just a conversation, but I am not going to repeat  
13 it here, except I am forced to, but I am not going to repeat it here, because  
14 it can have repercussions for other people.

11:34:10 15  
16 CHAIRMAN: Well, if it's not legal advice then you have to disclose it. Now if  
17 it involves naming people that have not been named here already you can  
18 certainly, for the moment write down.

19  
11:34:23 20 MR. RYAN: Judge, may I make a submission? I think Mr. Gilmartin is ill  
21 equipped to define whether or not, since he has no legal background.

22  
23 CHAIRMAN: In fairness Mr. Gilmartin seems quite adamant that it is not advice,  
24 he hasn't expressed any doubt as to whether it was advice. My understanding of  
11:34:41 25 what Mr. Gilmartin was told us is that it was some information.

26 A. No, it was not information.

27  
28 JUDGE KEYS: That's extraordinary.

29  
11:34:52 30 MR. RYAN: Judge, Mr. Gilmartin had retained Eugene F Collins.

11:34:57 1 A. He did not impart information.

2

3 MR. RYAN: There is no question at the moment but that Eugene F Collins was his  
4 retained solicitors at this point, in any conversation which he had with his

11:35:07 5 retained solicitors at this point must be treated prima facie.

6

7 CHAIRMAN: Well, Mr. Gilmartin told us that Ms. Ryan was replaced by

8 Mr. McCormack and the reason Mr. Gilmartin says he didn't continue with

9 Mr. McCormack was he didn't like something that he had received, that he told

11:35:27 10 him. I think it's appropriate that Mr. Gilmartin should be allowed take, talk

11 to his solicitor because we could be talking about advice and we could be

12 forcing him to, inappropriately, to disclose.

13

14 MR. RYAN: It's also my submission judge that Mr. McCormack was a solicitor in

11:35:48 15 Eugene F Collins and Eugene F Collins was a retained solicitor at that point.

16

17 MR. SREENAN: The fact that Mr. McCormack was a solicitor is irrelevant to the

18 issue, he has to be a solicitor for legal advice to arise as a privilege.

19

11:35:58 20 CHAIRMAN: But I think it's appropriate that Mr. Gilmartin should be, have the

21 opportunity of discussing with his solicitor whether in fact he was being given

22 advice on this occasion by Mr. McCormack. And clearly if it's not advice then

23 he will be asked by the Tribunal to reveal what was said, if that involves

24 names that are, have not been referred to in this module then he can avail of

11:36:27 25 an opportunity to write down the names and these will be shown to you.

26

27 MR. SREENAN: Yes, I simply observe Chairman that obviously the witness is

28 under cross-examination and I know Mr. Burke will be extremely careful what he

29 says to him.

11:36:41 30

11:36:41 1 CHAIRMAN: I expect so. I expect that.

2

3 MR. SREENAN: Sorry Mr. Ryan, I keep on calling my colleague Mr. Burke for some  
4 reason.

11:36:50 5

6 MS. DILLON: I think Mr. Sreenan should know that I don't think that the  
7 Tribunal has ever enforced the rule that solicitors and counsel cannot talk to  
8 their clients when they are being cross-examined. It was always the position  
9 here that any solicitor and counsel can talk freely to their client in the  
10 course of direct examination or cross-examination.

11:37:09 10

11

12 CHAIRMAN: Well, we have decided to allow him talk to his solicitor so we will  
13 rise for about 15 minutes.

14

11:37:27 15

**THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK.**

16

**AND RESUMED AGAIN AS FOLLOWS:**

17

18 Mr. Ryan: Judge, I had a consultation with my client in the break, took  
19 advantage of the break to do that, and I am of the view and mindful of my  
20 obligation to my colleagues and Tribunal, I consulted with my Senior Counsel  
21 Mr. O'Neill, we are both of the view that the conversation had with  
22 Mr. McCormack contained legal advice and is thus, we submit, subject to legal  
23 privilege.

12:00:26 20

21

22

23

24

12:00:43 25

CHAIRMAN: All right.

26

27 MR. SREENAN: Well, I think there are a number of issues arising out of that  
28 Chairman. Firstly, Mr. Ryan has been careful to say that the conversation  
29 contained legal advice which implies there was more in the conversation than

12:00:59 30

legal advice. My first submission would be that I am entitled to probe that

12:01:03 1 which was not legal advice. My second submission is, whether or not it did  
2 contain legal advice is irrelevant if Mr. Gilmartin is prepared to waive the  
3 privilege, I am quite happy for him to write down the names of persons that  
4 have not already been involved in this Tribunal in a piece of paper that can be  
12:01:19 5 simply handed in to the Tribunal and they can be referred to by letter and that  
6 may affect his decision as to whether or not to waive.

7  
8 CHAIRMAN: What I was going to suggest, we will allow Mr. Gilmartin talk to his  
9 senior counsel between now and Thursday because we are not sitting tomorrow,  
12:01:34 10 but what I will suggest, what we will I think suggest at that stage if either,  
11 if it is not legal advice or if it includes legal advice and Mr. Gilmartin  
12 waives privilege in relation to that, or in respect of that portion of it which  
13 isn't legal advice.

14  
12:01:52 15 If it he does insist on maintaining privilege we would ask that he would write  
16 down briefly the answer to the question as to what was said to him by  
17 Mr. McCormack and that would be, we can then make a decision. We would  
18 envisage showing that document and if necessary then, if there are people named  
19 in that who are not aware of anything untoward that might be said about them,  
12:02:27 20 if such is the case, then we would restrict the use of that information until  
21 such time as they have been notified. All right?

22  
23 MR. SREENAN: Yes, Chairman, I am happy to proceed on that basis.

24  
12:02:43 25 CHAIRMAN: All right.

26  
27 MR. SREENAN: Mr. Gilmartin, I want to bring you back for a moment, before  
28 moving on to the next issue that I was going to address, to the meeting that  
29 took place in Luton on the 8th July 1999, it's 16096. And remember I, asking  
12:03:15 30 you about whether or not you had the opportunity of speaking to Eugene F

12:03:21 1 Collins and giving them instructions before the day of that meeting, and I  
2 think your evidence ultimately was that you believed that you didn't, but that  
3 you met with them on the morning of the meeting at the Strathmore hotel, do you  
4 remember that?

12:03:37 5 A. Yes.

6 Q. 319 And I want to then bring you back to document 16089, this is the second page of  
7 telephone conversation number 21 of the 3rd June 1999, now this is over a month  
8 previously, and there we see in the third last paragraph you telling  
9 Mr. Hanratty that Susan Ryan is trying to get Machen's Solicitors to look at  
10 your Revenue file under the Freedom of Information Act. Mr. Hanratty says that  
11 he will telephone Ms. Ryan to get her to expedite this and that you mentioned  
12 that Ms. Ryan had spoken to Richard Foreman, but that you didn't think that she  
13 had received any documents from him.

14  
15 12:04:38 Now isn't it clear from that, Mr. Gilmartin that over a month before your  
16 meeting in Luton that Ms. Ryan had already received certain instructions from  
17 you and you had clearly been talking to her because you knew what she was doing  
18 on foot of those instructions?

19 A. I said I didn't remember exactly when I met her first.

12:04:57 20 Q. 320 But obviously --

21 A. You are referring to one particular meeting with the Tribunal.

22 Q. 321 But you had obviously met her or spoken to her more than a month prior to that  
23 meeting with the Tribunal in Luton?

24 A. That's correct.

12:05:12 25 Q. 322 And you didn't remember it when you were testifying a moment ago, before the  
26 Tribunal?

27 A. No, I didn't remember exactly, you know, what the sequence of events were.

28 Q. 323 It's not just a question of the sequence of events Mr. Gilmartin, you didn't  
29 remember speaking to Ms. Ryan to give her instructions before the morning of  
12:05:30 30 your meeting in Luton?

- 12:05:32 1 A. Well, I would assume that I would have been talking to her because she would be  
2 looking for some information as to what it was all about.
- 3 Q. 324 Well, you must have given her a fair --
- 4 A. But I did say I didn't remember exactly which meeting or when it took place.
- 12:05:51 5 Q. 325 And you must have given her fairly detailed instructions to say that she was  
6 going to get on to Machen's to see if she could get access to your Revenue  
7 file?
- 8 A. Well --
- 9 Q. 326 You must have given her detailed instructions?
- 12:06:16 10 A. I would have given her, yes, I am sure I would.
- 11 Q. 327 You must have given her information about Mr. Forman and how to contact him?
- 12 A. Yeah.
- 13 Q. 328 And she must have had enough information that she be able to engage in contact  
14 with the Tribunal because Tribunal counsel had said he had telephoned her?
- 12:06:33 15 A. That's correct, that's correct.
- 16 Q. 329 You didn't remember any of that when discussing the meeting this morning of the  
17 8th July 1999?
- 18 A. No, you mentioned a specific meeting on the 8th July, on the 8th July I  
19 couldn't remember from this distance whether I met her in June, July or when it  
20 was.
- 12:06:49 21 Q. 330 Well, you couldn't remember, Mr. Gilmartin whether you had met your own  
22 solicitor and given her instructions prior to the day of that meeting?
- 23 A. Well, I would assume that she would not be in a position to meet with the  
24 Tribunal without being prior briefed.
- 12:07:10 25 Q. 331 When did you retain --
- 26 A. Which would be normal practice for any solicitor.
- 27 Q. 332 When did you retain A & L Goodbodys?
- 28 A. Pardon? I'm not quite sure.
- 29 Q. 333 You don't remember that either?
- 12:07:22 30 A. No, I don't remember exactly what date that was, it was around the time of

12:07:29 1 Susan Ryan getting appointed, some time after Susan Ryan getting appointed as  
2 Registrar or some, to some job or promotion.

3 Q. 334 We know that Mr. Smyth had acted for you previously in the litigation, that was  
4 your contact with him?

12:07:45 5 A. Yeah.

6 Q. 335 What led to you A & L Goodbody Solicitors?

7 A. Pardon? I knew of A & L, I had dealings with Mr. Bruncker of A & L Goodbody's  
8 years before.

9 Q. 336 Did you give them detailed instructions?

12:08:01 10 A. Pardon? I assume, yes, I had meetings with Mr. Joe Kelly on numerous  
11 occasions, many occasions in Luton.

12 Q. 337 And they were in contact with the Tribunal on your behalf?

13 A. That's correct.

14 Q. 338 And on the 27th March 2000 they sent a two page letter to the Tribunal, 16123  
12:08:29 15 and if we can go on to 16124 as well? And we can see that there are eight  
16 numbered paragraphs there, going back to page 16123, clearly Mr. Hanratty has  
17 raised certain queries with A & L Goodbody on your behalf, eight topics in  
18 particular we're only allowed see the reply to one paragraph, isn't that  
19 correct? Only one of those eight paragraphs is not redacted.

12:09:07 20

21 MR. QUINN: Sorry Sir, perhaps I should clarify a matter in relation to the  
22 redactions, just a matter for persons who might not be familiar with the  
23 redaction system. As you will see on screen there is a number given and a  
24 letter beside the number and the redaction letter here is a letter C. Letter C  
12:09:28 25 relates to redactions which were permitted by Judge O'Neill following on the  
26 O'Callaghan case and.

27

28 In the case of the letter C, it is a redaction which is recorded as follows  
29 "Nothing in this redaction is recorded or transcribing anything said either  
12:09:43 30 verbally or in writing by Mr. Tom Gilmartin" so just to clarify that matter,

12:09:49 1 this might be an appropriate time to clarify it. The matters redacted here do  
2 not record anything said by Mr. Gilmartin as appears from the fact that it's a  
3 redaction number C and it's a permissible redaction. Sorry for interrupting My  
4 Friend's cross-examination but it's a matter I think I should clarify.

12:10:08 5  
6 CHAIRMAN: All right.

7  
8 MR. SREENAN: I'm grateful for that.

9  
12:10:12 10 Go then to 16125, on the 28th June 2000 and this is your 31st telephone contact  
11 with the Tribunal, you are again telephoning Mr. Hanratty, now why when you are  
12 on your third firm of solicitors at this stage, you have had Noel Smyth, Eugene  
13 F Collins, now A & L Goodbodys, why are you now again making direct contact  
14 with the Tribunal and drip feeding them further information?

12:10:47 15 A. Because that was hearsay information, not really directly -- some of it was  
16 hearsay information and I promised to pass on any information I got.

17 Q. 339 But that doesn't answer why you didn't pass it on to your solicitors and have  
18 them pass it onto the Tribunal.

19 A. I didn't see -- I didn't see any point in that.

12:11:14 20 Q. 340 And did your solicitors know that you were making contact directly with the  
21 Tribunal at this time?

22 A. I'm not quite sure if they did, possibly, maybe not, I don't know.

23 Q. 341 If we go to 16127, there is a long gap in your contacts with the Tribunal now  
24 of a year and a half, your 31st conversation was on the 28th June 2000, your  
12:11:52 25 32nd telephone conversation is on the 9th January 2002, and this time your  
26 telephoning Mr. Gallagher, Counsel. And you speak to him and give him further  
27 information which he records over the next page and a half, isn't that correct?

28 A. Well, I assume so, yes.

29 Q. 342 And then if we go to paragraph 16129, this is your 33rd telephone contact with  
12:12:29 30 counsel, a memorandum of a discussion between Pat Hanratty, SC and you and it

- 12:12:37 1 says, "Tom Gilmartin rang me in my offices today following the publication of  
2 the interim report of the Tribunal". And this is when you tell him all about  
3 your phone calls from a banker in England, you refer to the Starry O'Brien  
4 matter and it runs for some two and a half pages of notes?
- 12:12:56 5 A. Yeah.
- 6 Q. 343 Now those words there "Tom Gilmartin rang me in my offices" that's referring  
7 not to the Tribunal's offices, isn't that correct, but to Mr. Hanratty's  
8 private offices?
- 9 A. I don't know, it would have been the Tribunal, I'm sure.
- 12:13:16 10 Q. 344 Well, Mr. Hanratty had left the Tribunal something like a year prior to this  
11 telephone contact?
- 12 A. Well, I can't remember exactly.
- 13 Q. 345 But you must remember something like this, Mr. Gilmartin, you are taking the  
14 step of not ringing the Tribunal's offices, but tracking down in some way the  
12:13:37 15 private telephone number of a counsel to the Tribunal, who has left the  
16 Tribunal and is back in private practice, and you are ringing him giving him  
17 information. Now how did you come to do that? Why didn't you ring the  
18 Tribunal?
- 19 A. Well, Mr. Hanratty had been involved with the Tribunal from Day 1 and I was  
12:14:00 20 familiar with him, insofar as that I promised to pass on any information that I  
21 felt necessary.
- 22 Q. 346 But Mr. Hanratty was not involved with the Tribunal now and hadn't been  
23 involved for the best part of a year with the Tribunal?
- 24 A. Yeah.
- 12:14:16 25 Q. 347 You knew Mr. Gallagher from the Tribunal?
- 26 A. Yes.
- 27 Q. 348 Senior Counsel to the Tribunal?
- 28 A. Yeah.
- 29 Q. 349 He was still involved with the Tribunal at that stage?
- 12:14:25 30 A. Yeah.

- 12:14:25 1 Q. 350 You knew where the Tribunal's offices were?
- 2 A. I did, yeah.
- 3 Q. 351 You knew the Tribunal's telephone number?
- 4 A. Yeah.
- 12:14:31 5 Q. 352 Why did you ring counsel who was no longer with the Tribunal in his private  
6 offices to give him this information instead of ringing the Tribunal?
- 7 A. Because I had been familiar with Mr. Hanratty's involvement from Day 1.
- 8 Q. 353 But were you not familiar with Mr. Gallagher's involvement from Day 1?
- 9 A. I was yes, I may have rung Mr. Gallagher, but he may not have been available.
- 12:14:53 10 Q. 354 Can you remember whether you rang him and whether he was available or not?
- 11 A. I rang him a number of occasions, he wasn't available. One or two anyway.
- 12 Q. 355 Can you remember whether you rang him on this occasion?
- 13 A. I don't know, I can't remember.
- 14 Q. 356 If he was not available presumably you would have left a number and he would  
15 have telephoned you back?
- 12:15:10 16 A. Well, that's possible, yes.
- 17 Q. 357 Now why did you ring Mr. Hanratty whom you must have known had left the  
18 Tribunal at this stage?
- 19 A. Because I was familiar with Mr. Hanratty.
- 12:15:23 20 Q. 358 But what business do you think Mr. Hanratty had receiving information like this  
21 when he was no longer involved with the Tribunal?
- 22 A. I assumed he was still interested in passing on the information he asked me to  
23 give him in the first place.
- 24 Q. 359 Why should it be passed on, why not give it directly?
- 12:15:41 25 A. It depends on whether the person I asked for was available at the time.
- 26 Q. 360 But there are plenty of counsel in the Tribunal that you could have spoken to  
27 or could you have simply left a message?
- 28 A. I didn't know any of them.
- 29 Q. 361 What was so urgent about anything you told Mr. Hanratty in September 2002 that  
12:15:56 30 it wouldn't have waited for Mr. Gallagher when he was available?

- 12:15:59 1 A. Because there was an attempt to set me up.
- 2 Q. 362 Why --
- 3 A. By whoever.
- 4 Q. 363 By whoever. What do you mean by whoever?
- 12:16:09 5 A. Whoever hired Starry O'Brien.
- 6 Q. 364 The Starry O'Brien incident is an incident that goes back over a number of  
7 telephone conversations, why are you ringing Mr. Hanratty?
- 8 A. I was ringing him to inform him that it was a set up.
- 9 Q. 365 You are referring to Mr. Hanratty amongst other matters and including the  
12:16:37 10 Starry O'Brien. You are referring offshore payments that you were alleging  
11 were paid to certain politicians?
- 12 A. Yeah, that was a telephone calls I had to --
- 13 Q. 366 You were referring to tax designations, you were referring to Celia Larkin in  
14 that telephone conversation?
- 12:16:53 15 A. Oh no, that was, that particular information was connected with a journalist.
- 16 Q. 367 I didn't ask you who it was connected with. You were referring to that  
17 information in this telephone conversation?
- 18 A. That's correct, yeah. It was hearsay information to me.
- 19 Q. 368 Now when you told Mr, when you telephoned Mr. Hanratty presumably he told you  
12:17:15 20 that he was no longer involved with the Tribunal?
- 21 A. Yes, he did.
- 22 Q. 369 But you knew that already?
- 23 A. He would have told me, he would have told me I am sure.
- 24 Q. 370 So why didn't you put the phone down there and say fine I will contact the  
12:17:28 25 Tribunal?
- 26 A. Because I was familiar with Mr. Hanratty so I passed on the information I had  
27 to him.
- 28 Q. 371 Did he tell you to make contact with the Tribunal with this information?
- 29 A. He did, yes.
- 12:17:36 30 Q. 372 Why didn't you?

