

1 THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 30TH JULY 2003

2 AT 10.30 A.M:

3

4 MR. QUINN: Mr. O'Halloran please.

5

6 EXAMINATION OF MR. O'HALLORAN BY MR. QUINN CONTINUED AS FOLLOWS:

7

8 Q.1 Morning Mr. O'Halloran

9 A. Morning.

10 Q.2 Mr. O'Halloran, yesterday you gave evidence to the Tribunal concerning the
11 payment to you, in 1996, of two and a half thousand pounds by Mr. Dunlop?

12 A. Yes.

13 Q.3 Do you recall giving that evidence?

14 A. I do.

15 Q.4 I think your evidence to the Tribunal was that you had spoken on the telephone
16 with Mr. Dunlop, and then subsequently you attended at his office and he gave
17 you the cheque?

18 A. Yes.

19 Q.5 Isn't that right?

20 A. Yes.

21 Q.6 That was your recollection of events yesterday, isn't that right?

22 A. Yes.

23 Q.7 I have to suggest to you that that wasn't always your recollection of events in
24 relation to that payment. What do you say to that?

25

26 I will be more specific, in a letter of 4th July 2001, to the Tribunal, I
27 suggest you gave a different version of that payment, of the circumstances
28 surrounding that payment. I wonder could I have 298 please, of the O'Halloran
29 brief?

30

1 This is a letter written by your solicitors, on your behalf, presumably on your
2 instructions to the Tribunal, and it covers a number of matters, and I just
3 want to read to you what it says in relation to Mr. Frank Dunlop. If we could
4 have 299 please, which is the second page? Under heading "details of meetings"
5 and heading "Frank Dunlop" your solicitors say the following:

6
7 "Mr. O'Halloran states that he attended numerous meetings, both public meetings
8 and meetings with residents, at which the proposed development at Quarryvale
9 was discussed. Mr. Dunlop would have attended most, if not all, of these
10 meetings. Our client does not have the dates or locations of these meetings.

11
12 Our client further advises that he would have met Mr. Dunlop in the office of
13 the County Council but not by appointment

14
15 On one occasion when seeking the political donation referred to in previous
16 correspondence, our client called to the office of Mr. Dunlop.

17 Mr. O'Halloran's recollection is that he was informed that the donation would
18 be sent to him by post.

19
20 No further meetings took place with Mr. Dunlop."

21
22 I want to deal with the second last sentence there:

23 "Mr. O'Halloran's recollection is that he was informed that the donation would
24 be sent to him by post."

25
26 In that communication with the Tribunal during the investigative stage of its
27 inquiries, you advised the Tribunal that you attended at Mr. Dunlop's office in
28 relation to seeking the donation, and that you were advised that it would be
29 sent to you by post. In evidence yesterday you told the Tribunal that you had
30 a conversation with Mr. Dunlop initially on the telephone and then you called

1 to his office to collect the cheque. Do you accept you gave that evidence
2 yesterday?

3 A. I do, yeah. Yesterday's evidence is the correct sequence of events.

4 Q.8 Can you give any explanation to the Tribunal as to why the letter of the 4th
5 July 2001, gives an incorrect version of events?

6 A. No. I apologise, but yesterday's sequence of events as I outlined is in fact
7 what happened. The initial contact was by telephone and I collected the
8 cheque.

9 Q.9 But why would you have told the Tribunal, in correspondence, that you had
10 attended at Mr. Dunlop's office and that the cheque was forwarded to you by
11 post?

12 A. I was mistaken.

13 Q.10 Can you give any explanation?

14 A. I am sorry, I can't, other than to say I was mistaken.

15 Q.11 Now, the Tribunal in 2000 asked you for your consent to have copies of your
16 bank accounts discovered to the Tribunal by various financial institutions,
17 isn't that right?

18 A. Yes.

19 Q.12 You gave that consent?

20 A. I did, yeah.

21 Q.13 In January 2001 you were forwarded a bundle of statements, bank statements and
22 there were a number of matters requested of you; isn't that right?

23 A. Yes.

24 Q.14 You were asked to detail the source of lodgments for amounts of 500 pounds or
25 more?

26 A. Yes.

27 Q.15 You were also asked to confirm that the statements forwarded to you comprised
28 the total of the bank statements; isn't that right? The bank accounts?

29 A. I am sure --

30 Q.16 I can put the correspondence up on screen.

1 A. I accept what you are saying. I can't remember the details, but I accept what
2 you are saying.

3 Q.17 Then you were asked to respond to the Tribunal, that was in January 2001; isn't
4 that right? Do you recall that request being made of you?

5 A. I don't want to seem evasive, all I am saying is I don't remember exact dates,
6 but I accept that there was --

7 Q.18 In February 2001 your solicitors wrote to the Tribunal and advised that you had
8 close family bereavements and you weren't able to deal with the matter at that
9 time.

10

11 In May 2001, if we could have page 262 of the brief, your solicitors wrote to
12 the Tribunal advising that they had spoken to your accountants, who had yet not
13 finalised their accounts. At that stage you had engaged accountants to deal
14 with the queries brought by the Tribunal.

15 A. I had brought it to the accountants to assist in detailing it, or whatever.

16 Q.19 "We have today spoken to our client's accountants who has not yet finalised his
17 report. We understand that the main difficulty in the matter is the absence of
18 detailed records and supporting documentation. The accountant is endeavouring
19 to deal with the matter as speedily as possible and in the circumstances we
20 should be obliged if you could please allow some further time to enable the
21 report to be finalised."

22

23 You were given some further time, isn't that right?

24 A. Yes.

25 Q.20 Then on 26th June 2001 your solicitors again wrote to the Tribunal, if I could
26 have page 40 please?

27

28 "We enclose herewith for your information a copy of a letter which we have
29 received from Cronin Quinn and Company, dated 25th June 2001. You will note
30 that the accountant has advised he is unable to prepare the accountants for

1 Mr. O'Halloran owing to the absence of documentation."

2 Do you recall that documentation being forwarded to the Tribunal?

3 A. Yes.

4 Q.21 The accompanying letter at page 41 advises.

5 "Dear Ms. Cullen, Mr. O'Halloran presented to me bank statements of his various
6 bank accounts and requested me to prepare income and expenditure accounts. I
7 am unable to prepare any accounts for Mr. O'Halloran as I did not get any
8 cheque stubs, purchase invoices or sales records, which are necessary to
9 prepare accounts. The information received is just bank statements of their
10 own." Isn't that right?

11 A. Yes.

12 Q.22 What had happened is that in January 2001 you had received bank statements from
13 the Tribunal with a number of questions raised on those statements, isn't that
14 right?

15 A. That's right.

16 Q.23 You brought those statements to an accountant and you gave, by way of excuse to
17 your failure to respond to the questions asked by you, that your accountants
18 were preparing a report?

19 A. I gave it as a reason, not as an excuse.

20 Q.24 Your accountants were forced, in June 2001, to say that they were unable to
21 give you a report because they didn't have any of the back up documentation,
22 isn't that right?

23 A. That's right, yes.

24 Q.25 You then set about requesting details of expenses paid to you?

25 A. That's right.

26 Q.26 You were advised by the Council that they had no records for any expenses paid
27 prior to April 1993; isn't that right?

28 A. I accept what you are saying. I can't remember.

29 Q.27 Okay. I think -- you agreed with me yesterday whilst you had provided a
30 statement in December 2000, 20th December 2000 which I read yesterday, it

1 wasn't until July 2001 that you actually signed that statement; isn't that
2 right?

3 A. I don't follow.

4 Q.28 You had supplied your solicitors, I think, or your solicitors had supplied to
5 the Tribunal a statement which hadn't been signed by you but which had been
6 dated 20th December 2000, and then were you requested to sign it, and you
7 signed it and it was forwarded to the Tribunal by letter of 16th July, 2001?

8 A. Again I accept what you are saying, I have no absolute recollection.

9 Q.29 Again, by September 24th 2001 the Tribunal; could I have page 26 please? Wrote
10 to you again seeking a response to their letter of 19th January, 2001; isn't
11 that right?

12 A. Yes.

13 Q.30 And you were when asked to respond to the queries raised in the letter of 19th,
14 isn't that right? Then on the 26th September 2001, could I have page 24
15 please? Your solicitors responded as follows:

16
17 "I acknowledge receipt of your letter dated 24th September 2001.

18
19 As previously indicated to you during the course of our telephone conversation,
20 we confirm that Mr. O'Halloran is making every effort to respond to detailed
21 letters received from the Tribunal, dated 19th January, 2001. As you are aware
22 Mr. O'Halloran was operating a catering business which was effectively
23 conducted solely with cash receipts and cash payments. The remaining funds from
24 the business were intermingled with payments legitimately received by
25 Mr. O'Halloran in the County Council in respect of expenses etc.

26
27 Our client has recently furnished us with some records in relation to the
28 catering business. In addition our client has furnished us with authorities to
29 obtain from the local authorities a breakdown of the amounts received by our
30 client during his period as councillor. Our client requires this breakdown

1 from the County Council to enable him to distinguish lodgments made from
2 payments received from the County Council as opposed to lodgments made from the
3 proceeds of the catering business. Alternatively our client can now furnish a
4 reply to your letter of 19th January 2001, but in the absence of a breakdown
5 which he has requested from the Local Authority he would have to make
6 assumptions in relation to the lodgments of the accounts."

7

8 That is letter received by the Tribunal from your solicitors, I think you
9 accept that?

10 A. I do.

11 Q.31 On 28th September 2001 you -- your solicitors responded further to the Tribunal
12 and you say:

13 "We refer to our letter of 26th September 2001, and I now write in response to
14 your earlier letter of 19th January '01. We write to confirm that we're
15 instructed by our client that the bank accounts listed at numbers 1 to 16 of
16 your letters, complete list with the exception of the following." Then you
17 give the names of three -- that's page 22 of the O'Halloran Brief. You list
18 three bank accounts. TSB Account?

19 A. Yes.

20 Q.32 A second TSB account and then a closed account which had been held at
21 Nationwide Building Society at 48 Hurley, Hoxley Road, Edmonton, London; isn't
22 that right? They forwarded your authorisation to that branch for those
23 details?

24 A. Yeah.

25 Q.33 Have you received those details back yet?

26 A. No.

27 Q.34 What efforts are you making to receive details of that account?

28 A. No further efforts. I phoned and I was told that I would have to call over to
29 London and go in to the branch and ask.