- 12:17:37 1 A. I possibly did, I am quite certain that I phoned Mr. Gallagher, I'm not sure if  
2 I did, but it's possible I did.
- 3 Q. 373 You are not sure if you did, it's possible if you did, there is no record that  
4 did you Mr. Gilmartin, is your memory for matters in 2002 --
- 12:17:56 5 A. I would have passed the information onto the Tribunal.
- 6 Q. 374 This is only five years ago, is your memory for matters in 2002 so bad that you  
7 do not know whether you did in fact pass this information directly to the  
8 Tribunal?
- 9 A. Certainly, I said previously that I had passed it onto the Tribunal.
- 12:18:11 10 Q. 375 There is no record of you having passed this information onto the Tribunal so  
11 your memory must again be defective on this?
- 12 A. No.
- 13 Q. 376 The only record --
- 14 A. I don't know. I am not 100 per cent sure, but I think there was some reference  
12:18:28 15 to the telephone conversation with the Tribunal in connection with the Starry  
16 O'Brien where I told them it was a set up.
- 17 Q. 377 The only record of this telephone conversation is a record which is clearly  
18 been created by Mr. Hanratty because it's on an entirely typescript to what we  
19 have seen before, and has clearly been passed on by Mr. Hanratty promptly to  
12:18:53 20 the Tribunal because it's included in the Tribunal records. So you didn't pass  
21 this information directly to the Tribunal, notwithstanding the fact that you  
22 knew Mr. Hanratty was no longer with the Tribunal and he advised to you do it?
- 23 A. And he what, sorry?
- 24 Q. 378 He advised you to do it.
- 12:19:07 25 A. He advised me to --
- 26 Q. 379 To pass this information directly to the Tribunal?
- 27 A. I am reasonably sure that I might have done, I don't know for sure. But if  
28 there is a note in there somewhere from a telephone record with Mr. Gallagher  
29 he would have been the only, probably one of the only other people I spoke to.
- 12:19:30 30 Q. 380 And presumably Mr. Hanratty told you not to be making further contact with him,

- 12:19:35 1 to make contact with the Tribunal instead?
- 2 A. I don't know.
- 3 Q. 381 You don't remember that either?
- 4 A. I think he did say he was no longer involved, so consequentially I would have
- 12:19:50 5 to contact someone.
- 6 Q. 382 But you didn't take that advice did you, because on the 3rd October there is a
- 7 telephone attendance by Mr. Gallagher, 16132, and it says "Telephone call from
- 8 Pat Hanratty" not from you, but from Pat Hanratty, "Who informed me of the
- 9 following" again the first paragraph, and first two lines of the second are
- 10 redacted, there is then further information that you appear to have given to
- 11 Mr. Hanratty?
- 12 A. Yeah.
- 13 Q. 383 So can we take it that you contacted Mr. Hanratty again on or about the 3rd
- 14 October 2002?
- 12:20:39 15 A. That's possible, yes.
- 16 Q. 384 Even though he advised you not to?
- 17 A. Yeah well, I was familiar with Mr. Hanratty over a period of years, as well as
- 18 the people who interviewed me.
- 19 Q. 385 Go back to the evidence you gave on Thursday, on another matter, and that
- 12:21:02 20 incidentally, Mr. Gilmartin is, appears 34 telephone contacts that you had with
- 21 the Tribunal in addition to your meetings, your affidavit, your various
- 22 statements over the years?
- 23 A. Yeah.
- 24 Q. 386 Go back to the evidence you gave on Thursday, if we can put up Thursday's
- 12:21:21 25 transcript, the 12th July, starting at question 132 which I think is on page
- 26 17.
- 27
- 28 JUDGE FAHERTY: Day 744, I think.
- 29 Q. 387 I can read this out to you, Mr. Gilmartin to expedite matters and you will have
- 12:22:24 30 simply have to take it from me what I am reading out is correct, I am sure

12:22:28 1 Mr. Ryan will correct me if I am reading it out incorrectly. At question 132 I  
2 asked you "What do you understand it to mean to say that somebody is tapped" do  
3 you remember that?

4 A. Yeah.

12:22:41 5 Q. 388 And the answer you gave was - we've got it now on the screen for you. The  
6 answer you gave was "Well, actually I put a different interpretation on it. He  
7 meant was my phones tapped?"

8 A. That's correct.

9 Q. 389 So what you were saying in response to that question was that you put a  
10 different interpretation on what Mr. Smyth had said to you?

11 A. That's correct, he was asking me if my telephones were tapped.

12 Q. 390 And you were then asked in document 16404 if we can have it, Mr. Flynn's note  
13 of, Mr. Flynn's note of telephone conversations with you, sorry I am just  
14 reading from the transcript now, no need to go to the document, just reading  
15 from the same transcript, question 133, "In document 16404 if we can have it,  
16 Mr. Flynn's note of it -- seems to be Mr. Flynn's note of a telephone  
17 conversation with you, says six lines down there "Noel Smyth told me I'm  
18 tapped" and your answer "Yeah, he meant phone tapped.

19  
12:23:29 20 I said "and you said my phones were tapped". You were asked "Could he have  
21 meant that the allegations that you were making indicated that you were tapped  
22 in the sense that you were deluded, and your answer was "No, it referred to  
23 telephone tapping. I put it to you you didn't say telephone tapping and your  
24 answer was "I didn't bother."

12:24:10 25  
26 That was in your conversation with Mr. Flynn. And I put it to you in question  
27 137 that in some 35 telephone conversations with counsel for the Tribunal you  
28 never said to them your telephone was tapped, you said "Actually I reported to  
29 the Tribunal my number was being redirected through a Dublin number from London  
12:24:28 30 when I rung my sisters and I did report that that to the Tribunal."

- 12:24:33 1  
2 Finally, it was put to you in the 35 or so telephone conversations you had with  
3 the Tribunal counsel, you have never made a complaint that your telephone was  
4 tapped. And your answer was "No, I asked them to check why at one stage a  
12:24:45 5 Dublin number was coming up when I'd ring my sisters from Luton. Now I was  
6 ringing on BT, British Telecom, they were on Eircom or Telecom Eireann at the  
7 time and a different number, a Dublin number was coming up on their phone when  
8 I'd ring them so I asked the Tribunal look into that". You remember that  
9 cross-examination in your evidence last week?
- 12:25:04 10 A. I do, yes.
- 11 Q. 391 Now can I go back to an earlier piece of evidence you gave to Mr. Quinn, still  
12 in Quarryvale 2, this is the transcript for day 733 and it's page 56. It's  
13 question 266, if we can highlight that Mr. Quinn asked you "Well, did Mr. Smyth  
14 tell you you were tapped at any stage" and your answer then was "Well, if he  
12:25:42 15 didn't he should have done but he didn't tell me I was tapped. I was tapped to  
16 ever get involved in Dublin quite frankly. Actually a journalist ringing me up  
17 after Mr. Flynn's appearance on the - asking me was it true that I was unstable  
18 etc. etc. So I told him, yes I absolutely was and I said it was the fella's  
19 with white coats got me before I arrived in Dublin, anyway, sorry to digress  
12:26:08 20 but Mr. Smyth never said that to me". Now do you remember saying that in  
21 answer to a question from Mr. Quinn?
- 22 A. I do, I was just being -- in connection with a journalist ringing me and asking  
23 me was it true that I was unstable, I said of course I was. I had to be, to  
24 attempt to do anything in Dublin.
- 12:26:29 25 Q. 392 O.k, so can we just get this clear on the record now, at the time of The Late  
26 Late Show you informed a solicitor, or sorry, you informed a journalist who  
27 rang you that you were unstable?
- 28 A. No, I didn't say any such thing, I was joking.
- 29 Q. 393 What you said in evidence was that a journalist --
- 12:26:50 30 A. I said I had to be.

12:26:51 1 Q. 394 A journalist rang you up?  
2 A. To get involved in Dublin.  
3 Q. 395 Listen to me, Mr. Gilmartin. You said a journalist rang you up after  
4 Mr. Flynn's appearance on, that was presumably The Late Late Show, asking is it  
12:27:06 5 true that "I was unstable?" Now you are giving this evidence on oath, to the  
6 Tribunal?  
7 A. Yeah.  
8 Q. 396 On the 14th June last, and your answer was, you continued your testimony by  
9 saying "So I told him yes." You went to say "I absolutely was and I said it  
12:27:29 10 was the fella's with white coats got me before I arrived in Dublin?"  
11 A. Correct, that was a joke, Mr. Sreenan.  
12 Q. 397 And did you testify --  
13 A. Did you ever know a lunatic that knew he was?  
14 Q. 398 Did you testify to the Tribunal on oath, on the 14th June that Mr. Smyth never  
12:27:47 15 said that to you?  
16 A. He never said that I was deranged.  
17 Q. 399 No, can we highlight the last words of that answer? "But Mr. Smyth never said  
18 that to me."  
19 A. Yeah, what are you referring to?  
12:28:04 20 Q. 400 We are referring to the question that Mr. Quinn, Counsel for the Tribunal,  
21 asked you. He said "Well, did Mr. Smyth tell you you were tapped at any  
22 stage," and your answer was that "Mr. Smyth never said that to me."  
23 A. No, he asked me the question was I tapped, meaning telephone tapped.  
24 Q. 401 But you just told us a moment ago that Mr. Smyth did tell you that your  
12:28:35 25 telephones were tapped, or asked you were your telephones tapped?  
26 A. He asked me if my telephone was tapped.  
27 Q. 402 Well, here on the 14th June last, which isn't that long ago, Mr. Gilmartin for  
28 to you remember what you had said to the Tribunal, you were asked by Mr. Quinn,  
29 by reference to the very same line in the very same document which was  
12:28:57 30 Mr. Pdraig Flynn's note of a telephone conversation with you, did Mr. Smyth

12:29:02 1 tell you you were tapped at any stage?  
2  
3 And I must suggest to you there are two distinctive features of your answer to  
4 that question. Firstly, your understanding then of the term tapped was  
12:29:15 5 mentally unstable, and secondly you swore on oath that Mr. Smyth had never said  
6 to you that you were tapped.  
7 A. No, he never said such a thing to me. He asked me if I was tapped, was my  
8 telephones were tapped. He asked me the question.  
9 Q. 403 You gave that answer to Mr. Quinn in the context of undermining the accuracy of  
12:29:39 10 Mr. Flynn's note, suggesting that Mr. Flynn had noted down something that had  
11 never happened. The note said "Mr. Smyth told me I'm tapped." You were asked  
12 by Mr. Quinn, Counsel for the Tribunal had you ever been told that by Mr. Smyth  
13 and you said you didn't, thereby seeking to undermine the accuracy of the note?  
14 A. My phones were tapped.  
12:29:59 15 Q. 404 Only last Thursday then you say that Mr. Smyth did say to you that you were  
16 tapped but that what he meant was he was enquiring whether your phones were  
17 tapped?  
18 A. That's correct.  
19 Q. 405 But you had no difficulty when Mr. Quinn was asking you about the term tapped,  
12:30:16 20 of understanding what the phrase meant in the context of a conversation with  
21 Mr. Smyth, did you?  
22 A. I don't think Mr. Sreenan, that at any time that I considered myself to be  
23 unstable, in anyway, shape or form.  
24 Q. 406 The question --  
12:30:33 25 A. At any time, Mr. Sreenan, so if you are trying to get me to say that -- so if I  
26 made a joke about that I should have been locked up before I arrived in Dublin,  
27 somebody would have done me a favour, too true they would have done.  
28 Q. 407 Mr. Gilmartin, you know the question wasn't whether you regarded yourself as  
29 tapped, as you said yourself you don't know any lunatic who knows himself that  
12:30:58 30 he's a lunatic?

- 12:30:59 1 A. That's correct, so why would I be saying other than a joke, Mr. Sreenan?
- 2 Q. 408 The question was, did Mr. Smyth say to you that you were tapped in the sense
- 3 that you were mentally unstable?
- 4 A. No, he said was my phones tapped.
- 12:31:16 5 Q. 409 Can we go back to the first day when you gave evidence here Mr. Gilmartin, it
- 6 was in Quarryvale 1 and it was on the 3rd March 2004?
- 7 A. Yeah.
- 8 Q. 410 Do you remember swearing to tell the truth?
- 9 A. I do.
- 12:31:27 10 Q. 411 And you knew at that time that if you didn't tell the truth it would be
- 11 perjury?
- 12 A. I know if, on oath I never knowingly --
- 13 Q. 412 Do you remember testifying to the Tribunal that the first time you met
- 14 Mr. O'Callaghan was on the 7th December 1988?
- 12:31:48 15 A. That's correct.
- 16 Q. 413 And do you remember persistently testifying to the Tribunal that your first
- 17 meeting with Mr. O'Callaghan was in the Royal Dublin Hotel in O'Connell Street?
- 18 A. That's correct, in the room in the Royal Dublin Hotel.
- 19 Q. 414 And you knew at that stage that Mr. O'Callaghan's evidence was that his first
- 12:32:08 20 meeting with you was at the Airport Hotel?
- 21 A. No, Mr. O'Callaghan's first meeting was not at the airport, he had a meeting
- 22 with me at the airport after that, some time, I'm not quite sure how long after
- 23 that, but in the very first meeting was in the Royal Dublin Hotel in a bedroom.
- 24 Q. 415 Well, how well do you remember the location of that meeting, describe it to us
- 12:32:28 25 now?
- 26 A. What, the Royal Dublin Hotel?
- 27 Q. 416 Did you not hear my question? The room in the Royal Dublin Hotel, the location
- 28 of that meeting?
- 29 A. It's beside, it's in O'Connell Street.
- 12:32:40 30 Q. 417 We all, you can take it we all know where the Royal Dublin Hotel is, so you can

12:32:50 1 shortcut that bit.

2 A. Yeah.

3 Q. 418 Would you tell us where the room was and describe the room to us?

4 A. It was upstairs.

12:32:51 5 Q. 419 Where, what floor?

6 A. I'm not quite sure which floor, I think it was either the second or third

7 floor, but I think it was the second floor.

8 Q. 420 And how, how did you know where to go to for the meeting?

9 A. Because Mr. O'Callaghan met me in the foyer.

12:33:06 10 Q. 421 Right. And then did he escort you up to the room?

11 A. He escorted me up to the room, yes.

12 Q. 422 Was there anybody else there?

13 A. No.

14 Q. 423 And could you describe the room to us?

12:33:21 15 A. It was a normal bedroom.

16 Q. 424 So it was a room with a bed in it?

17 A. A room with a bed in it.

18 Q. 425 Not a meeting room?

19 A. No. It was a bedroom.

12:33:32 20 Q. 426 And can you remember when the meeting finished, what happened, did he see you

21 back down?

22 A. As far as I remember, back down to the door.

23 Q. 427 Did you use an elevator on the way going up?

24 A. Pardon?

12:33:46 25 Q. 428 Did you use an elevator on the way going up and coming back down?

26 A. I don't remember exactly.

27 Q. 429 Do you remember telling the Tribunal in your previous testimony that the very

28 first thing that happened at that meeting was that Mr. O'Callaghan told you

29 about the Lee Tunnel?

12:34:07 30 A. About?

- 12:34:09 1 Q. 430 The Lee Tunnel?
- 2 A. That's correct.
- 3 Q. 431 And that he told you --
- 4 A. He told me about a meeting. Number 1, that Mr. McSharry had told him about my
- 12:34:22 5 scheme and that he had met him and Mr. Haughey etc. in a hotel in Cork in
- 6 connection with the Lee Tunnel.
- 7 Q. 432 And do you remember telling the Tribunal that Mr. O'Callaghan had told you that
- 8 the original line of the tunnel had been altered to suit the Mahon site?
- 9 A. To suit the Mahon site.
- 12:34:51 10 Q. 433 And that he had been at a do I think the previous week in Cork for a launch of
- 11 the tunnel?
- 12 A. No, it was for the, it was not the launch of the tunnel, the tunnel had been
- 13 planned according to Mr. O'Callaghan for some time, under the Fitzgerald
- 14 government, so he was telling me how they managed to stall it until after the
- 12:35:22 15 election of 87. That they called for a public inquiry to stall it and there
- 16 was a proposal to put a bridge across and that Charlie wanted a bridge,
- 17 referring Mr. Haughey then, that he wanted the bridge because it was cheaper.
- 18 So he had an interest in this site he mentioned the Mahon site, I didn't know
- 19 anywhere in Cork, I had never been to Cork, never seen it before.
- 12:35:55 20 Q. 434 Did Mr. O'Callaghan make any reference to you about the launch of the Lee
- 21 Tunnel?
- 22 A. It was to launch the, to give the go ahead to build the Ring Road and the
- 23 tunnel.
- 24 Q. 435 Is that what your evidence is, that that's what he said to you?
- 12:36:10 25 A. As far as I remember, I can't exactly remember the exact words, they were
- 26 trying to get the South Ring Road and the tunnel off the ground.
- 27 Q. 436 And your evidence is that this man, whom you have never met before, who invites
- 28 to you a meeting, the first thing he does is he starts telling you something
- 29 like this?
- 12:36:35 30 A. That's correct, he told me more than that, Mr. Sreenan, but I haven't given

12:36:40 1 that to the Tribunal yet.

2 Q. 437 Oh so, there is more information is there?

3 A. Oh, there is more information, but anyway.

4 Q. 438 Tell us now then?

12:36:47 5 A. Pardon?

6 Q. 439 Tell us now. Let's see how, let's see what it really meant when you were

7 really cooperating with the Tribunal, all these years. Tell us now what more

8 things Mr. O'Callaghan is supposed to have said to you on --

9 A. It's not --

12:37:01 10 Q. 440 Hang on.

11 A. It's not information, I don't think I have given previously, I didn't bother

12 because they told me they weren't interested in Cork, they were not, they were

13 investigating Dublin.

14 Q. 441 Who told you that?

12:37:11 15 A. The Tribunal.

16 Q. 442 Who in the Tribunal told you that?

17 A. Well --

18 Q. 443 Who come on now, back this up Mr. Gilmartin, who in the Tribunal told you that

19 and when were you told?

12:37:23 20 A. It would have been some of the counsel of the Tribunal.

21 Q. 444 Are you just guessing now?

22 A. Pardon?

23 Q. 445 Are you guessing now?

24 A. Sorry?

12:37:29 25 Q. 446 Are you guessing?

26 A. Am I guessing?

27 Q. 447 Yes.

28 A. No, I'm not guessing.

29 Q. 448 Who told you, forget about any corruption --

12:37:37 30 A. The legal team at the time said that the Tribunal was not investigating Cork

- 12:37:44 1 or, it was, they were investigating wrongdoing in Dublin.
- 2 Q. 449 And can you remember who in the Tribunal said that to you?
- 3 A. It would have been either Mr. Gallagher or Mr. Hanratty.
- 4 Q. 450 And when did they say that to you?
- 12:37:59 5 A. Back from the very first, from the beginning.
- 6 Q. 451 And why then did you start telling the Tribunal in telephone conversations
- 7 about matters such as the Lee Tunnel, designation in Athlone, designation in
- 8 Kilkenny, designation in Limerick, why if they had told you that?
- 9 A. Because I passed that information on because it was connected with
- 12:38:23 10 Mr. O'Callaghan.
- 11 Q. 452 But isn't this just ridiculous Mr. Gilmartin, if you passed it on because it
- 12 was connected with Mr. Gilmartin or with Mr. O'Callaghan, why didn't you pass
- 13 on the rest of the information that was connected with Mr. O'Callaghan?
- 14 A. They told me that they weren't interested in what was going on in Cork.
- 12:38:44 15 Q. 453 Well, it they told you they weren't interested why were you giving them the
- 16 information for many years afterwards?
- 17 A. Because I was informing them of the clout Mr. O'Callaghan claimed he had.
- 18 Q. 454 If you were told --
- 19 A. Which he had, as it turns out.
- 12:38:59 20 Q. 455 If you were told by the Tribunal they weren't interested in Cork, why did you
- 21 come out with the dramatic allegation about the Lee Tunnel when you were
- 22 testifying before this Tribunal?
- 23 A. No, I repeated what Mr. O'Callaghan told me.
- 24 Q. 456 Why did you come out with it if you were told that the Tribunal wasn't
- 12:39:15 25 interested in Cork, why come out with something about Cork?
- 26 A. Because I repeated what Mr. O'Callaghan told me.
- 27 Q. 457 Because you were trying to blacken his name, is it?
- 28 A. No, no, I was not trying to blacken his name.
- 29 Q. 458 Because you were trying to grab a headline?
- 12:39:28 30 A. No, I was not trying to grab a headline.

- 12:39:31 1 Q. 459 Now come back to this --
- 2 A. Mr. Sreenan, I didn't speak to the press or anybody else for the best part of
- 3 ten years, but I read an awful lot about myself.
- 4 Q. 460 Well, you certainly made up for after that, didn't you, Mr Gilmartin?
- 12:39:42 5 A. Planted by Mr. O'Callaghan and Mr. Dunlop, for many years I read about myself,
- 6 a pack of lies but anyway, but all planted by Mr. Callaghan's hiring Mr. Frank
- 7 Dunlop.
- 8 Q. 461 Go back to the 7th December 1988 now and tell the Tribunal what is the lot more
- 9 that Mr. O'Callaghan told you about that you haven't told the Tribunal about
- 12:40:07 10 when you were really cooperating with them?
- 11 A. Well, that's a matter whether the Tribunal want to hear it or not.
- 12 Q. 462 No, no, I am asking you the question now, Mr. Gilmartin. I want you to tell
- 13 the Tribunal what other things you say Mr. O'Callaghan told you about on the
- 14 7th December 1988 that you didn't tell the Tribunal about when you were
- 12:40:31 15 cooperating?
- 16 A. He told me I didn't know how things were done in Ireland at all, that I was
- 17 naive.
- 18 Q. 463 Well, you have told us about that already, tell us the additional material?
- 19 A. Yeah. The additional material, well if you want to hear it, Mr. Sreenan, I
- 12:40:45 20 will.
- 21
- 22 CHAIRMAN: Just before you, we do want to hear it, but if you are going to
- 23 mention names that haven't been mentioned before you might just stop at that
- 24 point and you can write down the names. But subject to that you can tell us
- 12:41:01 25 what else was said to you and that hasn't been told to the Tribunal before.
- 26 Q. 464 A sheet of paper and a pen is going to be handed to you now and you can call
- 27 these people A, B, C etc. and hand it to the Tribunal. Off you go now,
- 28 Mr. Gilmartin?
- 29 A. Well, there wasn't names as such mentioned, there was persons mentioned but not
- 12:41:21 30 names.

12:41:21 1 Q. 465 O.k. You can write down the persons and give them a code if you like, come on  
2 tell us now?  
3 A. I think I can tell the story without writing down any names other than  
4 reference to, to - I think there was only two other persons referred to, but  
12:41:42 5 not by name.  
6 Q. 466 Well Mr. Gilmartin, I want the names and I want them written down.  
7  
8 CHAIRMAN: He says --  
9 A. I don't know the names.  
12:41:49 10  
11 CHAIRMAN: He says he doesn't know the names so he doesn't have to write them  
12 down. If you do know names you should write down the names.  
13 A. I only know one by title.  
14 Q. 467 Well, then you can write down the title because I want the Tribunal to know  
12:42:02 15 this and I want to know it.  
16 A. Yeah.  
17 Q. 468 Now you have had enough time, Mr. Gilmartin to think of your answer, off you go  
18 now and tell us the terrible things Mr. O'Callaghan told you?  
19 A. No, I don't have to think of my answer, it was just a repeat of what  
12:42:18 20 Mr. O'Callaghan told me on the first day.  
21 Q. 469 Off you go, we are waiting with baited breath to hear it, Mr. Gilmartin?  
22 A. He told me I wouldn't know the way things were done in Ireland.  
23 Q. 470 No, you told us that already.  
24  
12:42:31 25 CHAIRMAN: Just let, Mr. Gilmartin.  
26 A. I will explain in my way, Mr. Sreenan. So if you want me to explain I will  
27 explain in my way. Not to your --  
28 Q. 471 Go ahead Mr. Gilmartin, I am merely trying to get you to focus on the task at  
29 hand. You can take from now until 1 o'clock if you want to describe this.  
12:42:53 30

12:42:53 1 CHAIRMAN: No no, wait now.

2 A. O.k. He told me about another development in Limerick where a gentleman owned

3 an out of town site who wanted to get planning and he couldn't get the

4 planning, he had no -- he was blocked from getting the planning. And he had to

12:43:12 5 take him, Mr. O'Callaghan on board. Right? So he took him on board and things

6 were done different down the south, not to Dublin, you had to go through the

7 councillors and zoning, but the County Manager and the chief planner had the

8 main say in the south. So you only had to have them on board.

9

12:43:44 10 So he told me that this gentleman couldn't get the planning for his out of town

11 development until he took him on board, and he took him on board and the whole

12 thing was changed. He suddenly got planning, he had to take Mr. O'Callaghan on

13 as a partner.

14

12:44:04 15 Now if you want me to continue I will.

16 Q. 472 Yes. Continue.

17 A. Now, there was another gentleman who wanted, who had a major job in Limerick

18 who was interested in getting a Cork job, right? But O'Callaghan was able to,

19 he was able to guarantee the man the Cork job, so consequentially that man was

12:44:28 20 on board with him and he immediately got the thing changed and he became a

21 partner with the gentleman that owned the site, and the planning was more or

22 less a foregone conclusion.

23 Q. 473 Just to clarify that. When you are referring to the site, is this the same

24 site in Limerick that you are talking about in your first incident?

12:44:53 25 A. It's whatever site Mr. O'Callaghan became a partner in at that time.

26 Q. 474 So this is all one event in Limerick?

27 A. That was in Limerick, yes. But I am only repeating what Mr. O'Callaghan told

28 me.

29 Q. 475 Go ahead. What else did he tell you?

12:45:18 30

- 12:45:18 1 CHAIRMAN: Did he tell you anything else, Mr. Gilmartin?
- 2 A. Pardon?
- 3
- 4 CHAIRMAN: Did he tell you anything else that we don't know about?
- 12:45:24 5 A. He was telling me that's why I needed him and Ambrose Kelly on board. That
- 6 Ambrose Kelly, I needed Ambrose Kelly to get through An Bord Pleanala, he had
- 7 people in An Bord Pleanala, and I'd have to have Ambrose Kelly on board if I
- 8 was going to get anywhere. So I had to have him, Ambrose Kelly on board, but
- 9 that I was too naive in Dublin, I didn't know the way things were done.
- 12:45:59 10 Q. 476 Continue, Mr. Gilmartin.
- 11 A. Well. What else do you want to know?
- 12 Q. 477 I want you to tell the Tribunal all the additional things that you imply were
- 13 so damaging to Mr. O'Callaghan, that he allegedly had told you at this first
- 14 meeting on the 7th December 1988.
- 12:46:20 15
- 16 CHAIRMAN: He didn't say they were damaging to Mr. O'Callaghan.
- 17 Q. 478 I said implied I think, Chairman.
- 18
- 19 CHAIRMAN: I don't know but anyway, he didn't say they were damaging to
- 12:46:28 20 Mr. O'Callaghan. He said Mr. O'Callaghan told him, gave him other information
- 21 which he hadn't passed onto the Tribunal.
- 22 Q. 479 And by that answer did you not imply, Mr. Gilmartin that this was information
- 23 that could be damaging to Mr. O'Callaghan?
- 24 A. Sure why would Mr. O'Callaghan be telling me those story if he felt they were
- 12:46:47 25 damaging to him?
- 26 Q. 480 Mr. Gilmartin, you will remember you have to answer the questions rather than
- 27 asking me questions, if you answer the question?
- 28 A. I am posing the question, why was Mr. O'Callaghan bragging to me about his
- 29 clout if he felt it was going to be damaging to him?
- 12:47:09 30 Q. 481 Mr. Gilmartin, will you remember the question please that I asked you, which

12:47:13 1 was did you not imply by the testimony you gave, that the additional unspoken  
2 material that Mr. O'Callaghan had allegedly told you about at the meeting of  
3 the 7th December 1988 would be damaging to Mr. O'Callaghan if it came out at  
4 this Tribunal?

12:47:29 5 A. Well, I am answering you. He didn't consider it damaging by telling me it.  
6 And by advising me why I had to have him on board.

7  
8 CHAIRMAN: No, but Mr. Gilmartin, Mr. Sreenan is suggesting to you that the  
9 reason why you were reluctant a few minutes ago to tell us about this  
12:47:50 10 additional information, was that it might be damaging to Mr. O'Callaghan now,  
11 you mightn't have thought it to be so at the time, but now in the Tribunal. I  
12 mean, is it, was your reluctance because you felt Mr. Sreenan wouldn't want to  
13 hear it?

14 A. No, because I hadn't given - I hadn't mention it had previously when the  
12:48:15 15 Tribunal told me they weren't interested.

16  
17 CHAIRMAN: All right.

18 A. So I didn't bother mentioning it. I only mentioned so much and they said they  
19 weren't investigating Cork so I didn't bother saying the remainder of it.

12:48:33 20 Q. 482 Mr. Gilmartin, was your reference just a moment ago to Mr. O'Callaghan having  
21 told you a lot more information at the meeting of the 7th December 1988, that  
22 the Tribunal hadn't been told about, but that you tell the Tribunal about if I  
23 wanted to hear about it, was that not all just a puff of smoke now?

24 A. No Sir, that's what Mr. O'Callaghan told me on the day. Why I had to have him  
12:48:59 25 on board.

26 Q. 483 But I have a document --

27 A. And Ambrose Kelly.

28 Q. 484 Could I have document 16096? This is the meeting that you held in Luton on the  
29 8th July 1999 with your solicitor, Susan Ryan and Terry Legget in attendance,  
12:49:21 30 we saw this morning, didn't we?

- 12:49:22 1 A. Yeah.
- 2 Q. 485 If you go to page 16100 and the last paragraph there it says "I" that's
- 3 Mr. Hanratty, "I asked Mr. Gilmartin what he thought Mr. Perry meant when he
- 4 said that Owen O'Callaghan had done it again. Mr. Gilmartin said that
- 12:49:43 5 Mr. O'Callaghan had done the same thing before to somebody else in Limerick.
- 6 He said that the long standing owners of lands in Limerick could not get
- 7 planning permission for retail from Limerick Corporation. They were in some
- 8 financial difficulty and Owen O'Callaghan sent in the bank to put the squeeze
- 9 on the owners. The bank was Allied Irish Banks. The owner in question found
- 12:50:05 10 that he had a cuckoo in the nest, O'Callaghan ended up running the whole deal
- 11 and the owner turned into a minor partner."
- 12
- 13 Now we see that you told the Tribunal about this Limerick site on the 8th July
- 14 1999, so can you please tell us anything new that the Tribunal hasn't been
- 12:50:30 15 told?
- 16 A. No, that was, I was repeating what Mr. Perriman had said to me.
- 17 Q. 486 Would you tell us anything new that the Tribunal hasn't heard about that
- 18 Mr. O'Callaghan allegedly told you at that meeting?
- 19 A. There is no doubt because he said an awful lot of things to me, there is no
- 12:50:44 20 doubt there are a number of other things.
- 21 Q. 487 Well, tell us the other things?
- 22 A. Well, I can't just off the top of my head, I will have to --
- 23 Q. 488 Make them up, is it?
- 24 A. No.
- 12:50:54 25 Q. 489 And when you did come to tell the Tribunal on this page, about the Limerick
- 26 site, the one obvious feature of the story is that you do not say that
- 27 Mr. O'Callaghan was the source of the meeting, of the information, still less
- 28 do you say that he gave it to you at your very first meeting with him?
- 29 A. He told me at me very first meeting, exactly how things were done in Ireland.
- 12:51:18 30 Q. 490 But why didn't you tell Susan Ryan, Terry Legget and Mr. Hanratty, Senior

- 12:51:25 1 Counsel for the Tribunal, that bit of information when you were discussing that  
2 very same site at a meeting in Luton?
- 3 A. Because at the time the Tribunal said they weren't investigating Cork, so I  
4 didn't bother elaborating on it.
- 12:51:38 5 Q. 491 Is it because the Tribunal said they weren't investigating Cork that you  
6 started telling them about Limerick?
- 7 A. That was a repeat of what Mr. Perriman told me about a meeting in the  
8 Ansbacher, something in connection with Ansbacher, the day before.
- 9 Q. 492 Are you saying now it's Mr. Perriman or Mr. O'Callaghan told you?
- 12:51:59 10 A. No, Mr. Perriman told me this, this is a repeat of what Mr. Perriman said to  
11 me.
- 12 Q. 493 And do you remember telling the Tribunal when you were discussing --
- 13 A. And I have a witness to that incidentally which I am sure I can, I haven't  
14 spoken to probably in the best part of 10, 15 years, but I am quite certain  
15 that he will come forward if necessary.
- 12:52:20 16 Q. 494 But you have no witness to any of the things that Mr. O'Callaghan is supposed  
17 to have said to you?
- 18 A. No, just Mr. O'Callaghan and I in a bedroom in the hotel in O'Connell Street.
- 19 Q. 495 On any occasion, whether it's things he is supposed to have said to you about  
12:52:41 20 Mr. McGrath, Mr. Ahern, Mr. McSharry, Mr. Reynolds, you don't even have a  
21 witness to him allegedly falling out of a broom cupboard?
- 22 A. Well, of course I didn't have a witness, except the taxi driver will come  
23 forward on the way to the airport when he showed me the 10 or 20,000 he was  
24 going, handing to Colm McGrath at the airport.
- 12:53:10 25 Q. 496 Do you know if Mr. Maguire is going to back-up your story of being present with  
26 you when Mr. O'Callaghan allegedly fell out of the broom cupboard in the  
27 toilet?
- 28 A. I don't know, I don't know.
- 29 Q. 497 Do you remember describing in your first meeting or in your testimony to the  
12:53:29 30 Tribunal during Quarryvale 1 the persons who were allegedly present at this

12:53:36 1 launch of the tunnel, Mr. McSharry, Mr. Reynolds, Mr. Scanlon of Allied Irish  
2 Banks?  
3 A. He mentioned the name of Mr. Scanlon, I wasn't quite sure who it was, but I  
4 think it was Allied Irish Bank.

12:53:53 5 Q. 498 Can we look at --  
6 A. I never knew a Mr. Scanlon.  
7 Q. 499 Can we look at what you said about this when you first introduced it into  
8 evidence in Quarryvale 1, day 460 question 23, sorry, I understand it's not  
9 immediately available on the system, Chairman.

12:54:34 10  
11 CHAIRMAN: Yeah, well can you read it out?  
12 Q. 500 I can read it out, Chairman and My Friends probably have it on some computer  
13 and they will correct me.  
14

12:54:43 15 MS. DILLON: No, it's simply with the transcript always is slower to come up,  
16 it's on a separate data base, it's slower to call-up than the documents. It  
17 will come up in a minute.  
18

19 CHAIRMAN: It can be read and it necessary we can return to it.

12:54:56 20 Q. 501 Question 23 deals with a topic that's not relevant to the Lee Tunnel.  
21  
22 MS. DILLON: 22565 it's in the brief. 22564.  
23 Q. 502 It goes on to say at page 586 in the brief and at paragraph 15 of your  
24 statement, this is in the context of Mr. Lawlor turning up at the Trust House  
12:55:21 25 Forte meeting, you said about Mr. O'Callaghan, that you were aware that he had  
26 good political connections, and your answer is "no, he made me aware of his  
27 good political connections." Question 24, "did he spell out what those  
28 connections were? Answer: well he did, but there were certain details I am not  
29 quite sure, I don't think it's of relevance to the Tribunal, the very first  
12:55:42 30 thing he told me was that he had been at a do the previous week in the, in a

12:55:50 1 hotel in Cork where there was some major opening. It may have been to do with  
2 the launching of the tunnel, the Lee Tunnel and he mentioned a number of  
3 dignitaries that was there, including Mr. McSharry, Mr. Scanlon AIB,  
4 Mr. Reynolds etc, and he pointed out to me that the original line of the tunnel  
12:56:11 5 that they, that it was altered to suit the Mahon site. So he also went on to  
6 say that I had to have him on board or, and Ambrose Kelly, because of their  
7 clout.  
8  
9 Question: you haven't" This is from Tribunal counsel. Question: you haven't  
12:56:29 10 told us anything about this before, when did you say this was being conveyed to  
11 you? Answer: I didn't consider it a matter for this module or this section of  
12 the Tribunal." and the answer from Tribunal counsel was "I see."  
13  
14 Now Mr. Gilmartin, that evidence that you gave on day 460 on the 11th March  
12:56:50 15 2004 about this alleged conversation you had with Mr. O'Callaghan, that was a  
16 lie, wasn't it?  
17 A. No, it was not.  
18 Q. 503 You invented that piece of evidence?  
19 A. No, I did not.  
12:57:01 20 Q. 504 And I must put it to you that you were caught out in that lie?  
21 A. No, I was not.  
22 Q. 505 Because like many things that you have alleged Mr. O'Callaghan said to you, it  
23 was possible to check that by way of objective fact.  
24 A. Well, I repeated exactly what Mr. O'Callaghan told me on the day.  
12:57:22 25 Q. 506 And I put it to you that this piece of evidence is important because it shows  
26 that you casually made things up, that you are careless about the truth and  
27 that you are reckless about the damage that you inflict on other's reputations?  
28 A. No, Sir.  
29 Q. 507 Do you remember the lengthy statement you gave to Noel Smyth that we looked at  
12:57:43 30 earlier?

- 12:57:43 1 A. Yes.
- 2 Q. 508 We know the importance of that meeting because you had promised the Tribunal a  
3 statement and Mr. Smyth was taking a record of what you said to him?
- 4 A. Mr. Smyth was, asked me to run through my recollection of what happened to me.
- 12:58:05 5 Q. 509 And you --
- 6 A. He did not inform me he was taking any statement at that time.
- 7 Q. 510 You told him about the meeting of the 7th of December 1988?
- 8 A. That's correct.
- 9 Q. 511 You didn't tell him anything about Owen O'Callaghan saying this to you about  
12:58:22 10 having had the line of the Lee Tunnel altered to suit the Mahon site?
- 11 A. Well, I'm not so sure if I considered it, if I remembered it at the time or  
12 considered it relevant because it was quite a lot took place over a period of  
13 ten years.
- 14 Q. 512 Which is it --
- 12:58:41 15 A. Eight or nine year.
- 16 Q. 513 Which is it, that you didn't remember it or you didn't consider it relevant?  
17 This is an allegation that Mr. O'Callaghan, who is the person that you blame  
18 all your troubles, was so powerful that he managed to have a major  
19 infrastructural project rerouted to suit a private piece of property that he  
12:59:02 20 allegedly owned at the time?
- 21 A. His property.
- 22 Q. 514 Mr. Gilmartin, that was a very serious and important allegation?
- 23 A. That's exactly what he told me. A piece of property he was interested in.
- 24 Q. 515 Why did you not tell Mr. Smyth about that?
- 12:59:18 25 A. Well Mr. Sreenan, as you said yourself earlier when you brought up Finnstown  
26 House you asked me that question, same question. I didn't remember everything  
27 or repeat everything off the top of my head that happened over an eight year  
28 period, it was nearly impossible, hence the reason that I had to reflect on  
29 events that took place over a period of eight years.
- 12:59:46 30 Q. 516 So your memory is the product of reflection is it?

- 12:59:51 1 A. My memory is the product of - I have to go back and think.
- 2 Q. 517 And bits of information you have picked up from journalists and other people?
- 3 A. No.
- 4 Q. 518 You never told the Tribunal before that what Mr. O'Callaghan had said was that
- 13:00:13 5 it was to suit a site that he was interested in, you consistently gave the
- 6 evidence that it was to suit the Mahon site. Now I must put it to you you are
- 7 changing your evidence to alter what you now know is known fact that
- 8 Mr. O'Callaghan did not own that site at the time and didn't acquire it until
- 9 many, many years later?
- 13:00:33 10 A. Well, I assume the way he was talking that he had some interest in it.
- 11 Q. 519 Do you change your evidence like that to suit other bits of evidence?
- 12 A. No, I don't change my evidence at all, I am just -- there was a conversation in
- 13 a bedroom, you know, back what is it, 20 years ago.
- 14 Q. 520 Can we look at your statement starting page 2165, this is your statement of May
- 13:01:15 15 2001, produced by A & L Goodbodys on your behalf.
- 16
- 17 CHAIRMAN: Is this a new topic?
- 18 Q. 521 It's just continuing this topic, Judge, I could finish this point in two
- 19 minutes if that was convenient.
- 13:01:27 20
- 21 CHAIRMAN: All right. That's fine.
- 22 Q. 522 And this is the statement that you told us months of work had gone into
- 23 preparing, remember saying that?
- 24 A. Yeah.
- 13:01:37 25 Q. 523 And if we go to page 2172, paragraph 16 of that statement, you are telling the
- 26 Tribunal about this meeting of the 7th December 1988 and you said "I met with
- 27 Mr. O'Callaghan in the Royal Dublin Hotel. Mr. Lawlor had arranged the
- 28 meeting. At the meeting Mr. O'Callaghan informed me that he intended building
- 29 on the Neilstown site and he produced a drawing. He indicated that his plans
- 13:02:04 30 included the construction of a shopping centre of approximately 300,000 square

13:02:09 1 feet on the Neilstown site, and that he was only prepared to sell his interest  
2 for seven million Irish pounds. He also informed me that he had purchased  
3 Mr. Gubay's interest in the site for 500,000 pounds.  
4

13:02:20 5 It was eventually agreed that I would pay Mr. O'Callaghan the sum of 3.5  
6 million pounds in return for which I would acquire Merrygrove Estates Limited  
7 the company which owned the option over the Neilstown site. We shook hands on  
8 the agreement", and you set out the staged payments which were involved in the  
9 agreement.

13:02:40 10  
11 Now did you not at any stage tell the Tribunal that Mr. O'Callaghan had at that  
12 very same meeting made this admission or confession in relation to the Lee  
13 Tunnel and rerouting a major infrastructural project?

14 A. We were talking about the circumstances of the negotiation for the Neilstown  
15 agreement, so that's what I am referring to there.

13:03:00 16 Q. 524 And at page 14289, your solicitors, A & L Goodbody wrote supplementing  
17 information you gave in that statement and correcting various matters and again  
18 made no reference to the Lee Tunnel. Isn't that because your solicitors didn't  
19 know about it, you hadn't told them about it either?

13:03:25 20 A. I don't know whether I had or not, I can't remember if I had or not at the  
21 time.

22 Q. 525 Another failure of memory by you, Mr. Gilmartin, is it?

23 A. No, there is lots of stuff that, talking, if we are talking about the Neilstown  
24 agreement, the introduction by Liam Lawlor to Mr. O'Callaghan, Liam Lawlor's  
13:03:51 25 involvement, even prior to that, there was an awful lot to try and memorise in  
26 one brief statement.