30 Q.35 Is the Nationwide Building Society, is that an English building society?

1 A. Yes.

2 Q.36 And they won't give you details of your accounts. Did they ever give you a
3 statement of your account?

4 A. I have asked and my solicitor has asked but they haven't been forthcoming.

5 Q.37 Did they ever give you a statement in the past?

6 A. I mean, this is 20 years ago.

7 Q.38 Yes, but when you opened the account originally, did they give you a statement?

8 A. Yeah.

9 Q.39 Where are those statements?

10 A. I don't have them.

11 Q.40 So are you saying that the matter rests with you just writing to this building
12 society and they refusing to give you what you are entitled to?

13 A. Well, that appears so, yeah. I think I outlined the reasons for the opening of
14 this account. The solicitor furnished information to the Tribunal. But I mean
15 it is our personal -- and I can explain fully, you know.

16 Q.41 We will be, at a later stage, going into more detail to your financial
17 position, Mr. O'Halloran; but for the moment I am just dealing with the
18 question of --

19 A. Yes, sorry --

20 Q.42 If you want to expand in relation to the building society, please do so?

21 A. I would prefer not to do it in public, because it is personal.

22 Q.43 On the 26th October 2001 your solicitors, could have I page 20? Wrote to the
23 Tribunal advising and referring to the letters of the 24th October and the
24 telephone conversation on the 26th. You enclose the letter which you had
25 received from South Dublin County Council, together with the breakdown of
26 payments attached.

27

28 "I confirm I am still awaiting a response from the Nationwide Building Society
29 in London. I am continuing to press them in this regard. I further confirm
30 that I am meeting with Mr. O'Halloran and counsel next Tuesday and will

1 telephone you subsequent to our meeting."

2

3 I just want to refer to one thing arising from that letter. The accompanying
4 letter at page 265 is a letter to your solicitors dated 24th October 2001, from
5 the South Dublin County Council; isn't that right? Do you see that letter?

6 A. I do, yeah.

7 Q.44 That's the letter that advises that no records beyond April 1993, isn't that
8 right?

9 A. Yes.

10 Q.45 I want to refer to, there is the opening sentence of that letter: "I refer to
11 your letter of 25th September '01 regarding payments received by your client
12 during his period as councillor." Doesn't that convey to the reader that it
13 was on the 25th September 2001 that that those details were sought from the
14 Council?

15 A. It does, yeah.

16 Q.46 Yet it was on 19th January of the same year that you were first requested to
17 provide details to the Tribunal; isn't that right?

18 A. Yes, again I accept your --

19 Q.47 Between January and September you hadn't made any contact with the Council or
20 had any contact made on your behalf with the Council to ascertain details of
21 any payments; isn't that right?

22 A. No, that's not true. I had, by telephone.

23 Q.48 You had telephoned?

24 A. Yes. And failing to get anywhere with them, the solicitors then on my behalf
25 wrote.

26 Q.49 In your evidence to the Tribunal you have admitted to payments, you say between
27 the time you were first elected, which was June '91 and in the end of December
28 1993, from Mr. Dunlop; isn't that right?

29 A. Yes.

30 Q.50 And you have given evidence in relation to the 500 pounds in cash and the 250

1 pound cheque in December 1992. I think in evidence yesterday you said that the
2 payments were more likely to have been received in 1992 and 1993; isn't that
3 right?

4 A. Yes, while Dublin County Council, before it broke into three different
5 councils.

6 Q.51 The Development Plan was confirmed in December 1993; isn't that right?

7 A. Yeah. I think you are right, I am not very good at dates.

8 Q.52 What I have down, we've taken your bank statements for two bank accounts for
9 the period 1991 to December 1993, and you have already been furnished with
10 these, and we have blacked out everything from the accounts except a series of
11 lodgments. You have been furnished with these. If I could have page 259
12 please? This is a TSB account that was being operated by you in this period,
13 isn't that right?

14 A. Yes.

15 Q.53 And this is one of the documents that was sent to you and you were requested to
16 provide details of the lodgments over 500 pounds. You see a lodgment there in
17 April of 1992, 591.48 pence and a lodgment on 18th June 1992, 1,014.30 pence?

18 A. Yes.

19 Q.54 You were asked to provide details of the source of those documents. You have
20 written at the bottom, in manuscript: "Includes council expenses and wages from
21 Bakers Union."

22 A. That's right.

23 Q.55 In this period you were a full-time member of the Bakers Union?

24 A. No, organising secretary.

25 Q.56 Organising secretary of the Bakers Union?

26 A. Yes.

27 Q.57 What was your annual salary from that?

28 A. That detail has been furnished as well. I can't recall, but that detail was
29 also furnished to the Tribunal.

30 Q.58 You say, you know that the Council are unable to give you detail of the

1 expenses they paid to you prior to April 1993?

2 A. Sorry, I think subsequently they did provide the information.

3 Q.59 Information prior to April 1993?

4 A. My memory tells me that subsequently all the information was provided in terms
5 of expenses received. I mean that's my memory, now --

6 Q.60 -- provided information in relation to the period after April 1993, I just
7 open --

8 A. Well, after '93 I was a member of South Dublin County Council so that wouldn't
9 have been --

10 Q.61 If we could have page number 266 please? I don't know if you have seen this
11 document before, Mr. O'Halloran, but it would appear to set out your expenses
12 and expenses paid to you from April 1993 onwards?

13 A. Yes.

14 Q.62 267?

15 A. Yes.

16 Q.63 Are these the expenses that are you referring to? Is this the information you
17 are referring to?

18 A. In the page before this?

19 Q.64 Yes. 266, 267, 268 and 269?

20 A. Sorry, 267?

21 Q.65 It will come up now. I think that's the information you are referring to?

22 A. I am sorry, it may be. I thought the other information had been forthcoming.

23 Q.66 You didn't have any information, or did you, when you filled out the bank
24 statement at 259, that we've just been referring to?

25 A. No.

26 Q.67 Can you break down, for example, for the Tribunal, the amount of council
27 expenses included in the lodgment of 1,014 pounds?

28 A. No, it was an assumption on my part. I didn't have the details --

29 Q.68 260 please? This is a continuation of the same account, and again you have
30 identified, I think, two of the lodgments there. One is a compensation

1 payment, isn't that right?

2 A. Yes.

3 Q.69 The second one is "political donation" and at this stage I don't want you to
4 identify the donor. Then there is a 1,000 pound lodgment, a four thousand
5 pound lodgment. Can you say of the 1,000 pound lodgment how much of that
6 relates to accumulated takings of your coffee shop and how much relates to
7 council expenses?

8 A. No.

9 Q.70 Can you do the same with the four thousand pounds?

10 A. No.

11 Q.71 There was a second account, TSB account, at page 261, and then there were a
12 series of lodgments to that account; and I am just wondering, apart from
13 account transfers that appear there, can you give the breakdown of the other
14 lodgments as to how much relates to wages, council expenses, or takings of your
15 bakery?

16 A. No.

17 Q.72 Can I ask you Mr. O'Halloran, did you know of allegations of planning
18 corruption in 1991/1992?

19 A. There were rumours circulating around the Council.

20 Q.73 Were you ever contacted by the guards or anybody like that in relation to
21 inquiries?

22 A. I was.

23 Q.74 Were you telephoned?

24 A. I was telephoned by some person, I am not sure --

25 Q.75 How long did the telephone conversation last?

26 A. I can't remember. I don't think it was too long, but I can't remember.

27 Q.76 But there is no doubt but that every councillor would have known that there
28 were allegations of planning corruption in the area?

29 A. I would have thought so, but given what you said yesterday some people said
30 they weren't aware of that.

1 Q.77 Some people have come here and given evidence to the effect they weren't aware
2 of it?

3 A. I mean, I couldn't comment on that. All I am saying is I was very much aware
4 of it, I assumed everybody else was.

5 Q.78 Do you recall an incident involving the councillor Trevor Sargent?

6 A. I wasn't in chamber, but I obviously heard of it.

7 Q.79 You weren't -- you weren't present on that date but you may not have been in
8 the chamber?

9 A. I wasn't in the chamber, I just heard about the event or the incident,
10 subsequently.

11 Q.80 I see. But there was no doubt but that Councillor Sargent was making
12 allegations in relation to corruption?

13 A. It would appear so. I wasn't there when it transpired so I am only going on
14 hearsay.

15 Q.81 Thank you very much Mr. O'Halloran.

16 A. Thanks.

17

18 MR. DULLEY: With the permission of the Chairman and Mr. O Tuathail I would
19 like to ask Mr. O'Halloran some questions?

20

21 CHAIRMAN: Very good.

22

23 MR. O'HALLORAN WAS EXAMINED AS FOLLOWS BY MR. DULLEY:

24

25 Q.82 First of all, if I could ask you Mr. O'Halloran, did you have any political
26 experience at all before you were adopted as Labour Party candidate prior to
27 the local elections in 1991?

28 A. No, just as member of the party.

29 Q.83 You were a member of the party?

30 A. Yes.

1 Q.84 Now, in terms of any instruction or training or directives given to you by the
2 party as to how you were to deal with lobbyists, did you receive any such
3 training or instruction or guidance from your party colleagues?

4 A. No. Not in terms of training --

5 Q.85 Or instruction?

6 A. No. Well, I think the instruction usually was, you know, avoid them, or
7 whatever.

8 Q.86 Right. It would be fair to say then, Mr. O'Halloran, that you were not a
9 person of enormous political experience when you arrived at council in 1991?

10 A. Yeah.

11 Q.87 I think you have given evidence to the Tribunal that you became aware of Mr.
12 Dunlop largely in relation to another development which would be the subject,
13 as I understand it, of future modules of this Tribunal?

14 A. Yes.

15 Q.88 And I think it's also fair to say that this was a matter of enormous
16 controversy, both internally in the council and indeed within the city
17 generally?

18 A. Yes.

19 Q.89 You are from that area, as I understand it; is that right?

20 A. I am.

21 Q.90 Were you the only Labour Party councillor from that area on the council at the
22 time that this was being discussed in the council in 1992 and 1993?

23 A. I was, yeah.

24 Q.91 Now, I think it's also fair to say that the Labour Party policy, as expressed
25 on the council at the time, concerning this particular development, was to
26 oppose it?

27 A. Yes.

28 Q.92 Did you agree with that policy?

29 A. No.

30 Q.93 Why didn't you agree with that policy?

1 A. Well, I knew how important the development would be for, certainly the
2 amenities and employment prospects.

3 Q.94 Were people in the area you represented, your electorate so to speak, were they
4 supportive of this proposed development?

5 A. Yes, in the main, certainly.

6 Q.95 Would it be fair to say that there was a fair amount of friction and
7 controversy between you and your Labour Party colleagues on the council in
8 respect of your support of this development?

9 A. There, was.

10 Q.96 How did it affect your politically?

11 A. Eventually I came to part company with the Labour Party.

12 Q.97 Right. This dispute that took place between yourself and other Labour Party
13 councillors at the time was quite public and known, that it was a matter of
14 controversy, and that the Labour Party were not happy with the stance you were
15 taking?