27 Q. 526 Thank you, Chairman.  
28

29 CHAIRMAN: All right. Thank you. Thanks, Mr. Gilmartin. Mr. Gilmartin will  
13:04:06 30 be back on Thursday at 10 o'clock. We will sit again at 2 o'clock.

13:04:11 1

2

MS. DILLON: Yes, sir.

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**THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

13:04:23 5

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13:04:24 1 **THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:**

2

3 MR. O'NEILL: Good afternoon, Mr., Chairman, the witness scheduled for hearing  
4 today is Mr. John Garrett. Mr. Garrett will you come to the witness box,

14:05:22 5

please.

6

7

**JOHN GARRETT, HAVING BEEN SWORN**

8

**WAS QUESTIONED AS FOLLOWS BY MR. O'NEILL:**

9

14:06:01 10 CHAIRMAN: Good afternoon, Mr. Garrett?

11 A. Good afternoon.

12 Q. 527 Good afternoon Mr. Garrett, I think you are an employee of Allied Irish Bank,  
13 is that correct?

14 A. That's correct, yes.

14:06:12 15 Q. 528 You have been a bank official since 1982 or thereabouts, isn't that correct?

16 A. That's correct, yes.

17 Q. 529 I think your involvement with the Tribunal commenced when the bank nominated  
18 you as a person who could be of assistance to the Tribunal in understanding the  
19 foreign exchange systems and the computer systems in place in Allied Irish  
20 Banks in and around the mid-1990's, isn't that so?

14:06:33 21 A. That's correct, yes.

22 Q. 530 And I think that was following the Tribunal's detailed enquiries or focused  
23 enquiries into certain foreign exchange transactions involving Mr. Ahern and  
24 Ms. Celia Larkin, though you may not have been made aware of this in advance of  
14:06:55 25 being nominated?

26 A. That's correct, yes.

27 Q. 531 In any event, as a result of being so nominated you were interviewed by Members  
28 of the Tribunal legal team on two occasions in May of this year, that is the  
29 15th and 24th May and the transcripts of those interviews have been circulated  
14:07:11 30 as part of this inquiry, isn't that so?

- 14:07:14 1 A. That's correct.
- 2 Q. 532 I think your nomination probably follows from the fact that you have both
- 3 practical experience of operating the foreign exchange system which was in
- 4 place in branches in Allied Irish Banks in the early 1990's, and you were
- 14:07:37 5 particularly involved in the implementation of the computerisation of that
- 6 process from 1995 onward, isn't that so?
- 7 A. That's correct, yes.
- 8 Q. 533 And I think that places you in a position of being able to interpret and
- 9 understand the documentation which would be generated in a foreign exchange
- 14:07:58 10 transaction at the time, and also to assist the Tribunal with regard to the
- 11 computerised records which were kept at branch and at currency services level
- 12 in relation to those accounts, is that so?
- 13 A. Yes, they would be the branch, currency services would be outside my remit.
- 14 Q. 534 Right. Whilst it may be somewhat out of your remit you have had sight of the
- 14:08:23 15 documentation?
- 16 A. I have had sight of the documentation.
- 17 Q. 535 Of the bank, and I think you also have had the benefit of seeing the statement
- 18 of, or interview of your colleague, Ms. Murtagh who is going to be a witness
- 19 later in relation to that specific area, isn't that so?
- 14:08:40 20 A. That's correct, yes.
- 21 Q. 536 In the course of today's evidence Mr. Garrett, you will be questioned in
- 22 relation to documentation which has been generated and which records certain
- 23 transactions which I will identify for the purpose of the Tribunal. I don't
- 24 expect you to understand precisely the context in which these particular
- 14:09:06 25 lodgements are being examined, but for the Tribunal's point of view there are
- 26 four lodgements involved.
- 27
- 28 The first is the lodgement of the sum of 28,838.49, which was made to the
- 29 account of Mr. Bertie Ahern on the 11th October 1994.
- 14:09:30 30

14:09:30 1 In the Tribunal this is referred to as the Second Goodwill Loan and Manchester  
2 Dinner Lodgement.  
3  
4 The second lodgement which we will be examining with you is that made on the  
14:09:43 5 5th December 1994 to the account of Ms. Celia Larkin in the sum of 28,772.90,  
6 which is referred to as the Larkin Wall Lodgement.  
7  
8 The third lodgement is the lodgement of the sum of 11,743.74, made on the 15th  
9 June 1995, which is referred to as the Beresford Fitout lodgement.  
14:10:12 10  
11 The fourth lodgement is the lodgement of 19,142.92 made on the 1st December  
12 1995 which is referred to as the Unspent Funds Lodgement.  
13  
14 And the final part of the examination will centre upon an examination of the  
14:10:33 15 records of Allied Irish Banks, O'Connell Street, in relation to the sale of  
16 sterling between the 24th January 1995 and the 12th June 1995 with particular  
17 reference to whether or not there was a sale to any customer during that period  
18 of sterling in the amount of 30,000 pounds.  
19  
14:10:58 20 So those are the areas upon which we will touch. And before dealing with them  
21 specifically, perhaps I could just establish with you what the nature of the  
22 process was in 1994/1995 as regards the transaction of foreign exchange within  
23 the branch. Do I understand that, from the point of view of branch dealings  
24 with its customers, foreign exchange transactions were conducted using a  
14:11:33 25 machine called the Forde Money Changer?  
26 A. That would be correct, yes.  
27 Q. 537 And that machine apparently was a calculator, in effect, in which there was an  
28 internal tally roll and the specific transactions conducted through the foreign  
29 exchange desk at the branch were recorded on this tally roll, is that so?  
14:11:58 30 A. That's correct, yes.

- 14:11:59 1 Q. 538 The detail recorded on the tally roll did not include the identification of the  
2 customer transacting the particular transaction, it merely recorded the  
3 relevant financial details, isn't that so?
- 4 A. That's accurate, yes.
- 14:12:15 5 Q. 539 So what it recorded was the amount of the foreign currency intended to be  
6 exchanged in the event that a customer was coming in with foreign currency and  
7 hoped to change it. The rate at which that transaction was conducted, isn't  
8 that so?
- 9 A. Yes.
- 14:12:35 10 Q. 540 The question of whether there was a commission deducted from that sum?  
11 A. Yes.
- 12 Q. 541 Or otherwise?  
13 A. Yes.
- 14 Q. 542 And the ultimate amount that the customer got for his money, isn't that so?  
14:12:46 15 A. That's correct, yes.
- 16 Q. 543 And that was a process which was not interlinked to the then existing computer  
17 recording system in the bank, isn't that so?
- 18 A. That would be correct, yes.
- 19 Q. 544 I think from some date as far as we know in and around November 1995 the  
14:13:11 20 process was integrated from beginning to end, isn't that right?
- 21 A. Yes, that's correct.
- 22 Q. 545 Under the new system a specific transaction with a customer or at the desk I  
23 should say, can be related through the entire system, isn't that right?
- 24 A. That's correct, yes.
- 14:13:25 25 Q. 546 During the period we are examining here, between October 1994 and the last  
26 lodgement in December 1995, the process did not allow for the identification of  
27 an individual or a specific transaction, isn't that right?
- 28 A. That would be correct, yes.
- 29 Q. 547 On the other hand, when it came to reviewing the global activity of the foreign  
14:13:51 30 exchange desk on any particular day, there was information within the branch

- 14:13:58 1 system and within the bank's computer system which could look at that global  
2 view of the banking transactions, isn't that right?
- 3 A. That's correct, yes.
- 4 Q. 548 Yes. And in the course of that exercise I think there were a number of  
14:14:15 5 computerised ledgers which existed, which allowed for that to take place, one  
6 of which was called the Foreign Currency Held Document, is that right?
- 7 A. Foreign Currency Held Account, yes.
- 8 Q. 549 Account. Yes.
- 9 A. Yes.
- 14:14:32 10 Q. 550 The Foreign Notes In Transit account?
- 11 A. Correct, yes.
- 12 Q. 551 Is that right? There was also a global report called the All Items Report,  
13 which could be generated, which would record all of the banking transactions  
14 which were computerised within the bank on a particular day, isn't that so?
- 14:14:53 15 A. That's correct, yes.
- 16 Q. 552 The daily transmission of funds between currency services department and the  
17 branch would form the body of the information contained in the Foreign Notes In  
18 Transit Account, is that right?
- 19 A. That's correct, yes.
- 14:15:13 20 Q. 553 In addition I think there also was a computerised record of the foreign  
21 exchange rates that would be applied in the event that the Forde Money Changer  
22 is used to conduct the transaction, isn't that right?
- 23 A. That's correct, yes.
- 24 Q. 554 Those particular references to there being accounts, that is the Foreign  
14:15:37 25 Currency Held Account and the Foreign Notes In Transit Account, probably more  
26 accurately reflect accounting entries rather than individual or physical  
27 accounts, is that right?
- 28 A. Yes, they were used for the end of day account postings.
- 29 Q. 555 The end of day account postings.
- 14:15:53 30 A. A summary of the work that took place during the day.

- 14:15:56 1 Q. 556 Yes. Is it the case that at the end of every day the tally roll of the Forde  
2 Money Changer would be printed off for a start?
- 3 A. Yes.
- 4 Q. 557 That a bank official who is dedicated to the task of foreign exchange on the  
14:16:22 5 day, would take the totals of the amounts of transactions and physically record  
6 those on slips which would be used to enter the information which would then be  
7 found on the Foreign Currency Held Account?
- 8 A. That would be correct, yes.
- 9 Q. 558 Yes. So that while the individual transaction conducted within the day are not  
14:16:46 10 specified, information relating to the totality of those transactions, that is  
11 the overall value of those transactions, is available within the computer  
12 system of the bank, isn't that so?
- 13 A. That's correct, yes.
- 14 Q. 559 And in relation to that information is it the case that the bank official  
14:17:08 15 completing that documentation would treat the totality of the sterling  
16 transactions separate from the totality of the other foreign exchange  
17 transactions conducted through the desk on a day?
- 18 A. Yes, that's correct, yes.
- 19 Q. 560 So that by checking with this particular account, that is the Foreign Currency  
14:17:29 20 Held Account, one is in a position to see what the level of foreign exchange  
21 transactions is, conducted on the day as a whole, isn't that so?
- 22 A. One is able to see what the Irish pound equivalent of the foreign exchange  
23 transacted during the day was, yes.
- 24 Q. 561 Yes. Of that one can distinguish what portion of it is represented by sterling  
14:17:56 25 transactions and what proportion of it is reflected by foreign currencies other  
26 than sterling, isn't that so?
- 27 A. That's correct, yes.
- 28 Q. 562 Now, if we look to the specific documentation which was the subject of the  
29 present inquiry by the Tribunal, we have furnished you with a copy of the  
14:18:18 30 bank's documentation, in physical form here, but we will also be showing it on

14:18:23 1 the screen in front of you, that is in your desk there and on the main screen  
2 which is showing to members of the public who are present.  
3  
4 The first document, if we might look at it is page 18970, and this document you  
14:18:41 5 may confirm Mr. Garrett, is the customer's bank statement, showing transactions  
6 conducted on the account of Mr. Bertie Ahern on the 11th October of 1994, isn't  
7 that right?  
8 A. Yes, that's correct.  
9 Q. 563 We are now dealing with the lodgement of 24,838.49 which you will see as the  
14:19:16 10 first entry on that deposit account, isn't that so?  
11 A. That's correct, yes.  
12 Q. 564 And what this tells us is that on that day, the 11th October 1994, Mr. Ahern's  
13 account, which was a 28 day fixed punt maturing account, as of the 1st March  
14 1999 was opened with that amount, is that so?  
14:19:34 15 A. Yes, it looks to be the initial lodgement into the account, yes.  
16 Q. 565 That is the initial lodgement into the account. If we turn then now to the  
17 next page in your booklet, which is page 18971, we'll see a document which is  
18 an internal bank document, the last document being one which would have been  
19 sent to the customer, isn't that right?  
14:20:00 20 A. Yes, that's a statement of the account, yes.  
21 Q. 566 This is an internal document within the bank, it relates to the amount which we  
22 saw on the last page, that is 24,838.49 and the narrative indicates that it is  
23 a credit of funds lodged to AIB, perhaps D. C. I'm not sure, but it is a  
24 lodgement to what's called an R.D.C. account, isn't that right?  
14:20:30 25 A. That's correct, yes.  
26 Q. 567 Is that an account into which, if I might call it, somewhat a transit account,  
27 where customers of the bank intending to put money into an investment, that is  
28 a long term deposit account or a fixed term deposit account, would in the first  
29 instance have to have that money lodged to an AIB R.D.C. account, it would be  
14:20:54 30 taken then from that account and put into the customer's account?

- 14:20:57 1 A. That's correct, it was transmitted into it using that mechanism, yes.
- 2 Q. 568 And is that document that we see before us firstly confirming that this was an
- 3 R.D.C. lodgement, secondly, in the narrative that it was going to be the,
- 4 lodged to the account of Mr. Ahern, B Ahern, and secondly or thirdly, we see
- 14:21:21 5 that it is stamped with a stamp of the O'Connell Street branch of the bank,
- 6 isn't that so?
- 7 A. That's correct, yes.
- 8 Q. 569 Indicating that this particular lodgement transaction was conducted at the
- 9 branch in O'Connell Street, 37/38 O'Connell Street, isn't that right?
- 14:21:40 10 A. That's correct.
- 11 Q. 570 Now, we unfortunately in this particular document furnished to the Tribunal it
- 12 was not possible to distinguish which particular desk of the bank at which this
- 13 transaction was conducted. In other words, the reference to there being
- 14 foreign exchange, a foreign exchange stamp on this document is not immediately
- 14:22:06 15 legible, isn't that right?
- 16 A. That's correct, yes.
- 17 Q. 571 In the next, firstly before we leave that, that would indicate that this
- 18 transaction, this lodgement to the R.D.C. account was processed in the branch
- 19 through the foreign exchange desk, isn't that so?
- 14:22:27 20 A. We can't establish the brand on it.
- 21 Q. 572 In the event that it is a foreign exchange brand on it?
- 22 A. In the event it is a foreign exchange brand, yes.
- 23 Q. 573 I think we know from later examinations of better copies that that is in fact
- 24 the brand on it?
- 14:22:42 25 A. O.k.
- 26 Q. 574 In any event if it has a foreign exchange desk stamp on it it is consistent
- 27 with it being transacted through the foreign exchange desk of the bank, isn't
- 28 that so?
- 29 A. That's correct.
- 14:22:58 30 Q. 575 Now, if we look to the next document in your booklet and on screen, that's page

14:23:06 1 18977, we see a computer generated document here and I think that it reflects  
2 the rates of exchange which were applicable to the Forde Money Changer Machine  
3 as of the 11th October 1994, the date upon which the transaction we are  
4 concerned with took place, isn't that so?

14:23:31 5 A. That's correct, yes.

6 Q. 576 And on that document, if we look at it, it shows the rates which are applicable  
7 to sterling transactions at the branch level, isn't that so?

8 A. That's correct, yes.

9 Q. 577 And if we look to the left-hand column, it deals with the buy rates and the  
10 right hand column deals with the sell rates, isn't that right?

11 A. That's correct.

12 Q. 578 The buy rates are, as I understand it, the rates which the customer would be  
13 given in the event that the customer presented foreign currency, in this  
14 instance sterling, to the bank teller on the day?

14:24:12 15 A. That's correct.

16 Q. 579 Yes. And we'll see that that is divided as between foreign note rates and  
17 commercial rates. I take it foreign note rates means the rate which a customer  
18 would get who produced foreign currency notes?

19 A. That's correct.

14:24:28 20 Q. 580 Yes. We needn't concern ourselves with the commercial rates?

21 A. Yes.

22 Q. 581 The rate I think was determined for the day dependant upon the value of the  
23 transaction in Irish currency, isn't that so?

24 A. That's correct, yes.

14:24:45 25 Q. 582 We'll see that up to 500 pounds Irish, the rate which would be given to the  
26 customer was 1.0212, the next level would be for amounts up to 2,500, 1.0063,  
27 the next division up to 10,000 at 0.988. Those three rates divided in that way  
28 are intended, I understand, to reflect the rate which would be applied on a  
29 transaction where a customer presented foreign notes to the teller, falling  
14:25:26 30 within the ranges set out there, isn't that right?

- 14:25:29 1 A. That's correct, yes.
- 2 Q. 583 And I think it's correct to say that the rate from the customer's point of view  
3 improves depending upon which the amount of currency that they are tendering in  
4 exchange, isn't that so?
- 14:25:43 5 A. That would be correct.
- 6 Q. 584 The customer can expect to get a better rate for more money than he would for a  
7 smaller amount, isn't that right?
- 8 A. That's correct.
- 9 Q. 585 In addition to these rates, I think there also is a commission chargeable upon  
14:26:01 10 transactions, we see that at page 18978 which is the next page in the  
11 documentation before you. In the boxed area on the right there within the box  
12 it says 1 per cent commission with minimum 1 pound and maximum 5 pounds, is  
13 that right?
- 14 A. That's correct.
- 14:26:22 15 Q. 586 So in addition to the obtaining of a particular rate the customer would also be  
16 liable to be charged a commission of one percent but that was capped at a  
17 maximum of £5 on a transaction, isn't that right?
- 18 A. That's correct, yes.
- 19 Q. 587 Now this information if we can revert back to page 18977, the information which  
14:26:43 20 we see here is recording what would be entered into the Forde Money Changer for  
21 the day, isn't that right?
- 22 A. Correct, yes. The remit rate the 0.9918 would be put into the Forde Money  
23 Changer first thing in the morning and rates to the left then would  
24 automatically calculate upon that.
- 14:27:04 25 Q. 588 Yes. The remit rate I think is a rate at which the Currency Services Limited,  
26 Currency Services Department would buy the foreign currency which was acquired  
27 from customers, isn't that right?
- 28 A. It takes the currency from the branch, so if the branch had an excess of  
29 currency you would remit it at the remit rate to the Currency Services, yes.
- 14:27:29 30 Q. 589 And the branch's profit on the transaction, if the transaction takes place on

- 14:27:35 1 the same day, is the difference between what it paid its customer to buy this  
2 currency and what it remitted it to Currency Services at, isn't that so?
- 3 A. That's correct, yes.
- 4 Q. 590 Now in relation to the rates which we see there, the Tribunal has carried out a  
14:27:58 5 calculation, applying those rates to certain of the transactions that we are  
6 examining and in particular if we see the next page in your sequence of  
7 documents, it is page 22065 on screen, please.  
8  
9 In the top left hand corner there you will see that there are a number of  
14:28:29 10 calculations which have been conducted carried out by the Tribunal's  
11 accountants in which the detail contained within the Forde Money Changer rates  
12 shown on page 18977 have been applied to a transaction involving a 25,000  
13 pounds sterling exchange. And if you want to follow that on the document which  
14 is before you, in the top left hand corner there, you will see that there are,  
14:29:06 15 on the first line the rate and the ultimate amount which would be received by a  
16 customer who had produced 25,000 pounds sterling where the Forde Money Changer  
17 rate of up to 500 pounds had been applied to the transaction, do you see that?
- 18 A. I do, yes.
- 19 Q. 591 As you move across the bar of various headings you will see that the ultimate  
14:29:39 20 Irish pound net amount for 25,000 pounds sterling in the event that the rate  
21 applicable to up to 500 had been applied, was 24,476 pounds, isn't that so?
- 22 A. Correct, yes.
- 23 Q. 592 And the next line beneath that shows the rate which would be applied at the up  
24 to 2,500 pound rate and in they event that the £5 maximum charge for commission  
14:30:14 25 had been deducted for the transaction, isn't that so?
- 26 A. Yes, that's right.
- 27 Q. 593 In the event that that rate had been applied to a transaction involving 25,000  
28 pounds it would have resulted in the customer receiving the sum of 24,838.49,  
29 isn't that so?
- 14:30:34 30 A. That's correct, yes.