16 A. Yes.

17 Q.98 Did you ever attempt to disguise your support for this development?

18 A. No.

19 Q.99 You would have been publicly known as somebody who supported this development?

20 A. Absolutely.

21 Q.100 In addition to the fact, I think, that you subsequently lost the whip on the
22 council for the Labour Party and you left the Labour Party, did you suffer any
23 other adverse political consequences as a result of your support for this?

24 A. Well, I suppose the main one was I lost the opportunity to be Chairman of the
25 Council.

26 Q.101 Right. So, it's a fairly significant political price to pay for your support
27 of this development, would you agree?

28 A. Yes.

29 Q.102 This would have been support for this development over an extended period of
30 time while it was being discussed and debated in the council; is that right?

1 A. Yes.

2 Q.103Would you say, Mr. O'Halloran, that this was the biggest political issue you
3 were involved in when you were a councillor, between '91 and 1999?

4 A. Certainly.

5 Q.104And it's also fair to say, and I think it is conceded, that Mr. Dunlop was a
6 lobbyist on behalf of a developer in respect of this particular project?

7 A. He was.

8 Q.105Isn't that right?

9 A. Yeah.

10 Q.106I think it has already been conceded by Mr. Dunlop that he himself benefited
11 enormously, financially, but resulting from the fact that this project was
12 approved by the Council and subsequently developed; isn't that right?

13 A. Well, so it said.

14 Q.107It's also fair to say that the developer concerned also benefit enormously as a
15 result of the decision of the council to recommend this development to take
16 place?

17 A. Yes.

18 Q.108You made a decision, I think, to stand as an independent candidate in '96 in
19 the Dublin West by-election of that year?

20 A. I did.

21 Q.109Given all that had happened to you, the split in the Labour Party, the fact
22 that you had effectively had to leave the Labour Party; you approached Mr.
23 Dunlop, lobbyist, from the point of view of obtaining some political support
24 and political donation in the context of by-election; is that right?

25 A. Yes.

26 Q.110I think it is conceded by Mr. Dunlop in his evidence to the Tribunal in the
27 course of discussing the receipt of the political donation, as to whether one
28 was going to be given, you may have made reference to the fact that you were
29 supportive of this particular development, is that true Mr. O'Halloran, or
30 would that have been known?

1 A. Sorry?

2 Q.111Did you make reference when you had a discussion with Mr. Dunlop?

3 A. I don't think so.

4 Q.112You didn't?

5 A. I don't remember.

6 Q.113But it would have been known? Mr. Dunlop knew what you had done?

7 A. Certainly.

8 Q.114The political price you paid as a result of your support of this. Is it any
9 way surprising in that context, Mr. O'Halloran, that a donation of this sum
10 would have been given to you by Mr. Dunlop?

11 A. Well, as I said yesterday I thought it was generous, so --

12 Q.115Now, you have been cross-examined, or examined by Mr. Quinn at length,
13 Mr. O'Halloran, about your failure to disclose, a failure that you accept, the
14 receipt of two cheques; one for the princely sum of 250 pounds in 1992 and the
15 other cheque in 1999 for 500. In terms of your record keeping, would you first
16 of all regard yourself as being an organised person?

17 A. No.

18 Q.116Do you have any records for this period?

19 A. No.

20 Q.117So I take it, when you were making your declaration in 2000 to the Tribunal,
21 Mr. O'Halloran, that you had to rely on your memory?

22 A. Yes. Again, I am just thinking of something because it appears you say
23 something here in an innocent way and then it's turned into -- from what
24 Mr. Quinn just said it appears something connected with the catering was
25 subsequently unearthed. I came across it somewhere, but generally I don't keep
26 records, I never kept records. I am sorry, I just thought I should say that
27 now because --

28 Q.118I suppose I better put it to you, were you attempting to disguise the fact that
29 you had received money from Frank Dunlop in '92?

30 A. No.

1 Q.119What is your explanation for failing to disclose it to the Tribunal?

2 A. I had forgotten about it.

3 Q.120I think in 1999 there was a donation of 500 pounds; is that right?

4 A. Yes.

5 Q.121And the circumstances of that, as I understand it Mr. O'Halloran, were that you
6 had made a decision to run in the 1999 local elections; is that right?

7 A. That's right.

8 Q.122You received this donation and subsequently withdrew your candidacy. I am not
9 sure if you know this Mr. O'Halloran, was that cheque for 250 pounds in 1992,
10 or the cheque for 500 pounds in 1999, ever put to Mr. Dunlop when he was giving
11 evidence before this Tribunal by Mr. Gallagher?

12 A. Sorry, you are asking me?

13 Q.123Do you know?

14 A. I don't.

15 Q.124Would you be surprised to discover that the answer to that is no?

16 A. Yes.

17 Q.125Nor was it ever suggested to Mr. Dunlop that the proceeds of that cheque for
18 250 pounds in 1992, or indeed the cheque for 500 pounds in 1999, that they were
19 in any way allegedly corrupt payments paid by Mr. Dunlop to you; would you be
20 surprised to discover that was never put by Mr. Dunlop to Mr. Gallagher?

21 A. Yes.

22 Q.126Yet we spent most of yesterday afternoon listening to Mr. Quinn in the course
23 of your examination for your failure to disclose those cheques. Thanks very
24 much.

25 A. Thanks.

26

27 CHAIRMAN: Mr. Dulley, the responsibility to disclose cheques or payments
28 rests with Mr. O'Halloran, whether or not they are raised by Mr. Dunlop --

29

30 MR. DULLEY: Mr. Chairman, I am somewhat surprised that Mr. O'Halloran was

1 examined by Mr. Quinn about these cheques in circumstances where those cheques
2 were never put to Mr. Dunlop and that's simply the point I am making; and I
3 accept that that is so. But nevertheless, there has been no allegation made,
4 as far as I am aware, in the course of the evidence given by Mr. Dunlop, that
5 this cheque in 1992 represented a bribe or an inducement to Mr. O'Halloran to
6 vote in any particular way on any particular development, particularly the
7 development the subject matter of this particular module.

8
9 Nor indeed was it ever suggested that the cheque in 1999 paid to
10 Mr. O'Halloran, when Mr. O'Halloran was standing as a candidate in local
11 election, was also in effect a bribe or a corrupt payment made by Mr. Dunlop to
12 Mr. O'Halloran. That's the point I am making.

13
14 CHAIRMAN: The remit of the Tribunal, Mr. Dulley, is to investigate all
15 payments, whether they are stated to be corrupt payments or legitimate
16 payments, and once they were disclosed in correspondence with Mr. O'Halloran
17 then they had to be investigated. Whether or not they are corrupt is a matter
18 ultimately for the Tribunal to decide, but the fact that they weren't
19 necessarily described by Mr. Dunlop as corrupt does not mean that we don't
20 ourselves have to take a view in relation to them.

21
22 MR. DULLEY: I am simply saying I am a little bit surprised that Mr. Dunlop
23 wasn't asked about these cheques at all. It's not a question of asking to
24 describe them as corrupt or not corrupt, or legitimate or not; he simply wasn't
25 asked about the cheques at all.

26
27 CHAIRMAN: I don't know whether Mr. Quinn wants to respond to that?

28
29 MR. QUINN: Mr. Dunlop will be returning at future modules and can deal with
30 the matter if Mr. Dulley feels that Mr. O'Halloran is being prejudiced in any

1 way about the matter.

2

3 CHAIRMAN: Mr. O Tuathail, you don't want to say anything?

4

5 MR. O TUATHAIL: No, thank you, Mr. Chairman. No questions.

6

7 CHAIRMAN: I want to just ask you, Mr. O'Halloran, when the guards -- when
8 you were contacted by a Garda officer in relation to an inquiry about
9 corruption, when approximately was that?

10 A. I am sorry Chairman, I couldn't give you a date, but it wasn't an inquiry, it
11 was -- in as much as I can remember, I was asked if I as was aware of any
12 payments, or had I received any payments. I don't think it was in relation to
13 an inquiry, or whatever.

14

15 CHAIRMAN: Did you understand the phone call to be part of an inquiry being
16 conducted by the guards?

17 A. No, because other councillors had received, I mean a similar phone call, and --

18

19 CHAIRMAN: But you must have understood it to be part of an inquiry, not
20 necessarily of you personally, but an overall inquiry being conducted by the
21 guards, otherwise you would surely have said to yourself why are the guards
22 ringing me?

23 A. Chairman, sorry, really I never gave it a great deal of thought, in that sense,
24 whether it was an inquiry or not. I just understood it was a telephone call
25 from this particular guard, whoever it was, in fact he may have even said "was
26 I aware of rumours."

27

28 CHAIRMAN: Did you understand it to be an official phone call or just a
29 particular Garda officer being --

30 A. No, no, no. It was a pattern, I mean everyone, I assume, had been called, I

1 assume everyone was called.

2

3 CHAIRMAN: Did you ever hear of stories of councillors being paid?

4 A. There were rumours.

5

6 CHAIRMAN: Rumours, by Mr. Dunlop?

7 A. By Mr. Dunlop in particular?

8

9 CHAIRMAN: Yes.

10 A. No. Not by anybody in particular, I mean it was just a general rumour that was
11 circulating.

12

13 CHAIRMAN: But the rumours, I assume, related to corruption or improper
14 payments, rather than political donations?

15 A. Yes.

16

17 CHAIRMAN: But you never heard Mr. Dunlop's name being mentioned in that
18 context?

19 A. I have to say no, because if I said yes I might be doing the man a disfavour.
20 It was just a general kind of thing.

21

22 CHAIRMAN: You believed that Mr. Dunlop was giving you a legitimate political
23 donation?

24 A. Yes.

25

26 CHAIRMAN: Were you aware of other councillors receiving payments in that
27 category from Mr. Dunlop?

28 A. No.

29

30 CHAIRMAN: Did you think that you were the only one favoured by Mr. Dunlop

1 for contribution?

2 A. Again, I didn't give it a great deal of thought. I mean, I assumed what I was
3 getting -- I mean, obviously very naively now, was perfectly legitimate.

4

5 CHAIRMAN: But were you --

6 A. No, but I was aware that he would have supported a fundraising, or you know
7 there would have been golf classics or functions or whatever.

8

9 CHAIRMAN: But you weren't aware of other councillors getting similar type
10 payments to yourself?

11 A. No.

12

13 CHAIRMAN: Thank you.

14

15 JUDGE FAHERTY: Mr. O'Halloran, when did you part company with the Labour
16 Party?

17 A. I can't give you a date. I mean, honestly. It probably would have been in
18 1993, certainly before the formation of the new councillor, South Dublin County
19 Council.

20

21 JUDGE FAHERTY: Well, you were a councillor from 1991; isn't that right?

22 A. Yes.

23

24 JUDGE FAHERTY: You would have been a member of the Labour Party and a
25 Labour Party councillor for '91, the whole of '92; is that correct?

26 A. Yes.

27

28 JUDGE FAHERTY: Until sometime in 1993?

29 A. Yeah.

30

1 JUDGE FAHERTY: And --

2 A. Sorry, again Chairman can I say if somebody comes along and tells me it was
3 1994, I will accept that. I am just saying when it comes to dates I am -- I
4 wouldn't be very specific, but people can show me, I accept. I am saying 1993,
5 if it was 1994 I would accept that.

6

7 JUDGE FAHERTY: Fair enough. In relation to what you answered to the
8 Chairman about your knowledge of improper payments and corruption; Mr. Dulley
9 asked you did you ever get any instruction how to deal with lobbyists, and you
10 answered, I think, to avoid them, you got that from the Labour Party as I
11 understand it.

12 A. The Labour Party, unfortunately their attitude was that lobbyists were to be
13 avoided at all costs. They saw all development as bad, as far as I could see.
14 They thought any contact with them was wrong.

15

16 JUDGE FAHERTY: That's what I want to ask you about, just the context in
17 which you were told by the Labour Party to avoid lobbyists, was this a general
18 discussion within the Labour Party, or was it by circular or how did that come
19 about?

20 A. Well, group meetings or, you know.

21

22 JUDGE FAHERTY: Would you have -- we've heard from Fianna Fail councillors
23 and Fine Gael that they would have group meetings prior to the County Council
24 meetings, did such things happen with the Labour Party?

25 A. They did, yeah.

26

27 JUDGE FAHERTY: And what would be discussed at those meetings?

28 A. Well, probably the upcoming agenda on a particular day.

29

30 JUDGE FAHERTY: I want you to explain in what context were you told by the

1 Labour Party to avoid lobbyists?

2 A. Sorry, again unfortunately I mean I may not be phrasing it right. The Labour
3 Party had a view about development and developers, that it was all wrong, they
4 should be avoided. Now, this was in the context of the proposal for Quarryvale
5 which was so important to certainly North Clondalkin but maybe to the wider
6 community, and they wouldn't consider even discussing it or considering its
7 merits or whatever. And in fact I think the final argument was the development
8 was only to make money so there was no consideration given to the benefit that
9 might accrue to the community itself by way of amenities or job prospects. So,
10 I must say at an early stage I kind of discounted advice from Labour Party
11 colleagues.

12
13 JUDGE FAHERTY: Just to get back to something I asked you yesterday,
14 Mr. O'Halloran. You didn't have any sense that there might be a perception
15 that you if you were liaising with lobbyists and developers on a close personal
16 basis, whatever about your view of the job prospects for the community, that's
17 a different thing, that that could be perceived in a certain way, or that if
18 you were receiving donations from Mr. Dunlop during the course of the
19 Development Plan, did you ever worry about that?

20 A. No.

21
22 JUDGE FAHERTY: My final question: In light of the advice that you were
23 given, which you have told us fairly often you didn't agree with, from the
24 Labour Party, did that raise your attention anyway to be cautious?

25 A. No, because I didn't see anything wrong with it. I mean that's basically it.
26 I had a different view to my colleagues regarding developments, or proposed
27 developments.

28
29 JUDGE FAHERTY: Thank you very much.

30

1 MR. QUINN: Thank you Mr. O'Halloran

2

3 CHAIRMAN: Thank you for attending, Mr. O'Halloran.

4

5 THE WITNESS THEN WITHDREW

6

7 MR. QUINN: Ms. Carroll Barrett please.

8

9 CAROL BARRETT, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

10 BY MR. QUINN:

11

12 Q.127MR. QUINN: You supplied a statement to the Tribunal, dated 28th July 2003;

13 isn't that right?

14 A. Yes.

15 Q.128I propose to read that statement and ask you one or two questions arising from

16 it?

17 A. That's fine.

18 Q.129"My name is Carol Barrett. I am currently employed with Fingal County Council.

19 I commenced employment with Dublin County Council Planning Department in 1983

20 as a clerk-typist. In December 1993, in anticipation of the break-up of Dublin

21 County Council I was assigned to Dun Laoghaire/Rathdown County Council where I

22 took up the position of clerical officer, assigned and became Mr. Dermot

23 Drumgoole's private secretary. I left Dun Laoghaire/Rathdown County Council in

24 July 1997 and I took up employment with Fingal County Council.

25

26 Diaries: Mr. Drumgoole maintained a pocket diary during my period with him.

27 In addition I maintained a desk diary for him, in which I recorded meetings. I

28 have been shown an extract from Mr. Drumgoole's desk diary for February 1997

29 which shows an entry in my handwriting for a meeting with Deputy Liam Lawlor

30 for Wednesday, 26th February, 1997. Whilst I cannot now recall whether or not

1 that meeting took place, I can confirm that the entry is in my handwriting and
2 at the time it was entered it was anticipated that there would be a meeting
3 between Mr. Drumgoole and Deputy Lawlor.

4
5 It was my custom and practice throughout my period with Mr. Drumgoole to enter
6 at the back of the diary all the telephone numbers of people that Mr. Drumgoole
7 was in contact with. Once again I have been shown the telephone numbers
8 recorded for the year 1997 and I confirm that the entry "Liam Lawlor (Deputy)
9 (Ann) 8280507" is in my handwriting. It was my custom to enter up in the back
10 of the diary the names and numbers of people I would be in contact with on
11 behalf of Mr. Drumgoole. I can confirm that I cannot remember having had
12 contact with Mr. Lawlor or his secretary, having examined the list of names on
13 therein."

14
15 If I could just put on the screen please, Carrickmines Brief page 4911, I think
16 we there see an entry for the 26th February 1997, it should be coming up on
17 screen just now. I just want you to confirm that that is in fact your writing
18 and that this records a proposed meeting between Deputy Liam Lawlor and
19 Mr. Drumgoole.

20
21 While we're dealing with that, you have been handed a list of entries which
22 have been taken from the back of the diary -- we now have the entry of the
23 26th, do you see that?

24 A. Yes, I do.

25 Q.130Is that in your writing?

26 A. That is my writing.

27 Q.131As entered up by you?

28 A. Yes.

29 Q.132Somebody presumably made contact with you to organise a meeting at that date
30 with Mr. Lawlor?

1 A. I would say that's what happened.

2 Q.133Would it have been Mr. Drumgoole to enter it up or somebody on behalf of
3 Mr. Lawlor?

4 A. I would have written it in myself.

5 Q.134Who would have asked you to enter it up?

6 A. I would have entered it myself, that's what the diary was for, it was to enter
7 meetings.

8 Q.135Can you recall who made the appointment?

9 A. I don't, I am sorry, no.

10 Q.136If I could have 4912 please? At the end of the diary I think there is an area
11 for telephone numbers; isn't that right?

12 A. That's right.

13 Q.137You have entered up a number, on screen you will see an extract from which has
14 "Liam Lawlor (Deputy) (Ann)" and a telephone number. Is that your writing?

15 A. Yes.

16 Q.138Can you tell the Tribunal how you came to write that up?

17 A. I would say I wrote it up because obviously there was some form of contact
18 between Dermot's office and Liam Lawlor's office, but as to the number of times
19 I don't recall actually speaking to this girl, Ann.

20 Q.139I did a quick search through the numbers at the back and I find there are 43
21 numbers on one page and 12 on an additional page, do you see -- I haven't put
22 them on screen --

23 A. Yeah.

24 Q.140I want to keep them confidential if I may for the moment?

25 A. Okay.

26 Q.141Can I ask you what was the criteria for entering numbers at the back of the
27 diary? In other words, how did you determine to enter up one number as opposed
28 to the other?

29 A. There was really no criteria. I was secretary at the time and if I got a phone
30 call through the office, just as a matter of course I would enter a name and

1 number in the diary, perhaps if it was needed in future times. It might be the
2 case where the person was never -- they contacted us or we contacted them
3 again. But there are some names that would be regular as opposed to maybe once
4 off.

5 Q.142 How can one determine from looking at the list of numbers whether they are
6 regular or once off?

7 A. At this stage Mr. Quinn you can't -- I can't tell you going down through the
8 names, like, how many times I rang.

9 Q.143 It's unlikely that Mr. Drumgoole only spoke with 55 people in the year 1997,
10 isn't it?

11 A. It is, yeah. But as I explained previously, I would have known numbers because
12 I would have had them from previous years.

13 Q.144 Isn't it more probable than not that you would have entered up numbers that you
14 were in reasonable contact with at the end of the diary?

15 A. I confirm that. There are probably people on this list that we were in contact
16 with once and once only.

17 Q.145 Can you say, looking at that list, how you could determine ones you were in
18 contact with once only?

19 A. I can't.

20 Q.146 Were you entering it up on the basis that it is a number you might be in
21 contact with more frequently?

22 A. Just that I might be in contact with.

23 Q.147 Now, there is also an extract from Mr. Lawlor's diary, if I could have 4913? I
24 want you to confirm if you recognise the telephone number that is mentioned
25 there. It is "Dermot Drumgoole, Planning Department 724755." Does that number
26 mean anything to you?

27 A. That number means nothing to me, I am afraid, no.

28 Q.148 Was that the Planning Department's telephone number?

29 A. No, it wasn't. There is just one main number for Dun Laoghaire/Rathdown County
30 Council.

1 Q.149Did Mr. Drumgoole have a direct line?

2 A. He would have had a direct line, but again --

3 Q.150Do you know if that is his direct line?

4 A. I can't confirm that that's his direct number.

5 Q.151But it's not the --

6 A. It's not the main switch number, no.

7 Q.152Thank you very much.

8

9 CHAIRMAN: Ms. Barrett, for what period were you his secretary?

10 A. From the Christmas week of 1993 until July 1997.

11

12 CHAIRMAN: About four or five years?

13 A. Three and a half years.

14

15 CHAIRMAN: Was this the only list of phone numbers that you prepared during
16 your period there?

17 A. Not at all. There was previous diaries for each year, so if they were looked
18 at you would find numbers at the back of each diary, for each year.

19

20 CHAIRMAN: In the order that they are written down?

21 A. Yes.

22

23 CHAIRMAN: Starting at the top, with the name of a Mr. Ryan?

24 A. Yes.

25

26 CHAIRMAN: Do you see that?

27 A. Yes, I do.

28

29 CHAIRMAN: Is that the order in which you had contact from, say January 1st,
30 with those people?

1 A. No. The way they are written in is just the way the phone calls came in.

2

3 CHAIRMAN: That's what I mean. Was the first call from Mr. Ryan?

4 A. Yes, I just used each line. I didn't skip and go back and fill in a line. I
5 literally used each line as the calls came in.