- 14:30:35 1 Q. 594 And that sum equates exactly to the amount which was lodged to the account of  
2 Mr. Ahern on the 11th October 1994, the date upon which these rates of exchange  
3 were applicable, is that correct?
- 4 A. Correct.
- 14:30:52 5 Q. 595 Now the documentation which we have looked at so far does not record the actual  
6 transaction in which any individual foreign exchange amount was changed on that  
7 day, isn't that right?
- 8 A. Correct, yes.
- 14:31:32 9 Q. 596 And that is because the tally roll, the physical tally roll upon which this  
10 information was kept, is no longer available in the branch, isn't that correct?
- 11 A. That seems to be the case, yes, it's not available.
- 12 Q. 597 And therefore, when one is looking to the transaction or trying to identify  
13 what transactions took place, it is of assistance to look at the totality of  
14 the foreign exchange transactions conducted within the branch on the day.
- 14:32:01 15  
16 If we look to page 21285, the next document in your booklet, we see here  
17 another internal document generated within the branch in O'Connell Street on  
18 the 11th October 1994, isn't that so?
- 19 A. Yes, I see it, yes.
- 14:32:27 20 Q. 598 And the narrative is "FX held" can you interpret that for us?
- 21 A. That's the Foreign Currency Held Account.
- 22 Q. 599 Foreign Currency Held account. Beneath it then there is a narrative in which  
23 we see the words STG B/N, can you interpret that for us?
- 24 A. I assume that it means sterling buy note.
- 14:32:52 25 Q. 600 Sterling buy note?
- 26 A. That would be the purchase of sterling for that particular branch for that  
27 particular day.
- 28 Q. 601 I see. We see on the right-hand side the amount 27,491.95 and that sum is  
29 again encrypted in the computer track on the bottom of this docket, isn't that  
14:33:11 30 so?

- 14:33:11 1 A. That's correct.
- 2 Q. 602 This is the point at which the computer records are capable of interpreting  
3 what took place within the branch on its foreign exchange transactions that  
4 day, is that so?
- 14:33:24 5 A. That's correct, yes.
- 6 Q. 603 And does this document tell us that within the branch on the day upon which Mr.  
7 Ahern's lodgement of 24,838.49 was made to his account, sterling to an Irish  
8 value of 27,491.95 was transacted in the branch on that date?
- 9 A. That is correct, yes.
- 14:33:54 10 Q. 604 I think if we look now to the next page, 20678, if we can turn that, please?  
11  
12 This is the computerised record of the Foreign Currency Held Account, isn't  
13 that so?
- 14 A. That's correct, yes.
- 14:34:17 15 Q. 605 If we look to the last day there in the left-hand column, it's the 11th October  
16 of 1994, isn't that so?
- 17 A. That's correct.
- 18 Q. 606 And there are in the particulars, four references, there is, lodge 1,821.20 in  
19 credits. Lodge, 994.51 in credits. Then there is FX B/N 1,211.66 in debits  
14:34:57 20 and STG B/N 27,491.95 in debit, isn't that so?
- 21 A. That's correct, yes.
- 22 Q. 607 Is it correct to say that the debit entries reflect the purchase by the branch  
23 on that day of foreign currencies, divided as between foreign currency other  
24 than sterling totalling an amount of 1,211.66 Irish?
- 14:35:27 25 A. That is correct, yes.
- 26 Q. 608 And 27,491.95 in sterling?
- 27 A. Yes. That is assuming that the totals have been transcribed correctly from the  
28 tally roll of the day from which the numbers are taken from.
- 29 Q. 609 Yes. Have you any difficulty with that assumption, Mr. Garrett?
- 14:35:49 30 A. No.

- 14:35:50 1 Q. 610 No. That is what the bank records shows that we are looking at here, is that  
2 these were the transactions of the day?  
3 A. Yes.
- 4 Q. 611 And these transactions would indicate by reference to the earlier transactions  
14:36:10 5 conducted that week that an exceptional amount of sterling was purchased by the  
6 bank on that day by reference to that week's trading, isn't that so?  
7 A. Yes. I am just looking at the overall ledger for the week, yes, it was a  
8 larger amount than they had purchased at any stage during the previous week,  
9 yes.
- 14:36:33 10 Q. 612 A considerably larger amount to the point that, I suggest, it could be called  
11 an exceptional amount, which is what I was suggesting to you?  
12 A. O.k. Yes.
- 13 Q. 613 Would you --  
14 A. It's a large amount, yes.
- 14:36:44 15 Q. 614 Yes. I think we will see from the review of six months of the bank's  
16 activities conducted between January 1995 and July, sorry June 1995, that the  
17 average purchases of sterling by the bank were in the region of two to two and  
18 a quarter thousand per day?  
19 A. O.k, yes.
- 14:37:15 20 Q. 615 The 27,491.95 sterling here, I should say firstly it's not sterling, but it is  
21 the Irish value which is given to the sterling amount which was purchased,  
22 isn't that right?  
23 A. That's correct, yes.
- 24 Q. 616 The amount in sterling notes, because we are dealing with sterling notes here,  
14:37:41 25 is dependent really upon the rate of exchange that was applied to the  
26 individual component parts of this total value, isn't that right?  
27 A. That's correct, that sterling figure was available on the tally roll that comes  
28 out of the Forde Money Changer at the end of the day.
- 29 Q. 617 Exactly, which is not available to us?  
14:38:00 30 A. That's correct.

- 14:38:02 1 Q. 618 The amount of sterling purchased in the branch on this particular day is  
2 sufficient to have allowed for the entire of the 24,838.49 to have been a  
3 sterling amount, isn't that so?
- 4 A. That's correct, yes.
- 14:38:31 5 Q. 619 The next document I'd ask you to look at is next in sequence in your booklet  
6 there is page 20679, and that document is described as An All Items report and  
7 it is divided into a number of categories. And in relation to the transactions  
8 which we see on this particular page these are transactions which are conducted  
9 by teller number 12, isn't that right?
- 14:39:04 10 A. Sorry, I don't see the teller number on that, sorry yes, 12, yes, I see it.
- 11 Q. 620 Yes. The first of those transactions beneath the division of categories and  
12 the division I think is marked by the insertion of the words note, coin, remit,  
13 on us etc, that divides the various categories, isn't that right?
- 14 A. It does, yes.
- 14:39:27 15 Q. 621 The first of the entries on that page in this category is for 24,838.49, isn't  
16 that so?
- 17 A. Yes.
- 18 Q. 622 That confirms to us firstly that the transaction which was being conducted  
19 which involved the lodgement of that sum to the AIB R.D.C. account for the  
14:39:50 20 benefit of Mr. Ahern, was conducted through foreign exchange teller number 12,  
21 isn't that right?
- 22 A. That is on the assumption that the teller 12 was the foreign exchange teller,  
23 yes.
- 24 Q. 623 Yes. Well, if we look to what is beneath it in the narrative there you will  
14:40:06 25 see that the other items referred to here are for foreign drafts, foreign  
26 draft, sterling draft, US cheques, fees on sterling drafts. Are they all  
27 matters which would be conducted by the foreign exchange teller in the bank on  
28 that day?
- 29 A. Yes, they would be, yes.
- 14:40:25 30 Q. 624 They would be. Yes. If we turn then to the next page, 20681 and if we move to

14:40:40 1 the information on the bottom page, there is the question mark which has been  
2 put on this document I think in the course of its examination by some bank  
3 officials, and if we can blow up that section please? This is the All Items,  
4 again the All Items Report for the 11th October 1994, isn't that right?

14:41:08 5 A. Yes, that's correct.

6 Q. 625 And here in this particular section the teller is, or the record is recording  
7 the foreign exchange transactions conducted by teller number 12, isn't that so?

8 A. Yes, that's correct.

9 Q. 626 And we'll see in the second item up, that's the one which somebody in the bank  
14:41:29 10 has marked with the X, that 27,491.95 was the amount of sterling notes lodged  
11 to the Foreign Currency Held account in sterling on that day, isn't that so?

12 A. That's correct.

13 Q. 627 So I think that confirms to us again that the transaction which involved the  
14 lodgement of the funds to Mr. Ahern's account was conducted by the same teller  
14:42:03 15 who had taken in 27,491.95 worth of sterling on that day, isn't that so?

16 A. That's so, yes.

17 Q. 628 Now the fact that that teller had lodged 24,838.49 would indicate that that  
18 teller had, that's in cash, isn't it?

19 A. Yes, it came through as sterling cash, yes.

14:42:36 20 Q. 629 Right. Does that mean that one or two of the following scenarios could have  
21 happened? Firstly, that the lodgement of 24,838.49 represents part of the  
22 27,491.95, is that one option?

23 A. Yes, that's one option, yes.

24 Q. 630 And the other option is that a lesser amount of Mr. Ahern's was lodged, but  
14:43:12 25 that the balance of the funds which were exchanged, that is the balance of the  
26 27 thousand sterling was taken away by the customer who had conducted the  
27 exchange?

28 A. That's possible as well, yes.

29 Q. 631 Yes. So, Mr. Ahern has indicated to us that the sum of 8,000 pounds or  
14:43:37 30 thereabouts, sterling, represented the sterling element of the 24,838.49

- 14:43:48 1 lodgement made that day, and that the balance of his lodgement was represented  
2 by 16,500 pounds in Irish currency, do you understand?
- 3 A. Yes, I understand, yes.
- 4 Q. 632 If there was 27,400 odd pounds in sterling bought that day, it means that some  
14:44:09 5 other person must have exchanged close to 19 thousand pounds in sterling on  
6 that day, isn't that so?
- 7 A. That's possible, yes, yes.
- 8 Q. 633 And they did so through teller number 12, isn't that so?
- 9 A. Yes, yes.
- 14:44:29 10 Q. 634 But teller number 12 doesn't record another large lodgement of 19 thousand or  
11 anything like it, to an account, isn't that so?
- 12 A. I'm not aware of it.
- 13 Q. 635 Well, it's not shown in the All Items Report before you?
- 14 A. Yes. But that only reflects a certain number of transactions that that teller  
14:44:48 15 did at a certain point in time, it could be somewhere else on the All Item  
16 Report.
- 17 Q. 636 Where would it be in the All Item Report if it was conducted firstly by teller  
18 number 12?
- 19 A. It could be that the amount lodged to the other individual's account was lodged  
14:45:06 20 at a separate time, a different time of the day, it could be on the All Items  
21 Report in a different place. The All Items Report here reflects of the values  
22 of sterling purchased over the counter when the teller did its end of day  
23 process on the Forde Money Changer.
- 24 Q. 637 Yes. But that is an end of day process?
- 14:45:22 25 A. It's an end of day process for the foreign exchange.
- 26 Q. 638 Is it not an end of day process for all other transactions?
- 27 A. No, not necessarily. I could process transactions on an ongoing basis during  
28 the day, if I wanted to.
- 29 Q. 639 In either event, the two options which are there exist, namely that a person  
14:45:43 30 changing the money left the branch with that money, is that right?

- 14:45:47 1 A. The person could have changed the money and taken it in cash for example, yes.
- 2 Q. 640 Yes. The next item then that I'd ask you to look at is at page 21288, that is
- 3 a printout of the Foreign Currency Held Report for the 13th October, do you see
- 4 that, it's not a great copy I'm afraid?
- 14:46:17 5 A. O.k, yes.
- 6 Q. 641 The third item up there shows an amount of 31,224.32 I think it is?
- 7 A. Yes, I see it.
- 8 Q. 642 As a credit, do you see that?
- 9 A. Yes, I do.
- 14:46:37 10 Q. 643 Obviously the person preparing the narrative on the side there in manuscript
- 11 was looking at that document for that purpose, do you see that?
- 12 A. Yes, I do. I see that.
- 13 Q. 644 And then the next document now which we'll look at page 21289, you see the
- 14 Foreign Notes In Transit account, and on the 13th October you will see a
- 14:47:06 15 sterling remit for 31,224.62, do you see that?
- 16 A. Yes, that's correct.
- 17 Q. 645 Does that confirm to you that the branch remitted 31,200 pounds in sterling to
- 18 Currency Services following upon the transactions that we have looked at
- 19 earlier on the 11th?
- 14:47:30 20 A. No. It confirms to me that sterling to the value of 31,224 was remitted to the
- 21 note room on the 15th October.
- 22 Q. 646 Yes. Now I think what that means is that the branch, having purchased sterling
- 23 of 27,491?
- 24 A. Yes.
- 14:47:49 25 Q. 647 Did not keep that within its own branch for longer than the remission upward of
- 26 31,200 to Currency Services two days later, isn't that so?
- 27 A. That looks to be the case, yes.
- 28 Q. 648 Yes. From your experience in the branches at that particular time, was that
- 29 the practice of branches, that they would not take the risk of currency
- 14:48:21 30 fluctuations themselves, but that they would retain within the branch a

- 14:48:27 1 sufficient fund to meet their anticipated requirement but they would remit the  
2 surplus upward to Currency Services?
- 3 A. Yes, that would be the practice.
- 4 Q. 649 Yes. Now those documents which we have looked at so far relate solely to, or  
14:48:47 5 are being viewed in the context of the 24,838.49 which was lodged to Mr.  
6 Ahern's account on the day, isn't that so?
- 7 A. Yes, that's correct.
- 8 Q. 650 From that documentation can we conclude the following, firstly, that the sum of  
9 24,838.92 was lodged to Mr. Ahern's account that day?
- 14:49:13 10 A. That's correct, yes.
- 11 Q. 651 We can also see, because there aren't tally rolls available, that there is no  
12 record now available to show what foreign exchange transaction was conducted by  
13 Mr. Ahern or on his behalf on that day?
- 14 A. That's correct, yes.
- 14:49:31 15 Q. 652 The documentation shows that 25,000 pounds in sterling would have produced  
16 24,838.49 pence if the Forde Money Changer rate appropriate to a transaction of  
17 a value up to 2,500 pounds had been applied to this transaction?
- 18 A. That is correct, but I just need to point out there that when we went over the  
19 10,000 pounds we contact the note room to get a rate of exchange to purchase  
14:50:06 20 the currency in at, and that, the Forde Money Changer would prompt the cashier  
21 at the time to actually get a rate, known as a special rate, for a particular  
22 transaction over the value of 10,000.
- 23 Q. 653 That I understand to be the procedure of the bank, isn't that right?
- 24 A. That's the procedure of the bank, yes.
- 14:50:27 25 Q. 654 Is it the case that to your knowledge the bank has found itself having to  
26 return monies to customers on the basis that it did not implement its foreign  
27 exchange procedures and in particular did not apply the appropriate rates of  
28 foreign exchange to their transactions?
- 29 A. The bank has made refunds on foreign exchange transactions, yes.
- 14:50:59 30 Q. 655 Are we running to millions of pounds in relation to this?

- 14:50:59 1 A. That's correct, yes.
- 2 Q. 656 Does it follow from that, or are you in a position to say that the procedures  
3 of the bank and the practical application of those procedures were two  
4 different things?
- 14:51:05 5 A. No, I wouldn't agree with that. The procedure was that we would ring the note  
6 room for an amount above £10,000.
- 7 Q. 657 Yes. But if that was so, how is it that the bank has found itself in a  
8 position of remedying that situation by returning millions of pounds to its  
9 customers?
- 14:51:23 10 A. I gather, this is a slightly different issue in that the bank had, or thought  
11 it had permission to charge margins on certain transactions and it discovered  
12 afterwards it didn't. It was on that basis that the refunds were made, this is  
13 a different issue here.
- 14 Q. 658 All right.
- 14:51:39 15 A. This is a procedure where when the value of a transaction went above a certain  
16 floor limit the procedure was you rang the note room and got the rate. And  
17 that rate was based on market forces at the time, the value of the transaction,  
18 whether the currency was coming up to the note room or not, there was a number  
19 of variables in whatever rate you would have got back from the note room to  
20 conduct the transaction.
- 14:52:02 21 Q. 659 We will see in one of these transactions certainly that the rate, that is the  
22 last of the transactions on the 1st December as you know, the Forde Money  
23 Changer rate appropriate to two transactions at the -- up to 2,500 rate and the  
24 up to 10,000 pounds rate was applied to a transaction which had an actual value  
25 of 19 thousand, isn't that so?
- 14:52:28 26 A. If it's part of the transactions we are going to look at, yes.
- 27 Q. 660 It is, yes.
- 28 A. Yes.
- 29 Q. 661 It does indicate certainly at some point in that process a rate of exchange,  
14:52:43 30 two rates of exchange, which were the Forde Money Changer rates of exchange

- 14:52:48 1 appropriate to transactions of up to two and a half thousand and 10,000 were  
2 applied to a transaction having an actual value of 19 thousand, isn't that so?
- 3 A. That's correct, yes.
- 4 Q. 662 Do you say that that is consistent with the procedure of the bank being  
14:53:06 5 implemented?
- 6 A. Yes, I would. Because the procedure would be that you would ring the note room  
7 and may well get, what I refer to, as the spot rate of the day, which in that  
8 case is probably the 10,000 pound rate of the day and that rate is actually  
9 applied to the transaction.
- 14:53:22 10 Q. 663 If that were so of course there would be no reason to put in the rate for up to  
11 two and a half thousand as well, isn't that right?
- 12 A. That could have been an error in that the cashier when they were told to put in  
13 the spot rate picked the incorrect spot rate, realised that and then applied  
14 the correct spot rate afterwards.
- 14:53:40 15 Q. 664 How would they pick the inappropriate spot rate if they are ringing for a rate?
- 16 A. Because there are three rates quoted on the rate sheet, they may well have  
17 picked the two and a half thousand pound rate in error.
- 18 Q. 665 Right. Is the rate sheet not the Forde Money Changer rate.
- 19 A. No, the rate sheet is the sheet you showed me there on page 18977, that's the  
14:54:09 20 rate sheet that the branch would use on the day in question.
- 21 Q. 666 Yes. Is that not the rates that are applied within the Forde Money Changer?
- 22 A. That's correct.
- 23 Q. 667 That's what I had understood the position to be. If you don't use these rates  
24 you ring for another rate?
- 14:54:23 25 A. That is correct, but as I say the Forde Money Changer would prompt you above  
26 the value of £10,000 to ring.
- 27 Q. 668 When you ring for the other rate do you get another sheet or do you get an oral  
28 indication of what the shot rate will be?
- 29 A. You get an oral indication of the rates to purchase the currency.
- 14:54:40 30 Q. 669 So there isn't another shot rate sheet?

- 14:54:42 1 A. No.
- 2 Q. 670 No. So there aren't three alternative figures when you ring up you get one  
3 rate only?
- 4 A. Correct.
- 14:54:52 5 Q. 671 So the person who is conducting the 19,142 pounds transaction did not get two  
6 rates over the phone, they got one rate?
- 7 A. That's correct, they got one rate. But the instruction may have been to use  
8 the spot rate of the day which they may have interpreted as being the two and a  
9 half thousand pounds rate, because currency outside of sterling the floor limit  
10 was two and a half thousand pounds.
- 11 Q. 672 The volume of currency conducted on this day I think you have agreed with me to  
12 date, would appear to be exceptional in its volume, isn't that right, as  
13 regards sterling?
- 14 A. Yes.
- 14:55:36 15 Q. 673 And again as we know by a process of just examining the two amounts, it is  
16 large enough to accommodate for the 25,000 pounds sterling being a single  
17 transaction, isn't that so?
- 18 A. That's correct, yes.
- 19 Q. 674 Right. The next documentation that I would like you to look at, Mr. Garrett  
14:56:00 20 concerns the lodgement to the accounts of Ms. Celia Larkin of 28,772.90, this  
21 has been described as the Larkin/Wall Lodgement for Tribunal purposes. It was  
22 indicated to the Tribunal that this sum represented the lodgement by Ms. Larkin  
23 of an amount of some 30,000 pounds sterling which had been given by Mr. Michael  
24 wall to Mr. Ahern and in turn to Ms. Larkin for lodgement on the following  
14:56:39 25 Monday.
- 26
- 27 We see at page 19107, that this sum is lodged on the 5th December of 1994 to an  
28 account opened by Ms. Larkin for the purpose of receiving it, isn't that so?
- 29 A. That's correct, yes.
- 14:56:59 30 Q. 675 Yes. That is the customer document and it doesn't tell us what the source of

14:57:05 1 that deposit it is or what its component part is, rather it merely recites it  
2 as being a deposit?

3 A. That's correct, yes.

4 Q. 676 If we look to the next document on screen 19113, again we see that this is a  
14:57:20 5 credit docket which is generated within the bank, it's intended to reflect the  
6 fact that the lodgement is being made to an R.D.C. account within the bank,  
7 isn't that so?

8 A. That's correct, yes.

9 Q. 677 And the narrative to it is C Larkin, Ms. Larkin's account in which it will find  
14:57:38 10 itself, and again it has a stamp which is illegible but we have established  
11 that it is a stamp of the foreign exchange department of O'Connell Street on  
12 the day?

13 A. O.k.

14 Q. 678 This would indicate that this transaction, if that stamp is correct, was going  
14:58:01 15 through the foreign exchange department of the bank, isn't that so?

16 A. That's correct, yes.

17 Q. 679 The next document we look at is page 22071, this is a slip which is prepared by  
18 the teller, can you see that?

19 A. Yes.

14:58:21 20 Q. 680 And it tells us firstly it was conducted by teller 73, isn't that right?

21 A. Yes.

22 Q. 681 It's a receipt slip with an 08 code on it?

23 A. Yes.

24 Q. 682 Does that tell you that the teller was dealing with cash?

14:58:35 25 A. It tells me a received slip is cash received, in an internal bank AIB docket,  
26 cash received.

27 Q. 683 Now, it's expressed in Irish pounds at 28,772.90, isn't that so.

28 A. That's correct, yes.

29 Q. 684 In the event, well firstly, perhaps you agree with me that foreign exchange  
14:58:58 30 transactions were always expressed in Irish pounds, isn't that right?

- 14:59:01 1 A. That would be correct, yes.
- 2 Q. 685 The system is not geared to deal with matters in other foreign currencies so  
3 they are translated into having an Irish pound value and that figure is then  
4 used, isn't that right?
- 14:59:15 5 A. That's correct, yes.
- 6 Q. 686 So this document could reflect a lodgement of cash to a foreign exchange  
7 teller, which he would translate that into its Irish punt equivalent for the  
8 purpose of the record, isn't that so?
- 9 A. That's correct, yes.
- 14:59:36 10 Q. 687 Now we will then see on the next page in the booklet before you, page 19109,  
11 the rates of exchange for the Forde Money Changer in sterling for the 5th  
12 December, isn't that right?
- 13 A. That's correct.
- 14 Q. 688 We also see on the following page number 19110 the similar rates which are  
15 applicable to US dollar transactions, isn't that correct?
- 16 A. Correct, yes.
- 17 Q. 689 If we look to those US dollar transactions whereas the sterling bands fell into  
18 three bands that is below 500, sorry up to 500, up to two and a half thousand  
19 and up to 10,000, when dealing with dollars there were two rates only, that is  
20 up to 500 and up to 2,500, isn't that right?
- 15:00:27 21 A. That's correct, yes.
- 22 Q. 690 After that I take it the procedure was intended to be that the person would  
23 contact the money room, the Currency Services Department in other words, obtain  
24 a rate and apply that rate?
- 15:00:44 25 A. That's correct, yes.
- 26 Q. 691 Yes. Now if we look to the document at page 22065, which is a Tribunal  
27 document prepared by the accountant showing the sterling rates. In the second  
28 band of documents we see the application of the Forde Money Changer rates which  
29 we saw for sterling on the 5th December applied to an amount of 30,000 pounds  
15:01:33 30 sterling. And we see the amounts which those exchanges would produce allowing

- 15:01:42 1 for the varying rates which are given, that is up to 500, up to 2,500 and up to  
2 10,000, isn't that right?
- 3 A. Yes, that's correct.
- 4 Q. 692 And accordingly, if those rates were applied a customer who was conducting  
15:02:00 5 those transactions would receive in exchange the amounts which we see in the  
6 column headed Irish Pounds Net, isn't that so?
- 7 A. That's correct, assuming those rates were used on the 30,000 pounds.
- 8 Q. 693 Exactly.
- 9 A. Again if they rang the note room and got another rate something above the  
15:02:22 10 10,000 pounds rate and between the remit rate, you know, again if the rates  
11 were moving in the customer's favour that would be passed on, so there would be  
12 a possibility of a fourth rate there, something between the 10,000 pounds rate  
13 and the remit rate of the day.
- 14 Q. 694 There was a capacity to improve the rate by contacting the note room and  
15:02:43 15 getting a specific rate?
- 16 A. Yes.
- 17 Q. 695 But as regards the use of the published rates, none of the published rates, by  
18 that I mean the Forde Money Changer rates, would allow for a figure equating to  
19 the lodgement to Mr. Ahern's account, sorry to Ms. Larkin's account to have  
15:03:02 20 been made using those rates, isn't that right?
- 21 A. I will just check the amount.
- 22 Q. 696 Yes. It's 28,772.90, if you go down through the three items which are relating  
23 to foreign cash, sorry to sterling, cash, transactions at the rates of up to  
24 500, up to 2,500 and up to 10,000 you will see that the figures there are  
15:03:31 25 29,496.43, 29,932.13, 30,154.85 respectively, isn't that right?
- 26 A. O.k. yes.
- 27 Q. 697 So none of those rates would have applied?
- 28 A. None of those rates would give you the figure that you mentioned.
- 29 Q. 698 None of those rates give you the 28,772.90 which was actually lodged to the  
15:03:57 30 account, isn't that right?

- 15:03:58 1 A. That's correct.
- 2 Q. 699 Indeed if the rate was given that would have resulted in a lodgement of  
3 28,772.90 being lodged in return for 30,000 pounds it would have been a rate  
4 which is considerably worse than the worst published rate of the day, isn't  
15:04:23 5 that right?
- 6 A. That's correct.
- 7 Q. 700 Now we then move across, if you wouldn't mind, on the document in front of you,  
8 to a similar exercise conducted in relation to the exchange on the sum of  
9 45,000 US dollars, in the event that the published rates were used, and by  
15:04:47 10 published rates again I mean the rates we see on page 19110 as being the US  
11 dollar Forde Money Changer rates for the day. There are two rates, up to 500  
12 and up to 2,500.
- 13
- 14 Now if we look back to 22065, we will see that if 45,000 US dollars was  
15:05:18 15 tendered by a customer for exchange into Irish currency and if the rate applied  
16 to it was the rate appropriate to the transaction up to a value of two and a  
17 half thousand dollars, and if the £5 charge was deducted from that transaction,  
18 the net result would be 28,772.90, which was the amount of the lodgement to  
19 Ms. Larkin's account, isn't that so?
- 15:05:49 20 A. Yes.
- 21 Q. 701 Those are the figures. Now, on the day in question we are in a position to see  
22 the amount of foreign currency in sterling transacted by the branch that day  
23 and the amount of other currencies, isn't that so?
- 24 A. Yes.
- 15:06:13 25 Q. 702 And if we turn to page 22074, we will see a document which is a debit document,  
26 it gives the account number 99900881 FX notes held. That's the Foreign  
27 Currency Held Account, isn't that so?
- 28 A. That's correct, yes.
- 29 Q. 703 That is relating to foreign currency in foreign currency notes, physical  
15:06:41 30 foreign currency, isn't that right?

- 15:06:43 1 A. Yes.
- 2 Q. 704 And the narrative beneath that is STG, isn't that so?
- 3 A. That's correct.
- 4 Q. 705 Indicating that foreign currency notes in sterling on that day amounted to
- 15:07:00 5 1,921.53, isn't that so?
- 6 A. That's correct, assuming that the cashier had transcribed the correct figures
- 7 from the tally roll onto the docket in question, yes.
- 8 Q. 706 Exactly. Have you any reason to believe that the teller did anything other
- 9 than accurately transcribe what was on the tally roll to the account that he or
- 15:07:21 10 she was required to prepare at the end of the day?
- 11 A. No, I don't, but I also don't have the tally roll.
- 12 Q. 707 Nobody has that.
- 13 A. Nobody has it.
- 14 Q. 708 Yes. We'll see then the next page is page 22072, again this is the Foreign
- 15:07:41 15 Currency Held Account, debit document, this in effect is the entry by the bank
- 16 teller of the totals from the tally roll we have just spoken of, isn't that
- 17 right?
- 18 A. That's correct, yes.
- 19 Q. 709 The task which that teller had to do was transcribe the totals from the tally
- 15:07:59 20 roll which we don't have, to these notes which we do have, isn't that right?
- 21 A. Yes, that's correct, yes.
- 22 Q. 710 And this records that other than sterling, 28,969.34 in foreign currency was
- 23 transacted that day, in other words that this was the amount of foreign bank
- 24 notes purchased at the branch that day other than sterling, isn't that so?
- 15:08:25 25 A. That's correct, yes.
- 26 Q. 711 Now if we move then to page 20674, that is the computerised record or ledger of
- 27 the Foreign Currency Held Account in which the information which was on the two
- 28 previous documents is shown, isn't that correct?
- 29 A. That's correct, yes.
- 15:08:54 30 Q. 712 We will see on the debit side the currencies which were effectively purchased

- 15:09:03 1 by the bank from the customers, isn't that right?
- 2 A. That's correct, yes.
- 3 Q. 713 We see on the credit side the amounts of monies which were sold in foreign  
4 currency to the customers, isn't that correct?
- 15:09:14 5 A. That's correct, yes.
- 6 Q. 714 And those foreign currency amounts sold to customers were 737 - sorry 737.10  
7 worth of foreign currency other than sterling?
- 8 A. Yes.
- 9 Q. 715 And 1,189.29 pounds in currency of sterling denomination, isn't that right?
- 15:09:41 10 A. Yes, that's correct.
- 11 Q. 716 The balance then of 29,254.97 is shown as stock O or stock out, isn't that  
12 correct?
- 13 A. That would be my interpretation of the narrative that's there, stock out, yes.
- 14 Q. 717 Yes. Does that reflect the fact that the branch on that day remitted to  
15 Currency Services 29,254.97 worth of foreign currency?
- 15:10:08 16 A. Yes, it could be a make up of sterling, dollars, French Francs, but currency so  
17 the value of 29,254.97 left the branch on that particular date.
- 18 Q. 718 Without there being a definition here as to the currency in which it was, isn't  
19 that so?
- 15:10:35 20 A. That's correct, yes.
- 21 Q. 719 Now, we will see in the next document page 21261, which is the Foreign Notes  
22 Transit Account that that same sum 29,254.97 is shown as a debit on the 5th  
23 December, isn't that so?
- 24 A. That's correct.
- 15:10:57 25 Q. 720 And it's shown as a credit on the 9th December, isn't that so?
- 26 A. That's correct, yes.
- 27 Q. 721 That I think confirms to you that cash services, that is the Currency Services  
28 Department in AIB Headquarters received foreign currency notes to the value of  
29 29,254.97 for which credit was given to the branch on the 9th?
- 15:11:24 30 A. On the 9th December, yes, that's correct.

- 15:11:28 1 Q. 722 Now, we'll see the documentation that was generated within the branch in  
2 relation to that at page 22078, there is a debit docket for Foreign Notes In  
3 Transit in the amount of 29,254.97, isn't that so?
- 4 A. That's correct.
- 15:11:50 5 Q. 723 And we see that that was a credit docket from the Foreign Notes Held Account of  
6 the same amount, isn't that so?
- 7 A. That's correct, yeah.
- 8 Q. 724 Now, the next document we'll see is page 22080 and while we have been looking  
9 at documents to date which are generated within the system and available at the  
15:12:16 10 branch level on the computer system, this document is a document generated  
11 within Currency Services and is it's ledger called the Remits Book, isn't that  
12 so?
- 13 A. Yes.
- 14 Q. 725 And do you understand that the computerised system or the absence of a  
15:12:35 15 computerised system in December 1994, that the Currency Services unit was using  
16 a Forde Money Changer system to receive funds just as the branch was doing the  
17 same?
- 18 A. That's my understanding of it, yes.
- 19 Q. 726 And whilst there is no tally roll in relation to what took place in relation to  
15:12:55 20 the branch activities, this document records the transactions conducted by  
21 Currency Services Limited in relation to the 7th December 1994, isn't that so?
- 22 A. That's correct, yes.
- 23 Q. 727 This document lists a number of bank branches and against those bank branches  
24 it records varying amounts, isn't that so?
- 15:13:23 25 A. That's correct.
- 26 Q. 728 And the heading of the document is that it is the Remits Book, it has a date  
27 and then it has STG opened and US, do you see that?
- 28 A. Yes, I see it there, yes.
- 29 Q. 729 And the Tribunal understands from Ms. Murtagh of the Currency Services  
15:13:45 30 Department that this document is a ledger which reflects the receipt by

- 15:13:50 1 Currency Services of bundles of foreign currency on the 7th of December 1994,  
2 which were sorted, I should say, on the 7th December 1994 and attributed to the  
3 branches which are listed here?
- 4 A. Yes.
- 15:14:08 5 Q. 730 You can see?
- 6 A. Yes.
- 7 Q. 731 Now the upper lined copy which I'm afraid is rather blanked by the highlighting  
8 is an entry for 37/38 O'Connell Street, it is in the amount of 29,254.97, you  
9 see that?
- 15:14:33 10 A. Yes, I do, yes.
- 11 Q. 732 So whereas the documents we looked at earlier reflected the sending of that  
12 money or the dispatch of those funds or remission of those funds from the  
13 branch, this records the receipt of the remit within the branch, isn't that  
14 right?
- 15:14:49 15 A. It records the receipt of the remit within Currency Services.
- 16 Q. 733 In Currency Services?
- 17 A. Yes.
- 18 Q. 734 And Currency Services indicate that the inclusion of a figure in this opening  
19 of currencies is an indication that the amount received was either a sterling  
20 amount or a US dollar amount?
- 15:15:11 21 A. Yes.
- 22 Q. 735 Isn't that so?
- 23 A. That's what it indicates, yes.
- 24 Q. 736 Yes. So that it's not necessary for the Tribunal to enquire into what other  
15:15:25 25 foreign currencies were involved in relation to the transaction of the 5th,  
26 other than sterling and US currency, because what was actually received in  
27 notes in Currency Services was entirely made up of either dollars or sterling,  
28 isn't that right?
- 29 A. Either dollars or sterling or a mix of both.
- 15:15:51 30 Q. 737 Well, can we just look at that now for a moment. You will see that there are

- 15:15:59 1 entries for O'Connell Street, that is No. 10 and 11 O'Connell Street, for  
2 16,117 - sorry 16,712.25 and for 325.50 for the same branch, do you see that?
- 3 A. Yes, I do, yes.
- 4 Q. 738 You see they are then totalled in the margin to 17,037.75?
- 15:16:28 5 A. Yes, I see that.
- 6 Q. 739 What the Tribunal has been informed by Ms. Murtagh is that this indicates that  
7 in relation to O'Connell Street, No. 10 and 11, it received two bundles of  
8 currency one of which entirely comprised of US dollars, one of which comprised  
9 entirely of sterling, and that is why there is a division in relation to the  
10 number 10 and 11 O'Connell Street receipt as opposed to other transactions  
11 where you will see that only one entry is made, do you understand?
- 12 A. Yes, I understand that, yes.
- 13 Q. 740 So that this ledger we are told, reflects both sterling and US receipts of  
14 funds at Currency Services, but it distinguishes between them, in other words  
15 there is no mixed bag containing both?
- 15:17:23 16 A. As I say that's an internal document from Currency Services, I'm not familiar  
17 with all of their internal documents. If Rosemary has indicated that that is  
18 the case well, she is the expert on Currency Services dockets or documents.
- 19 Q. 741 Now the sum of 29,254.97 is a sum which we know from this document was  
15:17:54 20 received, sorry is the value of the currency which was received in foreign note  
21 form within Currency Services on that day, isn't that right?
- 22 A. Yes.
- 23 Q. 742 And if we look now to page 20674 which is the Foreign Currency Held Account?
- 24 A. Yes.
- 15:18:32 25 Q. 743 We see that this account has a balance running to it, isn't that right, shown  
26 on the right-hand side?
- 27 A. The right-hand column.
- 28 Q. 744 Exactly.
- 29 A. Yes.
- 15:18:42 30 Q. 745 We see for the 5th December 1994 the opening balance was 19,196.25, isn't that

- 15:18:50 1 right?
- 2 A. That's correct.
- 3 Q. 746 And closing balance that day was 18,905.74, isn't that right?
- 4 A. That's correct, yes.
- 15:19:00 5 Q. 747 The difference between those figures being 290 pounds and some 49 pence?
- 6 A. O.k, yes.
- 7 Q. 748 Within that we see that transactions were conducted to a value of total sales
- 8 of 31,181.36 that's the total of the two amounts there, the - let me see those
- 9 figures now, the 28,969.54 and 1,921.53?
- 15:19:41 10 A. Sorry, could you just repeat that again?
- 11 Q. 749 The total of the amount of foreign currency which was purchased by the bank is
- 12 represented by the addition of the foreign currency amount of 28,969.34 plus
- 13 the 1,921.53 represented by sterling, isn't that so?
- 14 A. That's a total of purchases for that branch for that day.
- 15:20:10 15 Q. 750 Yes, exactly. Then the total sale, the total sales of currency are represented
- 16 by the 737.10 of foreign exchange other than sterling, the 1,189.29 of sterling
- 17 and the 29,254.97, they are the three sums that are added together on the
- 18 credit side?
- 19 A. That's correct.
- 15:20:38 20 Q. 751 And the balance is reflected by the difference between the transactions of the
- 21 day credit and the debit transactions, isn't that so?
- 22 A. Yes, yes.
- 23 Q. 752 It's on that basis that we see that there is a 290.48 pounds shortfall between
- 24 those two amounts, so that the sales of foreign currency, and by that I include
- 15:21:05 25 the remission upwards to Currency Services, exceeded the amount of money bought
- 26 in by the bank by 290.48 pounds?
- 27 A. Yes.
- 28 Q. 753 That's how the balance is struck?
- 29 A. That's how the balance is struck, yes.
- 15:21:21 30 Q. 754 Yes. Now that indicates that the remission of the monies upward, the 25 -

15:21:31 1 29,254.97 that was remitted to Currency Services, was funded by the purchases  
2 of that day, isn't that so?

3 A. Yes, I would think so, yes.

4 Q. 755 Yes. So that the monies which were sent up to the Currency Services room were  
15:21:58 5 the proceeds of the transactions which are recorded as being the 28,969.34  
6 purchase of foreign currency other than sterling, and the 1,921.53 of sterling,  
7 isn't that so?

8 A. It may not have been. I mean the branch held approximately the 19,196.25, it  
9 held currency to the value of that in its stock. It may have remitted some of  
10 that stock for example could have been sterling, could have been dollars, it  
11 may have included some of that in its remittance for the day as well.

12 Q. 756 It could not have made up a sum of 29 thousand?

13 A. No, it couldn't but it had a balance of 19 already in stock, so some portion of  
14 that may have gone into the remittance for the branch on that particular day as  
15:22:52 15 well. You know the point is, that currency that came across the counter that  
16 day could have been held on to, the branch may have needed it, it may have been  
17 sterling, dollars, it may have been whatever, but the branch, all I can say to  
18 you is that currency to the value of 29,254.97 left the branch that day. It's  
19 make up --

15:23:16 20 Q. 757 In a foreign currency?

21 A. Yeah.

22 Q. 758 That is either sterling or dollars?

23 A. If the sheet from Currency Services is correct, yes.

24 Q. 759 If this sheet is correct it was not sterling?

15:23:28 25 A. I don't follow you, how can you assume it's not sterling?

26 Q. 760 Because this records that the amount of sterling that was received on the day  
27 was 1,921.53, the equivalent of that sum in sterling was bought that day?

28 A. Yes.

29 Q. 761 A single, a unitary amount of 29, sorry 25 - sorry, 29,254.97 in a currency was  
15:24:03 30 received within the Currency Services department that day, isn't that right?

- 15:24:07 1 A. Yes, that's correct.
- 2 Q. 762 Right. That was either a sterling sum or it was a sum other than sterling,  
3 isn't that right?
- 4 A. Right.
- 15:24:19 5 Q. 763 This record shows us that foreign currency other than sterling of 28,969.34 was  
6 received by the bank, purchased by the bank that day?
- 7 A. That is again assuming that your figures are transcribed correctly.
- 8 Q. 764 Sorry, it's not that I'm assuming that they are transcribed --
- 9 A. That we are assuming that they are transcribed correctly.
- 15:24:44 10 Q. 765 That the bank record is accurate in what it says, we are making that  
11 assumption?
- 12 A. Yes. But all I can say to you is that currency to the value of 29,254.97 was  
13 remitted from O'Connell Street on the 5th December. It's make up or what was  
14 in it, you know we can't - I can't say looking at the screen here in front of  
15 me, I can't say what was in it.
- 15:25:04 16 Q. 766 You can say, however, from looking at what was received in Currency Services  
17 that it is either dollars or sterling?
- 18 A. Yes, yes.
- 19 Q. 767 And do you suggest or would you believe that from your experience in Foreign  
15:25:23 20 Currency Services that the bank would retain within the branch 29 or 28,969  
21 pounds worth of foreign currency that it had bought on a particular day?
- 22 A. I would assume that it wouldn't.
- 23 Q. 768 No. It would remit it upward, isn't that right?
- 24 A. Yes, or a portion of it.
- 15:25:45 25 Q. 769 Yes. If that portion, I suppose being dictated by what is average or what it's  
26 usual funding or requirement for foreign currency is?
- 27 A. That's correct. I mean the branch in question here looks to be holding an  
28 average of about 20,000 pounds worth of currency at any given time.
- 29 Q. 770 Yes. It did so on this day, notwithstanding that it had remitted upward  
15:26:09 30 29,254.97 in foreign currency?