6

7 CHAIRMAN: Can we take it that it is your evidence that the total phone
8 calls, can you say, all phone calls that came in to Mr. Drumgoole in that year
9 are listed?

10 A. No.

11

12 CHAIRMAN: What would determine you putting down a name and a number and
13 details like "Liam Lawlor, Deputy" and then his secretary's name, or describing
14 in some cases the name of the company as well as the person?

15 A. Right. The fact is that any of the calls that would have come in, if I knew
16 the person that's the reason they are not in the diary, but like when these
17 calls came in these would be new people that I would be dealing with so I would
18 just take the name and number as a matter of course, I just ask who is calling,
19 so their name was just entered in the diary.

20

21 CHAIRMAN: How many calls, I know it may be a difficult question to answer --

22 A. Yes.

23

24 CHAIRMAN: Doing the best you can, how many calls would Mr. Drumgoole have
25 got, on an average day?

26 A. On an average?

27

28 CHAIRMAN: Was it sort of, four or five an hour or one an hour?

29 A. It could well be, yes, even more sometimes.

30

1 CHAIRMAN: So, that I think is what puzzles us, because the numbers you have
2 here would be the sort of numbers you would have listed, assuming you listed
3 every phone call for which you didn't already have a number, you would be
4 talking about three or four days out of the whole year?

5 A. But I didn't take the name and number each time and enter it into the diary,
6 does that explain? Like, I would take this name and number and just put it in.
7 But the second time I wouldn't enter it in again, that's, you know --

8

9 CHAIRMAN: Very good. Thank you. Thank you very much for attending to give
10 evidence.

11 A. Thank you.

12

13 THE WITNESS THEN WITHDREW.

14

15 MR. GALLAGHER: I wonder would the Tribunal consider a five-minute recess at
16 this stage, I have some witnesses here I need to speak to?

17

18 CHAIRMAN: We will rise until you are ready.

19

20 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

21 AND RESUMED AGAIN AS FOLLOWS:

22

23 MR. GALLAGHER: Mr. Liam Coghlan please.

24

25 MR. LIAM COGHLAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

26 BY MR. GALLAGHER:

27

28 Q.153MR. GALLAGHER: Mr. Coghlan, are you a civil engineer, is that correct?

29 A. That's correct.

30 Q.154Would you tell the Tribunal about your qualifications and experience. I think

1 you worked since 1985 largely with Dublin County Council and the successors of
2 Dublin County Council?

3 A. In December 1985 I got a job as Senior Executive engineer with the old Dublin
4 County Council, and I worked with the old Dublin County Council until June
5 19 -- sorry, until the end of the break-up of the County Council and then I was
6 employed for a few months by Dun Laoghaire/Rathdown and subsequent to that then
7 I was with Fingal County Council.

8 Q.155 You were, I think, in about 1992 you were asked to prepare a feasibility study
9 in relation to the proposed South Eastern Motorway?

10 A. That's right.

11 Q.156 I just want to read your statement in the first instance, and I want to ask you
12 some questions arising from it. You furnished a statement to the Tribunal?

13 A. That's correct.

14 Q.157 The statement reads as follows:

15

16 "Between December 1985 and '94 I was employed as a engineer by Dublin County
17 Council. During this period I was almost exclusively working in road design.
18 I was employed in this capacity throughout the process of the making of the
19 1993 Dublin County Development Plan.

20

21 1992 SEM feasibility study: In 1992 I was asked to carry out a feasibility
22 study into the proposed SEM setting out the best route from an engineering,
23 environmental and economic point of view. This occurred after a public inquiry
24 had been held about the Southern Cross Motorway during which concerns were
25 raised about carriageway capacity. In devising the various possible routes for
26 the SEM I consulted with the senior engineer and some senior executive
27 engineers of the Road Department. They would have given me any road
28 reservation lines or plans for the motorway in existence at the time. It was
29 the job of the Council's Roads Department to determine the extent of land
30 required for the building of the motorway, and to analyse the line of the

1 motorway shown on the Draft Development Plan.

2

3 Once the study commenced I would not have had much consultation with the town
4 planners in the council. I would have sought the opinions of engineers rather
5 than town planners on other possible routes of the motorway. The persons I
6 would have consulted with during that period would have included the following
7 engineers: Mr. John Henry, Mr. Cormac Rabitt, Mr. John Ring and Mr. John
8 Hutchinson, who was my immediate boss at the time. I would also have spoken to
9 some town planners on the Council including Mr. Willie Murray and Mr. Enda
10 Conway.

11

12 At the time I was conducting the study there was a general expectation in the
13 council that the motorway would form a physical barrier beyond which no
14 development would be permitted.

15

16 Proposed routes and interchanges on SEM: In devising the various possible
17 routes for the motorway I would have taken cognizance of the various zonings of
18 the lands through which the motorway would pass. Regard would also be had of
19 land use in the area. For example, there was a general intention to maintain
20 the viability of existing farms in the area.

21

22 Interchanges: Only one interchange in the area was envisaged between the N11
23 at Shankill and Carrickmines as fewer interchanges allowed for higher capacity
24 on a motorway. This interchange was proposed as half diamond interchange at
25 Lehaunstown and was known as Lehaunstown Interchange linking into Wyattville
26 Road. Given the existing road network it was highly desirable to have the
27 junction at the Ballyogen and Glenamuck Roads in the vicinity of the
28 Carrickmines bridge. A standard type of junction was envisaged for this area
29 which appears on map number 7 of the study. The main problem with this
30 particular design was that it would require a large amount of excavation.

1

2 Motorway routes: The 1983 Development Plan route, route 2 in the SEM
3 feasibility study. I was familiar with this route for the SEM but was not
4 aware of any plans that the planners may have had to alter this route. In my
5 opinion there were absolutely no technical problems with this line. It would
6 have been preferable to the route that would have gone across the N11 at
7 Wyattville Junction. I do not recall anyone suggesting that this line was
8 suitable for technical reasons. I do remember that it was recognised that if
9 there was a decision not to develop the western side of the motorway that a lot
10 of potential development land would be cut off by the 1983 line.

11

12 Modified 1983 route. Route 3: This line was designed in the light of
13 experiences with the SEM and basically consists of the 1983 line with a few
14 improvements. This was slightly further south west of the original 1983 line
15 which would permit more development.

16

17 1991 route, route 4: This line was produced in the light of the draft
18 development and its design would have come directly from the Planning
19 Department, or indirectly through the Road Planning Department.

20

21 The mountain route. Route 5: This route received my personal recommendation
22 as the optimal route for the SEM in the study. It was the closest route to the
23 mountains. After the study my recommendation was accepted. Subject to design
24 detail and environment impact assessment this was the line that was eventually
25 approved by the Minister for the Environment following a public inquiry.

26

27 Map DP90/123. I do not recall being shown DP90/123 within the Council but I
28 may have been shown it. The motorway design on the drawing is such as to cater
29 development on both sides of the motorway. Even to such an extent that one has
30 a number of choices as to where and how one would get on or off of the motorway

1 this was contrary to the understanding within the Council that the primary
2 function of the motorway was to serve national and regional needs rather than
3 any specific local development or area. This map shows that a large amount of
4 development was considered for the area were there was no development existing
5 at the time. I believe that the design for the South Eastern Motorway proposed
6 on this map is not good design. There are various reasons for this.

7
8 1. The junctions proposed on this map known as clover leaf junctions were not
9 used on any part of the existing M50 and were not part of the design or forward
10 planning of the motorway. The land take for a clover leaf junction is
11 significantly higher than that of a diamond junction which was the intended
12 type of junction for this stretch of the motorway. The land acquisition and
13 slip lanes are significant factors in the cost of building these type of
14 junctions.

15
16 2. The locations of the junctions are unsuitable. They are much too close
17 together which would create various problems which would involve merging
18 traffic.

19
20 3. The three roads parallel to the motorway and three roads to either side are
21 unnecessary and excessive.

22
23 The final route for the motorway was adopted following an EIS carried out in
24 1997. SEM is currently under construction.

25
26 Liam Coghlan. 28th July 2003."

27
28 I would like you to formally identify the feasibility study you carried out,
29 may I have page 4914 please? This is a document which you published, it bears
30 the name of John Ring, the Deputy Chief Engineer of Dublin County Council at

1 the time, who was your superior at that time?

2 A. That's correct.

3 Q.158This feasibility study was published in October 1992 and can the Tribunal take
4 it that it was prepared during 1992?

5 A. Yes. It was prepared starting around late 1991.

6 Q.159Right.

7 A. Probably about 12 months or thereabouts.

8 Q.160Right. And you at that stage, and at all material times were working in the
9 roads design department, in the roads design section of the roads department?

10 A. That's correct.

11 Q.161And you, as you have indicated in your statement, consulted only or largely
12 with engineers rather than town planners?

13 A. That's correct.

14 Q.162The position I think was that the preparation of the study was prompted by the
15 holding of a public inquiry in October 1991 into the South Eastern Motorway.
16 We can see on the screen on -- you can see the line of the South Eastern
17 Motorway --

18 A. Sorry to correct you there, the southern cross.

19 Q.163I beg your pardon. You see the inquiry into the south eastern cross portion of
20 the motorway was held in October '91 and at that inquiry certain questions
21 arose about capacity of the Leopardstown and Brewery Road to take the volume of
22 traffic that it was anticipated would come off the M50?

23 A. That's right.

24 Q.164That prompted an expedition in relation to the South Eastern Motorway and it
25 was in those circumstances that you prepared this study. The study I think
26 went roughly 122 pages?

27 A. I don't know, yes.

28 Q.165Of that order?

29 A. Something like that, yes.

30 Q.166And you looked at five separate routes in the area of Carrickmines to the

1 Shankill bypass, the N11, beyond Loughlinstown Hospital?

2 A. That's right. The feasibility study itself came from where the southern cross
3 route ended down to connecting the southern cross route effectively to the
4 existing Shankill/Bray bypass. But all of the routes converged around
5 Carrickmines, and the northern part you may say between Carrickmines and the
6 southern cross route was, in effect, a separate study, and then from
7 Carrickmines down to the Shankill bypass there were five possible routes.

8 Q.167 You looked at each in turn and route number two was the line of the motorway as
9 shown in the 1983 County Development Plan?

10 A. Yes. That's correct.

11 Q.168 And you looked at that, you found that it was possible to construct it along
12 that line, but you didn't think it was the best line?

13 A. That's correct.

14 Q.169 Is it fair to say that there were no technical or engineering reasons why the
15 road could not have been built on -- along the line as shown in the 1983, we
16 can see it on -- this is a composite map that was prepared by the Tribunal, or
17 at the request of the Tribunal, and we can see the 1983 line was shown blue
18 squares on the --

19 A. Yes.

20 Q.170 I think that the other lines as shown there were -- other lines that were
21 considered by you, routes, possible routes three, four and five?

22 A. Yes. I think three is probably the orange and four may, be or it appears to me
23 to be the pink and green.

24 Q.171 Yeah?

25 A. And the grey colour then, I think probably for route five.

26 Q.172 Right. In fact we can see that the route that was finally decided upon by MC
27 O'Sullivan, and recommended and approved by the Minister in due course and is
28 now under construction?

29 A. Yes. That seems to be the one that has a little bit more detail on it. A
30 little bit south west of the grey.

1 Q.173 If we look at the Wyattville Road extension we will see this coming from the
2 existing N11 at Loughlinstown, in by Cherrywood?

3 A. Yes.

4 Q.174 It comes in in that location, as you can see where I am pointing on the map
5 here. Sorry, on this screen Mr. Coghlan, just confirm that this is the
6 extension --

7 A. -- of the Wyattville Road, that's correct, yes.

8 Q.175 This shows the junction that is in fact to be constructed, or is in the course
9 of construction at that location?

10 A. I believe so, yes.

11 Q.176 Now, would you describe the type of interchanges that are in use or that are
12 constructed on the M50?

13 A. Yes. At that time and indeed most of the interchanges and junctions that had
14 been built since were mainly of two types. There was the dual carriage or main
15 line or motorway; part of it would go over or under, but in most cases under a
16 large oval roundabout, similar to what is on the Naas Road, that would be one
17 type of interchange.

18 Q.177 Is that at Citywest?

19 A. Say the junction between M50 and Naas Road. That would be a big junction; you
20 have a dual carriageway going to Cork and you have the motorway going
21 underneath it. That would be one type.

22 Q.178 What is that called in engineering jargon?

23 A. That would be either an oval or circular type of interchange. Then where the
24 traffic on one of the roads, say, going over and under the motorway wouldn't be
25 the same level as the Naas Road, for example, and quite similar to it or quite
26 close to the Naas Road there is what is known as Ballymount Interchange, where
27 you would have a main road or a significant road going over or under the
28 motorway, and having two small roundabouts at either side. It wouldn't be a
29 dual carriage that would be going under or over the roadway, it would typically
30 be a regional route, a two-way road. In which case you would have a small

1 roundabout at either side of the motorway and that would be connected to the
2 motorway then with ramps coming on or off the motorway and this would be called
3 a diamond type interchange.

4 Q.179 Right. I understand that the interchanges that are shown on DP 950/123 which
5 was on screen, page 205, that these are known as clover leaf junctions?

6 A. I suppose you would call it a clover leaf junction. A clover leaf junction
7 actually would usually be, I don't think that quite shows the clover leaf
8 junction itself. The clover actually would be inside that area itself. What
9 is shown there is the outline of it, but the detail inside there would be four
10 circular curves, typically, inside that.

11 Q.180 It's not a diamond junction?

12 A. It's not.

13 Q.181 No. So it is fair to call it, for the purposes of this exercise, a clover leaf
14 type junction?

15 A. Yes.

16 Q.182 Perhaps we can have it larger. We see that this is a map that was prepared as
17 part of the Draft Development Plan 1990. And we know from evidence that the
18 Tribunal has heard, that it was produced at a meeting of the Council in October
19 1990. Your study was carried out in 1991 and 1992 for the same council?

20 A. Yes.

21 Q.183 Did you ever see this map or was it ever produced to you or given to you as a
22 serious proposal for the construction of the South Eastern Motorway?

23 A. I have no recollection whatsoever of seeing that map before, and it certainly
24 wasn't considered in any great detail as part of the feasibility study. But I
25 would say that there would have been a possibility that at some meeting or
26 other it might have been passed around or whatever, but it certainly wasn't
27 considered in any detail as part of the feasibility study.

28 Q.184 Is it fair to say that you have no recollection of ever seeing this map before
29 it was produced to you by the Tribunal at interview?

30 A. That's correct.

1 Q.185And, but you are not excluding the possibility that it might possibly have been
2 seen, but you have no recollection whatever?

3 A. It might possibly have been but -- it certainly wasn't seriously considered or
4 it wasn't submitted in any way that -- to examine it.

5 Q.186You have, in your statement, criticised certain aspects of the layout and the
6 design?

7 A. Yes.

8 Q.187We see that the design proposals in this show a half diamond, what might be
9 described as half diamond interchange, at the Wyattville Road extension.
10 That's down the bottom right-hand corner, south eastern corner of the map. Do
11 you see that?

12 A. Yes.

13 Q.188And it also showed that the Wyattville Road extension was to pass under the
14 proposed M50 or the South Eastern Motorway; is that correct?

15 A. Yes.

16 Q.189And was to move up in a -- perhaps we can see the larger scale on the -- was to
17 come out here in this -- as I am showing on the large screen here, if you look
18 over here?

19 A. Yes.

20 Q.190Can you see where I am pointing to?

21 A. Yes.

22 Q.191It comes out here, that's the M50?

23 A. That's right.

24 Q.192This proposed Wyattville Road extension was to come under the M50, turn up and
25 join up here, or at least turn right again under another interchange?

26 A. Yes.

27 Q.193At that location and extend on and to a road which was, again, going to come
28 down here?

29 A. Yes.

30 Q.194To join the Wyattville Road extension?

1 A. Yes.

2 Q.195 There was going to be, as it were, a rectangular road which would adjoin and
3 open up the lands to the west of the M50?

4 A. Yes.

5 Q.196 South Eastern Motorway; isn't that right?

6 A. That's correct.

7 Q.197 And it showed that the interchange, the diamond shaped -- sorry, the clover
8 leaf interchange that you have referred to, was to be constructed reasonably
9 close to the half diamond interchange?

10 A. Yes.

11 Q.198 What do you say about the design that you see there?

12 A. Well, it's important when you are designing a motorway like a ring motorway or
13 a national road, a road like that, that one wouldn't consider every individual
14 area. One would be looking at the broader picture. And it's important in that
15 respect, for example, not to have too many junctions on the motorway, because
16 if you have too many junctions the traffic isn't able to -- it really would be
17 catering more for local rather than national needs. The whole idea of the M50
18 would be to have a number of strategic junctions, but not to be catering for
19 every single possible development. That there would be a hierarchy of roads
20 that particular areas would feed into regional routes or more general type of
21 area routes, and then they would feed into the motorway, but that you wouldn't
22 take every individual development directly into the motorway.

23 Q.199 All right. Well now, we have -- we see that there was a proposal to -- on this
24 map to construct a junction on, or adjacent to, the lands known as Jackson Way
25 lands?

26 A. I actually don't know what the definition of the Jackson Way lands are.

27 Q.200 You can take it from me that this -- the junction, the clover leaf junction
28 that you see there was proposed to be built in or around the Jackson Way lands?

29 A. Yes.

30 Q.201 Do you follow me?

1 A. The purple area.

2 Q.202 You see the purple areas were proposed as industrial development areas?

3 A. Yes.

4 Q.203 To provide for industrial and related uses?

5 A. Yes.

6 Q.204 Now, would you give your professional, expert, view as a roads design engineer
7 on the desirability of having that junction in that location, having regard to
8 the fact that the half diamond junction is situated some relatively sort
9 distance to the southeast?

10 A. Yes. Yes. What I would say is that there is an existing road infrastructure
11 around the Glenamuck Road, that would be at the top left-hand corner along
12 where the arrow is being shown there now.

13 Q.205 Yes?

14 A. There is also the Ballyogen Road. There is a road network there, albeit
15 somewhat rural, but it's already there and it would be -- and was quite
16 difficult to see another location where it was necessary or indeed possible to
17 tie in the motorway into some area there. You know, if you take it from
18 Shankill all the way up to, right up to close to even Ballinteer, there were
19 relatively few locations that you would tie a national road, or connect a
20 national road, or a motorway, into the existing areas.

21
22 So, that would have been one of the few locations that it was necessary in some
23 shape or form to connect into, or desirable, let's say, highly desirable to
24 connect into --

25 Q.206 What you are saying is that it was highly desirable that the South Eastern
26 Motorway, when designed and built, would tie into the Glenamuck Road and
27 Carrickmines Road?

28 A. Yes.

29 Q.207 That has been shown on the left-hand side of the map, as we see on screen, we
30 see the Glenamuck Road?

1 A. Yes.

2 Q.208 That is a significant distance away, perhaps three quarters of a mile, perhaps
3 a mile, or of that order, half a mile perhaps, from the junction as shown on
4 this map?

5 A. That's correct. The Lehaunstown -- oh yeah the junction.

6 Q.209 The clover leaf junction?

7 A. Yes.

8 Q.210 So from your point of view, as a road design engineer, that junction is not
9 shown on the correct place?

10 A. It's not.

11 Q.211 It should be a half mile, at the junction of Carrickmines and Glenamuck Road?

12 A. It is highly desirable.

13 Q.212 That is ultimately what happened and that's the design that we have heard so
14 much about, the Carrickmines interchange being constructed and injunctions in
15 the High Court etc?

16 A. Yes.

17 Q.213 But that's the location?

18 A. And to emphasise that point, I would say that each of the routes converged
19 around Carrickmines. That's why I said that the northern part of that study
20 had various different routes. They all converged around the Carrickmines area
21 and the southern part of the feasibility study between Carrickmines and the
22 Shankill bypass, there were different routes there, but all of the routes, no
23 matter north or south, all converged around the Carrickmines area. And all of
24 them had an indication that it was desirable, highly desirable to connect into
25 that area.

26 Q.214 What you are saying is that the, if we look at the map, if we look at the
27 northern portion of the map from the junction that is shown at the top of the
28 map there, if we look at that right down to the Ballyogan area, you say that
29 there were a number of possible routes in that general area?

30 A. Yes.

1 Q.215Route A, B and C?

2 A. Yes.

3 Q.216But they all had to come through, no matter which route was selected it had to
4 come through a relatively narrow gap at Carrickmines?

5 A. Yes.

6 Q.217And once you got beyond Carrickmines you had five possible routes between there
7 and Shankill?

8 A. Yes.

9 Q.218But no matter what route was selected it had to come through the Carrickmines
10 gap?

11 A. Yes. They all show the connection into the existing road network at that
12 location.

13 Q.219So, it was obvious, from your point of view, that the interchange had to be
14 constructed at Carrickmines, rather than as shown on DP90/123?