- 15:26:14 1 A. Mm-hmm, yes that's correct.
- 2 Q. 771 And if this document, the Foreign Currency Held document is accurate, that was  
3 in the currency other than sterling?
- 4 A. If the foreign currency document is accurate it was in a currency other than  
15:26:31 5 sterling, yes.
- 6 Q. 772 Yes, yes. And if the document in Foreign Currency Services is accurate it was  
7 in dollars, because it was not in sterling. If we look to the document on  
8 screen of 22080, which is the Remits Book, that document is intended to reflect  
9 either sterling receipts or dollar receipts and no other currency?
- 15:27:00 10 A. Correct.
- 11 Q. 773 And it records the amount received in one or other and is not a mix of both?
- 12 A. That's what you have told me based on what the Currency Services have said to  
13 you, yes.
- 14 Q. 774 That is entirely consistent with the Foreign Currency Held Record, which shows  
15:27:19 15 the same amount being sent up?
- 16 A. Yes.
- 17 Q. 775 Now, I am suggesting to you that given that the branch would not retain within  
18 the branch 29 thousand pounds worth of foreign currency and would remit up what  
19 it had received that day, in excess of its needs, if it remitted up this sum of  
15:27:53 20 29,254.97 it did so in a currency other than sterling because it recorded that  
21 it had only received 1,921.53 in sterling. Otherwise if it was going into its  
22 stock it would be remitting two amounts, it would be remitting both a foreign  
23 currency amount and the sterling amount to the Currency Services?
- 24 A. Yes.
- 15:28:25 25 Q. 776 Isn't that so?
- 26 A. Yes.
- 27 Q. 777 Right. So as matters stand if these accounts are accurate, and everything is  
28 premised for the moment on that basis, this would show that the amount that was  
29 remitted was an amount in dollars and not an amount in sterling. Because it  
15:28:45 30 could not have been sterling, because sterling wasn't received in sufficient

- 15:28:50 1 quantity to fund this remission?
- 2 A. Yes, that's an assumption you can make based on the fact that everything is
- 3 correct.
- 4 Q. 778 Yes.
- 15:28:57 5 A. Without the tally roll of the day I can't say if the figures were transcribed
- 6 correctly.
- 7 Q. 779 Right. But this error, if there was one, has not been corrected in any of the
- 8 records of the bank that have been made available to the Tribunal so far, isn't
- 9 that correct?
- 15:29:14 10 A. That's correct, but the end of day process was simply involved transcribing the
- 11 values of the sterling purchased and foreign currency purchased on to two
- 12 dockets. Now the narratives are actually almost irrelevant in the balancing
- 13 process, all I want to do is make sure that they transcribed the correct value
- 14 across onto the bank's ledgers. It's about value rather than narrative.
- 15:29:41 15 Q. 780 Yes. But from, it's probably something to be dealt with by Currency Services
- 16 themselves, they do have to ensure that the funds they have received are as
- 17 described and accounted for by them?
- 18 A. They have to verify that the funds received are correct in value, that the
- 19 correct exchange rate has been applied, and that the correct Irish pound value
- 15:30:03 20 is recredited back to the branch that remitted the currency in the first place.
- 21 Q. 781 Yes, they are physically dealing with notes they have in their hands?
- 22 A. Yes.
- 23 Q. 782 On this instance, either a sum in sterling or a sum in dollars which is not
- 24 going to stay within the Currency Services Department, it's going to be
- 15:30:22 25 distributed to other branches as part of the process?
- 26 A. Either that or it is remitted out from Currency Services.
- 27 Q. 783 Yes, but it is remitted out in a form that it is in a foreign currency and
- 28 somebody is going to receive it, if it comes in as sterling it can't be sent
- 29 out as dollars in plain terms?
- 15:30:43 30 A. Correct.

- 15:30:44 1 Q. 784 Isn't that right?
- 2 A. Yes.
- 3 Q. 785 If somebody gets dollars instead of sterling they will be sending it back and
- 4 looking for dollars which is what they wanted?
- 15:30:52 5 A. Yes.
- 6 Q. 786 And there is no adjustment that we see in foreign currency, Currency Services,
- 7 which treated this as anything other than a single currency received by the
- 8 Currency Services from the branch on foot of foreign notes in transit record
- 9 which would appear to show that the sum came from the Foreign Currency Held
- 10 Account in which it is shown as foreign currency other than sterling. That is
- 11 the trail, whether it be accurate or otherwise, that is the trail?
- 12 A. Yes. But Currency Services are only looking at the currency as presented in
- 13 front of them. As I say they are not interested in what the branch purchased
- 14 it or what narratives they put on the docket, they are not even interested in
- 15 the value. They are interested to make sure that the correct currency is
- 16 received, the correct remit rate is applied, the correct Irish pound value is
- 17 calculated, and the correct money goes back to the branch to reflect the value
- 18 of what was sent up in the first place.
- 19 Q. 787 Now, we have spoken about the value of currency, that is the value of foreign
- 15:32:03 20 notes, it has a value for the branch which is not the same value necessarily as
- 21 the value to the customer for example, or the value to Currency Services, in
- 22 Irish terms. Because there is a profit on these various transaction, they are
- 23 not going to equate as the same sum in Irish terms, though they go through the
- 24 process of being purchased from the customer, being sold, in other words, to
- 15:32:32 25 the branch at a given rate?
- 26 A. Yes.
- 27 Q. 788 The bank then sells them up the line at a different rate, isn't that so?
- 28 A. Yes, I presume so.
- 29 Q. 789 I think these are reflected in the rates we see, there is a buyer remit rate
- 15:32:46 30 which is the rate at which the Currency Services will take the funds from the

- 15:32:51 1 branch, isn't that so?
- 2 A. That's correct, yes.
- 3 Q. 790 And if we look to the US dollar buyer remit rate at page 1911 - sorry 19110 we
- 4 will see the buy remit on the day, the 5th December was 1.5386, do you see
- 15:33:13 5 that?
- 6 A. Yes, 1.5386, yes.
- 7 Q. 791 And of course you have told us that the rate can vary depending on the amount
- 8 of the foreign currency which is the subject of the transaction?
- 9 A. Yes.
- 15:33:29 10 Q. 792 And in general the larger the transaction the keener the rate, i.e. the more
- 11 favourable rate to the seller of the currency?
- 12 A. Yes.
- 13 Q. 793 Isn't that so?
- 14 A. Yes.
- 15:33:40 15 Q. 794 And this rate, the buy remit rate of 1.5386 was what I might call the standard
- 16 rate on the day, isn't that right, the standard remit rate?
- 17 A. Standard remit rate.
- 18 Q. 795 Yes, the spot rate could be different?
- 19 A. The stop rate would be one of the two rates that you see to the left, up to the
- 15:34:02 20 value of two and a half thousand.
- 21 Q. 796 O.k. that's the spot rate?
- 22 A. That's the spot rate, yes.
- 23 Q. 797 The rate one might get if one rang Currency Services, saying I have a larger
- 24 amount than is the norm, give me a rate on this, you would expect to get a more
- 15:34:15 25 favourable rate, isn't that so?
- 26 A. You would on, if market conditions permitted, yes. So would I expect to get a
- 27 rate somewhere in the range from 1.5637 to 1.5386, but I may get 1.5637 if
- 28 nothing is happening in the market.
- 29 Q. 798 Now, the next document I ask you to look at is a document at page 22066, if we
- 15:34:49 30 turn to that please. This again is a Tribunal document and what it seeks to do

15:34:54 1 is to look to each of the transactions which are recorded as having been funds  
2 received within Currency Services on the 7th December. In other words, the  
3 items which are set out in the Remits Book reference, which we saw a little  
4 earlier which was generated as a ledger within Currency Services recording the  
15:35:22 5 dollar and pound exchanges on the day, do you understand?  
6 A. Yes, I do, I understand, yes.  
7 Q. 799 Now if we look to the items then starting with O'Connell Street, 10 and 11, I  
8 mentioned those two figures to you a little earlier?  
9 A. Yes.  
15:35:41 10 Q. 800 That's the 16,712.25 and the 325.50 pounds?  
11 A. Yes.  
12 Q. 801 Since this was an opening by Currency Services of bundles of cash limited to  
13 dollars and sterling, the amounts in question must be reflected by notes in one  
14 or other currency, isn't that so?  
15:36:07 15 A. Yes, yes.  
16 Q. 802 This exercise which is carried out here is to look at those Irish pound values  
17 and to look at the rates of exchange which could allow for them translating  
18 into round sum figures, do you understand?  
19 A. Yes, I do, yes.  
15:36:26 20 Q. 803 So that within the box in the highlight there are the rates applicable to  
21 foreign exchange transactions which have been reflected in the documents  
22 showing the current, the then current money changer rates?  
23 A. O.k, yes.  
24 Q. 804 Outside the box are variations in those rates which would have to be allowed  
15:36:53 25 for if the sums were to come to even amounts, do you understand?  
26 A. Yes, I do, yes.  
27 Q. 805 O.k. So then if we look to item No. 3 here which is the O'Connell Street  
28 transaction which we know to have had a value of 29,254.97, if we then apply  
29 the rates appropriate in either dollars or sterling to that transaction you  
15:37:21 30 will see that we cannot get an even 45,000 dollars, you see that?

- 15:37:30 1 A. Yes, I do, yes.
- 2 Q. 806 Nor can one get any even amount in sterling?
- 3 A. Yes.
- 4 Q. 807 You see that?
- 15:37:37 5 A. Yes, I do.
- 6 Q. 808 What we are dealing with here are sterling notes, isn't that right?
- 7 A. Correct, yes.
- 8 Q. 809 And the smallest sterling note at the time was a five, five pound note, isn't
- 9 that right?
- 15:37:49 10 A. Five pound notes, yes.
- 11 Q. 810 The Currency Services is not opening bundles which include any coin whatsoever,
- 12 isn't that right?
- 13 A. That would be correct, yes.
- 14 Q. 811 So whatever rate is being applied it would have to result in there being a
- 15:38:05 15 series of figures ending with a zero or a five, if it's sterling?
- 16 A. No, it wouldn't necessarily end in five because if you were remitting five
- 17 pound notes to Currency Services and there was a minimum of 500 pounds you
- 18 could remit, so it would have to be made up of bundles of 500 pounds to a
- 19 thousand pounds.
- 15:38:27 20 Q. 812 We are told that they endeavour to bundle them into, I think, units of 100 of
- 21 any one note, but that the Currency Services would accept bundles of less than
- 22 that, provided they were in notes. In other words, what we are told and this
- 23 may not be accurate, but certainly what Ms. Murtagh tells us is that they would
- 24 accept any sum in dollars up to a single dollar bill, they would accept any sum
- 15:39:06 25 in sterling starting with a five pound note.
- 26
- 27 That it was intended that they would be batched and bound in hundreds, that's
- 28 hundred notes in each instance, but that on occasion they would receive amounts
- 29 which were not formed of hundreds?
- 15:39:18 30 A. Yes. My understanding would be that, I think either once a quarter or once a

15:39:25 1 half year, we were allowed send up currency that outside the standard bundles.  
2 But the rest of the year they would have to be standard bundles, would have  
3 been my understanding.

4 Q. 813 Yes. We'll explore that a little further with Ms. Murtagh but in either event  
15:39:41 5 the purpose of this exercise and looking at this transaction as reflected at  
6 item 3 in the scheduled of documents, schedule in front of you, you you will  
7 see that if you move to a remit rate of 1.5382 for US dollars the sum of  
8 29,254.97 value in Irish currency translates as 45,000 dollars if that rate of  
9 exchange were applied, do you understand the exercise?

15:40:22 10 A. Yes, I understand the exercise, yes.

11 Q. 814 That would mean that in fixing a rate for that transaction the seller of the  
12 currency, in this instance the branch, would have improved over and above the  
13 standard rate by 0.0004 i.e. four points on the transaction, do you understand?

14 A. I understand, yes.

15:40:52 15  
16 MR. MAGUIRE: Sorry Chairman, just to briefly perhaps interrupt in relation to  
17 what was put to the witness as I understood it, that in respect of the document  
18 we are dealing with that's document no. 22066 and we are dealing with the third  
19 column over essentially, and the figure that appears in that is not 45,000 but  
15:41:12 20 rather 44,999.99 and that was put otherwise.

21  
22 CHAIRMAN: Mr. O'Neill with deal with that.

23 Q. 815 I think if you carry out the exercise of dividing the amount by the currency it  
24 comes out at 50,000, 45,000, I should say.

15:41:32 25  
26 MR. MAGUIRE: That's not what the sheet says.

27 Q. 816 Do you know that?

28  
29 MR. MAGUIRE: Sorry Chairman, it is important.

15:41:40 30 Q. 817 The sheet, with respect the sheet shows both figures and the explanation for

15:41:47 1 that is when you carry out an exercise using a calculator to four decimal  
2 points you end up with that figure, you have a calculator before you there.  
3  
4 CHAIRMAN: Well does Mr. Garrett want to comment?

15:42:03 5 Q. 818 Mr. Garrett might carry out the exercise for us.  
6  
7 CHAIRMAN: Or do you want to comment on that?

8 A. I assume yes, if you divide 45,000 by 1.5382 you are going to come up with  
9 29,254.97.

15:42:24 10 Q. 819 Yes.  
11 A. That's a calculation, I mean --

12 Q. 820 I mean if the calculation is being done on the Forde Money Changer or what have  
13 you, that is what is going to result, you are using a calculator?

14 A. It's a calculation on the Forde Money Changer would be done at the remit rate  
15 of the day.

16 Q. 821 You can enter the rate into the Forde Money Changer, isn't that right? If you  
17 - if you ring the, if you were operating this at branch level and you rang the  
18 Currency Services?

19 A. Yes.

15:42:57 20 Q. 822 And they gave you a rate other than that which is programmed into the machine  
21 in the first instance.  
22 A. Yes.

23 Q. 823 You have to enter that rate into the machine to conduct the exercise of putting  
24 it on the tally roll, isn't that right?

15:43:09 25 A. For the purchase of the currency, yes.

26 Q. 824 Yes, that's the same exercise that's being carried out here?

27 A. No, because the Currency Services would only give you the rate to buy the  
28 currency at, they wouldn't give you a rate to remit the currency at. The  
29 currency is remitted at the standard rate of the day, which in this case is, I  
15:43:29 30 would believe to be 1.5367.

15:43:39 1 Q. 825 1.5386?

2 A. Sorry, I was looking at the commercial rates there, yes, sorry 1.5386.

3 Q. 826 Now again we have been told by Ms. Murtagh that it is not unusual that the

4 branch will ring the bank and say I have an unusually large amount of currency

15:43:58 5 here, I want a better rate than the standard rate, the standard remit rate and

6 they will get it, you don't know of that?

7 A. No, you would ring the Currency Services to get a better rate to purchase the

8 currency at, but I will always remit the currency at the remit rate of the day.

9 Q. 827 There is an issue there obviously between what Ms. Murtagh says and otherwise.

15:44:21 10 As we understand it she says that the bank, the branch rates can, the branch

11 can improve on the remit rate by contacting Currency Services and therefore,

12 get a rate on the day that is marginally better than the rate that was fixed

13 that morning, and that that is entirely consistent with this entry here?

14 A. Well --

15:44:49 15

16 MR. MAGUIRE: Sorry Chairman, I have to interrupt again. What we are dealing

17 with here is not what the branch did, this is the currency, it was not what was

18 lodged at the branch, this was the currency that was sent up to the note room.

19

15:45:04 20 CHAIRMAN: Yes.

21

22 MR. MAGUIRE: It's not a question of the branch ringing up for a rate.

23 Q. 828 We will hear the evidence I think in time from Ms. Murtagh but as I understand

24 the position, Mr. Garrett --

15:45:20 25

26 MR. MAGUIRE: It's derived from the sheet the witness is being questioned on.

27 Q. 829 Just a minute, the value 29,254.97 is a value in Irish currency which is given

28 to foreign notes in the possession of the branch on the 5th December, isn't

29 that so?

15:45:37 30 A. That's correct.

- 15:45:37 1 Q. 830 That's when that rate was fixed?
- 2 A. Yes.
- 3 Q. 831 Now, that is a rate which was fixed to a physical block of foreign notes, isn't
- 4 that right?
- 15:45:49 5 A. Yes.
- 6 Q. 832 The value of which is not stated within the reference to 29,254, isn't that so?
- 7 A. That's correct.
- 8 Q. 833 So that rate is a rate which has been applied to a foreign currency which does
- 9 not equal that particular denomination, does not equal 29,254.97 obviously, we
- 15:46:16 10 don't know by reference to this figure alone what the foreign currency amount
- 11 is, isn't that so?
- 12 A. Correct.
- 13 Q. 834 To find what the foreign currency is reflected by this, one must know what the
- 14 rate of exchange applied to the transaction was, as between Currency Services
- 15:46:36 15 and the branch, isn't that so?
- 16 A. Yes, yes.
- 17 Q. 835 Yes. And that is a matter which is either the standard rate which is the
- 18 printed out rate of 1.5386 or, another rate if another rate was applied by
- 19 Currency Services, isn't that right?
- 15:46:58 20 A. Yes.
- 21 Q. 836 Your belief is that the only rate that would apply was the rate fixed for the
- 22 day and not a later rate that might be fixed by Currency Services, isn't that
- 23 so?
- 24 A. The number of time that is I would have rang Currency Services for a rate --
- 15:47:13 25 Q. 837 Yes.
- 26 A. The rate was to buy from the customer, there was never a question of a rate to
- 27 be remitted to the Currency Services.
- 28 Q. 838 Yes, I appreciate that that is your evidence in relation to your dealings with
- 29 the branch, with Currency Services when you were in the branch. I am merely
- 15:47:31 30 indicate to you that Ms. Murtagh, we understand, has given evidence or will

15:47:35 1 give evidence to the effect that the branch could improve on the rate that was  
2 the standard rate for the day. That is something that apparently you do,  
3 either do not agree with or were unaware of but we will deal with that with  
4 her?

15:47:50 5 A. O.k.

6  
7 MR. NESBITT: Mr. Chairman, perhaps I can intervene on behalf of AIB. We have  
8 made available our witnesses to the Tribunal, we have indicated if there is  
9 uncertainty about questions between one witness and another we should be given  
10 an opportunity to clear it up rather than have somebody like Mr. Garrett  
11 examined as though he does not know what the answer was. And it's regrettable  
12 that this should happen, I think given that warning to the Tribunal counsel.  
13 We will check into this overnight but it's quite wrong that Mr. Garrett should  
14 have suggested to him that he is disagreeing with a colleague in those  
15 circumstances.

16  
17 MR. O'NEILL: The witnesses have been circulated with the transcripts of and  
18 statements where appropriate of other witnesses, if there are conflicts which  
19 appear in those accounts, in the course of testimony being given by a witness,  
20 it don't arise from anything that the Tribunal has been aware of. This is an  
21 examination of this witness on particular issues, if there is a conflict  
22 between his evidence and that of Ms. Murtagh it has arisen now, rather than in  
23 their interviews, I cannot be aware of these matters.

24  
15:48:36 25 CHAIRMAN: I assume Mr. Garrett has been given this document that's on screen?

26  
27 MR. O'NEILL: Oh, yes, these are all bank documents, the Tribunal has been  
28 endeavouring to --

29  
15:49:07 30 MR. NESBITT: This was a document created by the Tribunal on screen.

- 15:49:11 1
- 2 JUDGE FAHERTY: This is a Tribunal analysis.
- 3
- 4 CHAIRMAN: This is Tribunal analysis, has Mr. Garrett been given this?
- 15:49:17 5
- 6 MR. O'NEILL: It was circulated as far as I know in the brief, yes. It has a
- 7 brief page number, 22066. It has been circulated, yes, the exact date of
- 8 circulation I will have to establish.
- 9
- 15:49:31 10 But in any event, the document we were looking at on screen there, Mr. Garrett
- 11 shows that there are a number of possibly different rates of exchange in
- 12 relation to the individual transactions which are shown here, put another way,
- 13 the 20 transactions which are shown here were not all conducted at the same
- 14 rate of exchange, isn't that so?
- 15:50:11 15 A. That would appear to be the case, yes.
- 16 Q. 839 And isn't that consistent with the fact that the branches contact the Currency
- 17 Services, they get a rate and the rate might not necessarily be the same rate
- 18 for each branch?
- 19 A. No, the remit rate of the day is the same for every single branch. You may
- 15:50:37 20 have discrepancies here if currency was remitted on different days, and it
- 21 arrived into the centre on the 5th or 7th. But the currency could have been
- 22 made up on the previous Friday for example, if the 5th was a Monday, the
- 23 currency could have been made up and bundled on the previous Friday and the
- 24 remit rate for the Friday would have been applied to that transaction.
- 15:50:59 25 Q. 840 The remit rate is the rate struck by the bank, sorry, as to timing the remit
- 26 rate applied is the remit rate which applies on the day upon which the
- 27 remission of the money is accounted for in the Foreign Currency Held account,
- 28 isn't that so?
- 29 A. In the foreign currency, yes that would be so, but it does vary.
- 15:51:24 30 Q. 841 Physically the money may take a number of days to actually get to the sorting

15:51:28 1 office because it has to be physically collected?