15 A. Highly desirable.

16 Q.220Would you tell the Tribunal what your view is about the proposed location of
17 the clover leaf interchange on the Jackson Way lands as shown on DP90/123 from
18 a traffic hazard point of view, given the relative proximity of the half
19 diamond interchange at Lehaunstown? Would it be safe to construct an
20 interchange on the Jackson Way lands as shown on that map, for example?

21 A. It would be -- I think the detail that is shown on it wouldn't be sufficient to
22 say whether it would be safe or not, because the way that design is shown on
23 that map there, it actually doesn't show all the movements; and that's why I am
24 saying it shows the outline of a clover leaf junction, and you couldn't go into
25 the safety end of it without having a little bit more detail. It's quite
26 likely that that would have been done in such a way that it would have turned
27 out unsafe. Without knowing what the full --

28 Q.221To put it another way, given the relative proximity of the proposed Jackson Way
29 junction, interchange, to the Lehaunstown interchange, half diamond interchange
30 shown on that?

1 A. Yes.

2 Q.222Is it desirable that you would have interchanges in such close proximity, one
3 to the other?

4 A. No. I think the Lehaunstown junction there is almost superfluous, because all
5 the movements, if you were over in let's say the Wyattville end, and if you
6 wanted to go into town you could come along the Wyattville Road extension, you
7 could go up one of those parallel roads and you could get into the town that
8 way. So --

9 Q.223In other words, you come on the M50 in the first instance, you'd come up the
10 Jackson Way lands and then you would swing left to get on the M50 that way?

11 A. Yes. It would be pointless, I don't see what the purpose, or what the point
12 would be from an overall point of view, an overall design point of view, of
13 having the Lehaunstown interchange there at all, that half interchange there,
14 when you would have this clover leaf type of junction further up.

15 Q.224Right. You have said in your statement that the -- in your view the junctions
16 are much too close together and would create various problems involving merging
17 traffic?

18 A. Yes.

19 Q.225The Tribunal can take it, therefore, that you were not in any way consulted or
20 nor would you have approved of this as a design if you had been consulted?

21 A. No, I wouldn't have recommended that at all.

22 Q.226Did anybody ever ask you as to whether or not you were of the opinion that the
23 1983 line of the motorway was technically deficient or that there was some
24 technical reason why the road could not be built along the line --

25 A. I never heard that being stated. Ever.

26 Q.227May I have page 408 please? This is part of the minutes of the meeting of the
27 Dublin County Council held on the 13th May, 1992. This was at a time when you
28 were preparing your study, and you will see that if we go back to 407 they say
29 that the SEM -- "The Council is carrying out a study of the options for the
30 alignment of the SEM concentrating on its connection with the southern cross

1 route, that is between Taylor's Grange and Glenamuck. This study will form
2 part of the EIS which will be necessary before the final alignment is decided.

3
4 Accordingly, the finalisation of the line on the Development Plan map must
5 await the outcome of this study. It is proposed that the present line be
6 retained for the time being and an appropriate note put on the maps indicating
7 the status of the alignment. In the area of the Carrickmines Valley between
8 Glenamuck Road and the Shankill bypass, the alignment shown lies between the
9 original 1983 line which is unacceptable for the technical, and the line shown
10 on the '91 Draft Plan. It is considered to be an improvement on in design
11 terms of '91 line."

12 Were you aware what was proposed by the Council in the original 1983 Plan was
13 unacceptable for technical reasons?

14 A. I don't recall being involved in any way with that statement. I don't recall
15 in any way being involved. I was working on the feasibility study, the offices
16 themselves were separate from the main County Council offices and I don't
17 recall anybody ringing up or informing me. I may or may not have been aware of
18 the reply that had been drafted for that.

19 Q.228 But was it your view, as the road design engineer carrying out the feasibility
20 study, that the original 1983 line was unacceptable for technical reasons?

21 A. I can't understand that, because as far as -- I don't know what the definition
22 of technical -- about the wording used, it's unacceptable for technical
23 reasons, I don't know what that means. But I can certainly say from an
24 engineering point of view it was more than possible and more than feasible to
25 build the motorway along -- if one wanted, exactly along the 1983 line, or
26 indeed at a range of locations as shown on the feasibility study. It was quite
27 possible from an engineering and cost point of view to build the motorway.

28 Q.229 To the best of your recollection and belief were you ever made aware of the
29 fact that this report, in those terms, in relation to the 1983 line, had been
30 presented to the councillors in 1992?

1 A. I have absolutely no recollection of that.

2 Q.230 To the best of your recollection and belief is it the position that you were
3 not aware of that until you were shown it at interview with members of the
4 Tribunal's legal team?

5 A. I was not aware of it.

6 Q.231 Thank you.

7

8 JUDGE FAHERTY: Just a couple of questions, Mr. Coghlan. You were at the
9 roads department of the Council; isn't that correct, from 1985 onwards?

10 A. That's right. The roads department in the old County Council was a large
11 department and it had different sections within it. There would have been a
12 section for road forward planning which would have been outline planning for
13 the future, and then there would have been a detailed road design section and
14 there would have been a road construction section and there would have been a
15 road maintenance section, and I think separate from that in addition I believe,
16 I recall a roads traffic section. And I believe it was a large organisation by
17 any standards.

18

19 JUDGE FAHERTY: I understood you to say would it be to yourself that the
20 planners would revert to in terms of the South Eastern Motorway?

21 A. Well, as I said there was a road planning section, a road forward planning
22 section it was known, and the main interaction between the roads department and
23 the actual planning department itself would have been through that department
24 or through that section of the roads department. The road design department or
25 section would have been putting in the detailed design as distinct from desire
26 lines. Somebody wants to go from A to B, there is an area of land possibly
27 reserved for it, or preserved for it, would probably be the word for it. And
28 roads design would get involved there when the detailed design would have to be
29 worked out.

30

1 JUDGE FAHERTY: There would be interaction between the roads department and
2 the Planning Department, that's my question?

3 A. Yes.

4
5 JUDGE FAHERTY: And I understood Mr. Murray, when he gave evidence, he said,
6 my note, I am only going on my handwritten note, in fairness, not the
7 transcript; that the roads department would have given DP90/123 approval. You
8 seem to say you didn't see DP90/123, to the best of your recollection?

9 A. Not, as I say, when it came to the area that I was involved in, the detailed
10 design.

11
12 JUDGE FAHERTY: In relation to the detail, that would include, presumably,
13 the type of interchange?

14 A. Yes. Exactly. That would be where, for example, the desire might be to have a
15 connection at rough locations along a route, but the detailed design would work
16 out what size, depending on the predicted traffic flows, it would decide
17 precisely what land was required. So it would get down to the real details.

18
19 JUDGE FAHERTY: So, it wouldn't be a situation where the interchanges in any
20 sort of road design would be put in by the planners as a matter of course.
21 Would you find that unusual?

22 A. Very unusual.

23

24 JUDGE FAHERTY: Thank you very much.

25

26 CHAIRMAN: Thank you very much for attending.

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28 MR. GALLAGHER: Thank you. You are free to go.

29

30 THE WITNESS THEN WITHDREW.

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MR. GALLAGHER: Mr. Madden please?

MR. EOIN MADDEN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS
BY MR. GALLAGHER:

Q.232MR. GALLAGHER: Mr. Madden, you are a chartered engineer; is that correct?

A. That's correct.

Q.233You have worked for many years in the roads department of Dublin County Council and subsequently with its successor; is that correct?

A. Yes. Since 1983 with Dublin County Council until dissolution in '94 and I worked with Dun Laoghaire for a short while after that. I currently work with the City Council.

Q.234You have considerable experience of road design and you were familiar with the various proposals in relation to the South Eastern Motorway and the southern cross motorway over the years?

A. I would be, yes.

Q.235You have furnished a statement to the Tribunal in relation to the structure of the roads department and I don't know that that's of any great concern to the Tribunal at this stage. I think it can be summarised in saying that the -- would you accept the evidence of Mr. Coghlan in relation to the general structure of the roads department?

A. Absolutely.

Q.236In Dublin County Council?

A. Yes.

Q.237There were various departments within the roads?

A. There was a forward planning section; design section which would firm up on that; construction section to build it; a maintenance section to build it afterwards and then traffic.

Q.238There was a section dealing with planning control?

1 A. That's correct.

2 Q.239You were involved with that at one stage?

3 A. That was part of forward planning. The two sides of forward planning.

4 Q.240You were asked to attend at interview to assist the Tribunal in understanding
5 various things, and you did do so, and at that stage you were shown DP90/123?

6 A. That's correct.

7 Q.241What role did you have in Dublin County Council in or about the years 1990 to
8 1993?

9 A. I worked in the planning control/forward planning area.

10 Q.242All right. In that context you would have, I take it, been familiar with the
11 County Development Plan that then existed, and the roads layout in that plan,
12 and you would have been familiar with the proposed changes in the Development
13 Plan that was under review at that stage and in the Draft Plan?

14 A. I would be.

15 Q.243I think you were, at that interview, you were shown DP90/123?

16 A. I was, that's correct.

17 Q.244Was that the first time you had seen that map, to the best of your
18 recollection?

19 A. To the best of my recollection, it was.

20 Q.245In relation to that, I will read your statement, it might confirm that it is
21 correct. This portion of the statement you furnished to the Tribunal:

22

23 "In relation to the map shown to me by the Tribunal" that's DP90/123?

24 A. That's correct.

25 Q.246"At first sight it provides a motorway to motorway link from Sandyford to the
26 Shankill bypass. I have outlined my direct involvement in that interview, but
27 it seems to have been post the time in question and related to lands from
28 Ballyogan West towards Ballinteer. I am aware that a proposal of this general
29 nature i.e. corresponding to the proposed motorway to motorway interchange at
30 Sandyford and in general terms to the movement of the 1983 Development Plan

1 alignment westwards in the area in question was under discussion. I believe
2 the movement of the assignment related to the bridge at Bride's Glen."

3 You think it might be Druid's Glen, you are not quite sure of the name?

4 A. It's Cherrywood Road basically.

5 Q.247"In terms of (a) the cost of the bridge and (b) the location with least
6 environmental impact on the Carrickmines Valley, (c) a straight section from
7 Carrickmines to the Bride's Glen was shorter.

8

9 On inspection of the detail of the map I have no recollection of the
10 combination of interchanges proposed i.e. in the Killgobin or Carrickmines
11 areas."

12

13 Looking at the map on screen, the Killgobin is the interchange on top of the
14 map?

15 A. It's further down also, that's the Sandyford, the middle one, just beside
16 Stepside really.

17 Q.248You say you have no recollection of the proposed interchange in the

18 Carrickmines area; and we see that that's the interchange, the clover leaf
19 interchange that Mr. Coghlan has described?