2 A. And physically the money could be made up a day or two prior to collection

3 from, by the particular security company that collected the currency. I could

4 make up currency on a Thursday or a Friday to be remitted on the following

15:51:44 5 Monday when my currency was collected to go back into the central.

6 Q. 842 In any event if we are looking at item No. 3 here, I suggest to you as a matter

7 of mathematics that if one divides the amount, 45,000 by the rate of exchange

8 of 1.5382 one ends up exactly with the 45,000 as a figure, isn't that right?

9 A. Yes. That's a calculation that has been put together, yes, based on using a

15:52:30 10 remit rate of 1.5382.

11 Q. 843 Yes, which is a remit rate which is very close to and within the range of the

12 value of foreign currencies of sterling, sorry of dollar currency being

13 remitted at that time?

14 A. It's within the range, but the remit rate of the day is 1.5386.

15:52:49 15 Q. 844 I appreciate that is so. That is the remit rate which is the standard remit

16 rate and you say that is the only rate that would ever be applied to a

17 transaction?

18 A. It's the only rate I have ever seen applied to a transaction, yes.

19 Q. 845 Exactly. Now in relation to the transaction then, this is the 28772

15:53:20 20 transaction that has been the subject of this inquiry so far, you perhaps would

21 agree with me that the records show the following. Firstly, that the amount of

22 28,772.90 was preceded by a foreign exchange transaction involving cash to that

23 value being produced at the foreign exchange desk at AIB in O'Connell Street?

24 A. Yes, the lodgement goes against cash received to the value of, to the exact

15:53:50 25 value in Irish punts.

26 Q. 846 Yes. Secondly, would you agree with me that the 28,772.90 at the rate

27 applicable for Forde Money Changing of US dollars on that day, if the rate

28 applicable to 2,500 thousand Irish value was applied, and five pounds

29 commission was taken from it, it would result in 28,772.90 being received in

15:54:23 30 exchange for 45,000 dollars, if that were tendered on that basis?

- 15:54:30 1 A. Yes, that would be the case.
- 2 Q. 847 And thirdly, would you agree that the record shows that AIB purchased only  
3 sterling to an amount of 1,921.53 on that day?
- 4 A. I would agree with you on the basis that the, I don't have the tally roll so I  
15:54:52 5 can't verify that was the exact amount, but that is the amount that is on the  
6 docket with a narrative of sterling.
- 7 Q. 848 And equally that 28,969.39 in foreign currencies other than sterling were  
8 transacted on that day?
- 9 A. Again I reference back to the last answer I gave, I don't have the tally roll  
15:55:12 10 but assume the transaction is recorded correctly, yes.
- 11 Q. 849 Would you agree with me that irrespective of whether this was sterling or  
12 foreign exchange, the transactions conducted on that day were exceptionally  
13 large by reference to the transactions which would be the norm for that day?
- 14 A. Yes, they were large.
- 15:55:44 15 Q. 850 Would you agree with me that the amount of 28,965 which is the non sterling  
16 record of cash at the moment on the Currency Held Account, that is sufficient  
17 to allow for an exchange of 45,000 US dollars to have taken place in the branch  
18 on that day?
- 19 A. Yes.
- 15:56:05 20 Q. 851 Would you agree with me that if the record is correct that the sum of 1,921.53  
21 sterling would not have been sufficient to have funded a payment of 29,254  
22 pounds in sterling to the Currency Services Department on that day?
- 23 A. That would be correct, yes. I say the tally roll is central to all of this.  
24 It is my record of all transactions in that branch on that day. Anything else  
15:56:42 25 is an Irish pound value that is generated from that tally roll.
- 26 Q. 852 Yes, put it this way, Mr. Garrett, if the entire of the balance of the monies  
27 on the 5th of December, the opening balance of 19 thousand odd, we know that to  
28 be the case?
- 29 A. Yes, that's in the statement, yes.
- 15:57:07 30 Q. 853 If that was all sterling, right, and if all the sterling received in the branch

15:57:12 1 that day was 1,921.53 and if you added all that sterling to all the sterling  
2 that represented the balance, you still could not come up with 29,254 pounds in  
3 sterling to remit to Currency Services, isn't that right?

4 A. That's correct, yes.

15:57:31 5 Q. 854 Although that is the sum that was remitted?

6 A. Yes.

7 Q. 855 And it was all remitted in one currency?

8 A. Yes.

9 Q. 856 How could it possibly be anything other than dollars then in those  
15:57:44 10 circumstances?

11 A. Because as I have said to you, the tally roll is my source of information here.  
12 It tells me exactly what transactions took place, it tells me exactly the  
13 currency, the volumes and the value, that is central to my understanding of how  
14 the foreign exchange works.

15:58:04 15 Q. 857 And central also to your belief that you cannot confirm that this is dollars is  
16 that somebody made a mistake in the bank and transposed the figures that were  
17 for foreign currency for the figures that in fact were figures for sterling, is  
18 that right?

19 A. It's a possibility.

15:58:26 20 Q. 858 No, I appreciate that it is a possibility and everything is a possibility?

21 A. Yes.

22 Q. 859 But in order for there to be an explanation for this sum possibly being  
23 sterling, it would have to involve a mistake having been made by a bank  
24 official in taking down the total sum in the Forde Money Changer machine and  
15:58:51 25 putting that sum as sterling when it should have been as foreign currency,  
26 other than sterling, isn't that right?

27 A. Yes.

28 Q. 860 Right. The next item that I'd ask you to deal with is in relation to a further  
29 lodgement to the account of Ms. Larkin, and this is an account in which a sum  
15:59:25 30 of 11,743.74 was lodged, this is the Beresford Fitout lodgement, if we look to

15:59:35 1 page 18998, you will see that this is the bank statement of the client, it  
2 shows on the 15th June a deposit of 11,742.74 was made to the account, isn't  
3 that right?

4 A. Yes.

15:59:51 5 Q. 861 Then we look to page 19025, we will see the document which represents the  
6 lodgement slip, an internal document of the bank lodging these monies initially  
7 to the bank's AIB R.D.C. account, isn't that so?

8 A. Yes.

9 Q. 862 The narrative for that tells us that it is being lodged to the account number  
16:00:15 10 11620/001 which was Ms. Larkin's account, we will see from the document before  
11 that?

12 A. Yes.

13 Q. 863 And that sum is broken down as to two sums 9,743.74 and 2,000, isn't that  
14 right?

16:00:32 15 A. Yes.

16 Q. 864 It is a total cash amount, in other words, it don't involve cheques or any  
17 other form of paper document, isn't that correct?

18 A. Yes, it looks all to be cash.

19 Q. 865 It's stated to be cash?

16:00:50 20 A. It's stated to be cash, yes.

21 Q. 866 That cash total of course 11,743.74 is in itself an uneven amount, isn't that  
22 right?

23 A. Correct, yes.

24 Q. 867 Is there any reason that you would know of, if this was entirely an Irish  
16:01:07 25 lodgement why there would have been a diversion in the cash between, well, a  
26 diversion at all, in what was an Irish cash lodgement with no paper transaction  
27 involved?

28 A. No, there would be no reason for it.

29 Q. 868 No. There is no logic to it, isn't that right?

16:01:27 30 A. No.

- 16:01:28 1 Q. 869 Where the teller in completing this particular document entered the figures  
2 9,743.74 against large notes, that cannot have been an accurate diversion of  
3 those funds if the amount was Irish currency, isn't that right, you can't have  
4 large notes ending in coin for a start?
- 16:01:55 5 A. Correct.
- 6 Q. 870 So the large notes categorisation of this amount is nonsensical, isn't that  
7 right?
- 8 A. Yes.
- 9 Q. 871 On the other hand, if that represented £10,000 in large sterling notes it would  
16:02:16 10 make sense, isn't that right?
- 11 A. It would yes. I don't know what the exchange rates were at the time.
- 12 Q. 872 Well, they were exactly that. We will explore that for a moment.
- 13 A. Then, yes.
- 14 Q. 873 If one was to make sense of that division, to make sense of the entry of this  
16:02:34 15 sum against large notes, it could be that it represented large notes in  
16 sterling?
- 17 A. Could be, yes.
- 18 Q. 874 If we look to document 19037 we see the remit rates for the day in sterling and  
19 the remit rate for foreign notes up to a value of 10,000 pounds was 1.02630 and  
16:03:03 20 if we look to the Tribunals document then at page 22065, in the third column of  
21 documents down on the left-hand side you will see that using the rate up to a  
22 value of 10,000, which in this instance would be the correct Forde Money  
23 Changer rate to use, one would obtain a figure of 9,747.74 on the transaction  
24 provided the five pound commission was not deducted, do you see that?
- 16:03:52 25 A. Yes.
- 26 Q. 875 And that deduction of £5 was a discretionary deduction, isn't that right?
- 27 A. Yes.
- 28 Q. 876 So that this figure as we see it, is consistent with there being a foreign  
29 exchange transaction involving £10,000 sterling, changed at the appropriate  
16:04:10 30 rate of exchange in the Forde Money Changer without a deduction of the £5

- 16:04:17 1 having been taken from it, isn't that so?
- 2 A. Yes.
- 3 Q. 877 And again if one looks to the transactions conducted in the branch on the day
- 4 at page 21308, we will see that sterling transactions on the 15th June 1995
- 16:04:40 5 totalled an Irish pound value of 12,798.65, isn't that so?
- 6 A. Again yes, assuming that the figures are transcribed correctly.
- 7 Q. 878 Assuming it's transcribed correctly.
- 8 A. Yes.
- 9 Q. 879 And with sterling bank notes marked in the narrative there, isn't that right?
- 16:05:00 10 A. Sterling buy notes, yes.
- 11 Q. 880 Sorry, sterling buy notes. And again the next page 21310, showing currencies
- 12 other than sterling to an amount of 4,496.29 were transacted on the branch on
- 13 that date, isn't that right?
- 14 A. Yes.
- 16:05:22 15 Q. 881 So a person seeking to establish the nature of that transaction. Had they
- 16 consulted with the foreign exchange rates for the day would see that £10,000 in
- 17 sterling could have been transacted by the bank that day by the purchase of
- 18 10,000 sterling in cash, isn't that right?
- 19 A. Yes.
- 16:05:45 20 Q. 882 Now in relation to the final lodgement, which was a lodgement of 19,142.92
- 21 which was made on the 1st December 1995, we see at page 19291 there is a bank
- 22 statement of Mr. Ahern in which that sum is shown to be lodged to his account
- 23 on the 1st December, isn't that so?
- 24 A. Yes.
- 16:06:17 25 Q. 883 The very last entry on the bank statement of that day?
- 26 A. Yes, sorry, yes, I see it there, yes.
- 27 Q. 884 And the document within the bank giving the origin of that transaction is to be
- 28 found at page 19293, here we see a lodgement to the AIB R.D.C. account, it
- 29 contains a stamp of the foreign exchange desk of AIB O'Connell Street, it's
- 16:06:51 30 upside down I'm afraid there. It shows a bank reference number which is bank

- 16:06:59 1 account 1A 04519 which is Mr. Ahern's account into which this sum was  
2 ultimately to be lodged, and it shows in addition two sums, one of which is  
3 crossed out that is for 19,002. 79, do you see that?
- 4 A. Yes I see that.
- 16:07:18 5 Q. 885 Beneath that has been written 19,142.92 and that sum is on the computer  
6 print-out at the base of the lodgement docket, isn't that right?
- 7 A. Yes.
- 8 Q. 886 And that is the sum that we know that found itself lodged to Mr. Ahern's  
9 account. This document would indicate that that transaction was processed  
16:07:40 10 through the foreign exchange desk of the bank. That it was done by a person  
11 who had entered two separate numbers in the course of that transaction which  
12 involved the lodgement to the R.D.C. account, isn't that right?
- 13 A. Yes.
- 14 Q. 887 They will see that page 19299 the next page in the sequence, the rates  
16:08:03 15 applicable to sterling at that time?
- 16 A. I see that.
- 17 Q. 888 Yes, and again at page 22065, you will see that the analysis by the Tribunal of  
18 those figures indicates that in the fourth column down there, if we can blow  
19 that up please, in the event that a teller was transcribing information in  
16:08:30 20 relation to transactions involving the exchange of exactly 20,000 pounds  
21 sterling on that day, applying the rates applicable to currency transactions of  
22 up to two and a half thousand and up to 10,000 pounds, and deducting the five  
23 pound commission which would have been payable in respect of each transaction,  
24 one gets the two figures that were mentioned on the R.D.C. lodgement docket,  
16:09:02 25 isn't that so?
- 26 A. Yes, that's correct.
- 27 Q. 889 Which would appear to indicate that the teller or the person who was conducting  
28 that transaction had regard to the then current rates of exchange on the Forde  
29 Money Changer for currency transactions involving sterling, isn't that so?
- 16:09:32 30 A. Yes.

- 16:09:32 1 Q. 890 Now, if we look to the next document at page 21325, we will see that the  
2 Foreign Currency Held account in AIB on that day reflects that sterling  
3 purchases of, that is the purchase from customers of sterling on that day  
4 totalled 19,734.04 pounds, isn't that right?
- 16:10:02 5 A. Yes.
- 6 Q. 891 That as we have seen earlier is an exceptionally large volume of sterling  
7 transaction by reference to the then average, isn't that so?
- 8 A. Yes.
- 9 Q. 892 And that sum is sufficient to have allowed for the 20,000 pounds sterling  
16:10:23 10 transaction to have taken place in the bank on that day, isn't that so?
- 11 A. That's correct, yes.
- 12 Q. 893 The next document would I ask you to look at is page 21347, if we can turn that  
13 please, if we look to the reference where there is a star put on it by a bank  
14 official, then we see the figure of 19,142.92 and that is reflecting the  
16:10:58 15 transaction we have seen earlier in the documents, isn't that right?
- 16 A. That's correct.
- 17 Q. 894 This tells us that this was conducted by teller 32, isn't that right?
- 18 A. Yes.
- 19 Q. 895 If we look to the next page we will see, next page, 21341, you see the  
16:11:24 20 reference to 19,734.04 pounds sterling transaction conducted on that day, isn't  
21 that so, it shows the notes bought that day?
- 22 A. Yes.
- 23 Q. 896 Again that is processed through teller 32, confirming that this was a  
24 transaction, both as regards the lodgement of the monies to the account of Mr.  
16:11:53 25 Ahern, but also the receipt of the sterling amounts, that it was all conducted  
26 by teller 32?
- 27 A. It confirms it all went through the one cashier.
- 28 Q. 897 Sorry?
- 29 A. It confirms they all went through the one cashier, i.e. 32.
- 16:12:11 30 Q. 898 Exactly. Which is the foreign exchange teller on the day?

- 16:12:15 1 A. Yes. There are foreign exchange transactions processed by that teller.
- 2 Q. 899 Yes. The final matter that I want to deal with you with, Mr. Garrett, is in  
3 relation to the review by the bank of the documentation relating to there being  
4 a sale of 30,000 pounds in sterling to any customer of AIB's at the branch of  
16:12:42 5 O'Connell Street AIB, that's 37/38 O'Connell Street, between 24th January 1994  
6 and 15th June 1995, I beg your pardon.
- 7 A. Yes.
- 8 Q. 900 I think the documentation in relation to that generated within the bank is the  
9 record of the Foreign Currency Held account of the bank during that period,  
16:13:10 10 isn't that so?
- 11 A. That's correct, yes.
- 12 Q. 901 The bank indicated to the Tribunal, in correspondence, that to date  
13 investigations being conducted by the bank have not been in a position to  
14 identify a sale of 30,000 pounds sterling during the period in question?
- 16:13:32 15 A. That is correct.
- 16 Q. 902 Is that so?
- 17 A. That's correct.
- 18 Q. 903 Now the pages of the foreign notes, sorry Foreign Currency Held have been  
19 provided to the Tribunal by the bank and the bank has analysed those  
16:13:49 20 transactions, and the document reflecting that analysis is enclosed in the  
21 documents before you, isn't that right?
- 22 A. That's correct, yes.
- 23 Q. 904 I think you may have had an opportunity of looking at that documentation. But  
24 it is confirmatory virtually of the fact that those records do not record there  
16:14:10 25 being any sale on any one day to any customers of the bank of 30,000 pounds  
26 sterling, isn't that so?
- 27 A. Not that I can see.
- 28 Q. 905 Well --
- 29 A. I have been through the records and I can't see a value equating to what 30,000  
16:14:28 30 pounds would be.

- 16:14:28 1 Q. 906 Does that mean, Mr. Garrett, that the bank records do not show that any  
2 customer purchased 30,000 pounds from the bank, in sterling, during that  
3 period?
- 4 A. The records that I have here in front of me, yes, do not indicate that the bank  
16:14:43 5 sold 30,000 pounds to a customer.
- 6 Q. 907 Are you suggesting in your response that there are other records that may show  
7 this?
- 8 A. No. These are the only records that I have looked at, which I would assume  
9 it's a Foreign Currency Held account, that is the account where all  
16:14:56 10 transactions are processed through.
- 11 Q. 908 Yes. Put another way, if a person had gone to the bank and purchased 30,000  
12 pounds sterling would it be reflected in one of the pages of the bank  
13 documentation that has been provided by the bank to the Tribunal?
- 14 A. I would expect it to be, yes.
- 16:15:20 15 Q. 909 Yes. If we look to page 22655, just at the very bottom of that we are showing  
16 an average of, that is the daily average during the period in question, that is  
17 from January to June of 1995 of the transactions in sterling conducted within  
18 the bank. You see the very bottom there, the daily average is 2,133.65 pounds,  
19 do you see that?
- 16:15:51 20 A. Yes, I see that, yes.
- 21 Q. 910 In relation to foreign currencies other than sterling, the amount, the average  
22 is 2,333.61 pounds, but that has to be adjusted for a volume of activity that  
23 took place on St. Patrick's Day, but it merely has a relatively minimal impact,  
24 isn't that right?
- 16:16:15 25 A. Yes.
- 26 Q. 911 On the averages?
- 27 A. I haven't seen this document before, so yes.
- 28 Q. 912 I appreciate you haven't seen it, but what it does is to merely list in  
29 sequence each one of the sterling transactions and each one of the transactions  
16:16:29 30 in currencies other than sterling which reflect the sale to customers by AIB of

16:16:37 1 foreign currency during the period?

2 A. O.k, yes.

3 Q. 913 O.k. In the light of that, if there were sales of 30,000 pounds sterling to

4 anybody, it would be a notable event insofar as it far exceeds the average of

16:16:53 5 the amounts of sterling transactions, sales at that time, through that bank,

6 isn't that right?

7 A. Yes.

8 Q. 914 In relation then to the monies which, the purchase of foreign currency from

9 customers, we see at page 22656 and the two pages that succeed that, 22657 and

16:17:21 10 658, that again the average of the transactions conducted within the branch in

11 the purchase from customers of foreign currencies was in the average of

12 1,510.26 pounds for foreign currencies other than sterling and 2,593.71 for

13 sterling amounts, isn't that so?

14 A. Yes.

16:17:56 15 Q. 915 They are the averages?

16 A. Yes.

17 Q. 916 Which would mean that any lodgements involving figures of 28,772.90 or 19,142

18 pounds would again be exceptional amounts of sterling to have been conducted

19 through the branch at the time, isn't that so?

16:18:18 20 A. Based on the numbers here in front of us, yes.

21 Q. 917 But again while you say it's based on those figures, those are the actual

22 figures?

23 A. Yes, yes.

24 Q. 918 Fine. Thank you.

16:18:32 25

26 CHAIRMAN: Mr. Maguire, do you want to cross-examine now or do you wish to

27 defer, to wait until Thursday, we are not sitting tomorrow?

28

29 MR. MAGUIRE: Thursday Chairman. I think given the lateness of the hour, it's

16:18:46 30 more appropriate -- given the lateness of the hour and the complexity of the

16:18:51 1 matter I think it's appropriate to say Thursday.

2

3 CHAIRMAN: All right. That's fine. And Mr. Nesbitt I don't know whether you

4 wish to --

16:18:58 5

6 MR. NESBITT: I was only going to intervene to clear up any inconsistency.

7

8 CHAIRMAN: All right, Thursday then at 2 o'clock.

9 We are sitting for Mr. Gilmartin at 10 o'clock on Thursday.

16:19:13 10

Thank you.

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**THE TRIBUNAL THEN ADJOURNED TO THURSDAY 19TH JULY 2007 AT 10AM**

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