20 A. No, I have no recollection of that either.

21 Q.249"Furthermore, the interchange designs as they appear in the map seem somewhat
22 simplistic. They show schematic interchanges with lines at 45 degrees joining
23 the main road. They do not attempt to show the type or layout of the
24 interchanges or to make a serious effort to establish the land take necessary
25 for their construction. The distance between the proposed interchanges at
26 Carrickmines and Lehaunstown seems to be inadequate, at least on first
27 inspection. Because of this I do not believe that the map was prepared by the
28 roads department. The location of the interchanges are at variance with the
29 road hierarchy in the '83 Development Plan and with the planning control sheets
30 which had a more detailed assessment of the effect of road improvement

1 proposals.

2

3 My involvement focused on the Sandyford area and dealt with the capacity
4 affects of various possible motorway layouts and the potential to reverse
5 existing motorway order on a section of the southern cross route. They were
6 related to the operational capacity from a Dublin County Council perspective of
7 the national route.

8

9 Southern Cross Motorway. South of Carrickmines, as long as a motorway existed
10 its alignment would not effect its capacity, consequently I did not have the
11 same interest in that area.

12

13 I am not aware how the proposals on this map came to be. On the face of it
14 they do not seem to have been drawn by the roads department and seem to have
15 been more suitable to the establishment of a principle, rather than exact
16 proposals. I do not believe that I would have used the map as a guide in
17 relation to consultation in relation to a possible planning application. I
18 have no recollection of having done so."

19

20 You have heard the criticism of the proposal as shown on DP90/123 as expressed
21 by Mr. Coghlan. Would you share those views?

22 A. I would, yes. The design of the interchanges -- Mr. Coghlan has said the focus
23 was to have an interchange on Glenamuck. Bringing the interchange further
24 south would bring the weaving movements between the proposed interchange at
25 Carrickmines and the existing one which was always mooted at Lehaunstown. It
26 would be bringing them very close together. It's -- on the face of it there
27 doesn't seem to be a huge reason to move from possibly 750 or 800 metres
28 closer.

29 Q.250 To Lehaunstown?

30 A. To Lehaunstown.

1 Q.251 Do you think that these -- if the interchange had been constructed in the
2 location as shown on DP90/123 that it would have caused probable traffic hazard
3 because of the weaving movements?

4 A. It's difficult to say so. It looks, based on the scale, which is at the bottom
5 of the map, I had a look at it before I came up here, it seems to be just under
6 1.4 kilometres apart, and that's just about the limit, you could just about
7 make it at about 1.4 kilometres. I think the Ballymount to Naas Road junction
8 is just at 1.4 kilometres, but that is heavy traffic conditions there, that is
9 extremely congested and there is difficulty there. So it would not be a design
10 practice to go down to that level when you didn't have to.

11 Q.252 From a road engineer's point of view, and a design point of view, can the
12 Tribunal take it that it was, it would be desirable that the interchange should
13 be at Carrickmines rather than as shown on DP90/123?

14 A. You can certainly take it, in design terms it would be a retrograde step to
15 bring it closer to Lehaunstown.

16 Q.253 As shown on DP90/123?

17 A. Yeah.

18 Q.254 Thank you very much.

19

20 CHAIRMAN: Thank you very much.

21 THE WITNESS THEN WITHDREW.

22

23 MR. GALLAGHER: That is all that is to be dealt with this morning. As you
24 are aware there is a matter for mention in relation to Mr. Caldwell at quarter
25 past two.

26

27 CHAIRMAN: We will sit at quarter past two.

28

29 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

30

1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2

3 CHAIRMAN: Mr. Gallagher?

4

5 MR. GALLAGHER: Sir, the Tribunal put the matter in relation to the order for
6 discovery that was made in respect of Jackson Way Properties Limited in for
7 mention today at quarter past two.

8

9 CHAIRMAN: Mr. Finlay, I think we were hoping you might enlighten us as to
10 what's happening in relation to the Jackson Way discovery, and what
11 instructions you have at the moment.

12

13 MR. FINLAY: Thank you very much, Chairman. Insofar as it's possible to do so,
14 that's the purpose of my presence here this afternoon.

15

16 Chairman and Members of the Tribunal, I am here today in response to a request
17 contained in a letter from the Tribunal solicitor to Miley & Miley, my
18 solicitors, dated the 29th of July 2003, that's a letter of yesterday, which I
19 understand was received just before lunch yesterday.

20

21 Now, at the time that letter was received and indeed as of now also, that my
22 client Mr. Caldwell was out of the country, and is out of the country.

23

24 But despite those circumstances and despite the short time interval which has
25 elapsed, and with a view to assisting the Tribunal if possible today,

26 Mr. Miley, my solicitor, was able to arrange a conference telephone call with
27 Mr. Caldwell in which I was able to participate. And as a result of that
28 conference call, I am in a position to relay to the Tribunal today

29 Mr. Caldwell's instructions in relation to the matters raised in the letter of
30 the 29th of July.

1

2 Before I move to the four matters mentioned in relation to the Jackson Way
3 discovery, I might, if the Tribunal would bear with me for a moment, go back a
4 little in time. I think it is of immense relevance to what I am about to say,
5 because the letter of the 29th of July asks my solicitor, through my solicitor
6 possibly myself, to effectively inquire as to "Mr. Caldwell's current attitude
7 to that order", that's the order against Jackson Way Properties Limited. And I
8 take it that the use of the word "current " in the letter was an advertent use
9 of that term. I think it is appropriate because Mr. Caldwell's attitude to
10 that order for discovery has already been evidenced in extensive correspondence
11 which appeared before the Tribunal at an earlier stage, when the Sole Member
12 was Mr. Justice Feargus Flood.

13

14 In the short-term, I can tell the Tribunal before I go to the detail, that
15 unsurprisingly, Mr. Caldwell's current attitude to the order for discovery is
16 precisely the same as his former attitude, which was the subject of exchanges
17 with the Tribunal, and material put before the Tribunal in late 2002.

18

19 And it's to that time and that correspondence, and those events, to which I
20 would now like to turn.

21

22 Before I do so, it may be of assistance if I just remind the Tribunal of
23 certain factual aspects which are relevant to all of this, and I would remind
24 the Tribunal of the following circumstances.

25

26 First of all, as has already been indicated, Mr. Caldwell is not either a
27 director of, a secretary of, or a shareholder in Jackson Way Properties
28 Limited. Which, as the Tribunal knows, is not an Irish company.

29

30 Mr. Caldwell's only connection with that company, Jackson Way Properties

1 Limited, is through an entity called Renzenbrinck Limited. Now, do I all of
2 this by way of recapitulation because all of this material is, in fact, in
3 correspondence before the Tribunal but it is sometime ago and perhaps the
4 Tribunal would bear with me if I attempt to bring it together for present
5 purposes, it may be of assistance.

6
7 So Mr. Caldwell's only connection with Jackson Way is through Renzenbrinck,
8 Renzenbrinck is not a shareholder in Jackson Way Properties Limited.

9 Renzenbrinck is one of the co-beneficiaries of the lands which are owned by
10 Jackson Way Properties Limited but held by that company in trust for two
11 entities, two co-beneficiaries; one of which is Renzenbrinck and the other of
12 which I understand to be Maskani. Now, as I say, none of this information is
13 new to the Tribunal but it is helpful to bring it together for present purposes
14 as background.

15
16 Now, at the time when the issue of discovery and the order for discovery
17 against Jackson Way Properties Limited first arose the Tribunal may recall that
18 Mr. Miley, my solicitor, also represented Jackson Way Properties Limited as
19 well as Mr. Caldwell, and at that time there was no purpose of departure
20 between the individual, Mr. Caldwell, and the company. And, therefore, the
21 timing of any particular event against that background is very important,
22 because at a certain stage, as the Tribunal will remember, Mr. Miley ceased to
23 act for Jackson Way Properties Limited, in the precise circumstances of failure
24 of that company to comply with the Tribunal's order for discovery.

25
26 And that brings me to the first of the four queries raised in the Tribunal's
27 letter of the 29th of July, which I am sure the members have in front of them
28 at this moment.

29
30 And prior to that event, and as the Tribunal will hear in a moment, in relevant

1 regard subsequent to that event, the event of Mr. Miley coming off record,
2 Mr. Caldwell had taken extensive and repeated steps to secure compliance by
3 Jackson Way Properties Limited with the order for discovery.

4
5 Now, those steps, many of which are documented and some of which are not, when
6 I talk about undocumented steps that would include telephone calls with
7 relevant individuals. Those included correspondence, both from Mr. Caldwell
8 directly, to a number of individuals. I will come to that in a moment. And
9 correspondence from Mr. Miley on Mr. Caldwell's behalf to a number of
10 individuals.

11
12 It included correspondence from Mr. Bullock, the director of Renzenbrinck, on
13 Mr. Caldwell's behalf, to Mr. Holland, the director, the sole director and I
14 think that will have a relevance in a moment, the sole director of Jackson Way
15 Properties Limited. And just for the Tribunal's benefit in case an eye brow
16 might be raised, I understand that at that time in England the position was as
17 it has now become in this country, that a company may have one director only,
18 and I think that has since also become the position here though it wasn't
19 always so.

20
21 So, my instructions are that Mr. Holland, of whose existence the Tribunal is
22 already aware, was and is the sole director of Jackson Way Properties Limited.
23 That's his relevance,, My Lord, in this matter.

24
25 Mr. Bullock has the function of a director of Renzenbrinck, the entity with
26 which Mr. Caldwell is associated. So the steps taken by Mr. Caldwell include
27 correspondence with Mr. Bullock asking Mr. Bullock in his capacity of
28 Renzenbrinck to write to Mr. Holland. That correspondence I believe is already
29 with the Tribunal, we will come to that shortly.

1 Correspondence from Mr. Miley to Mr. Bullock, Mr. Holland rather, and also
2 extensive correspondence from Mr. Miley on Mr. Caldwell's behalf with English
3 lawyers, David Morgan Whitehead and Isadore Goldman.

4
5 The steps taken also included a meeting in England which Mr. Caldwell attended
6 with Mr. Miley for the expressed purpose of seeking to secure compliance with
7 the order against Jackson Way Properties Limited. As I say, Mr. Miley attended
8 that meeting in England.

9
10 And I am at the moment attempting to give the Tribunal an outline of what took
11 place, I can come to the detail of some of this correspondence because I think
12 it is relevant in a moment, but just to try and get an overview first perhaps.

13
14 But there was also correspondence, and perhaps very significant correspondence,
15 on Mr. Caldwell's behalf from Mr. Miley with a firm of lawyers, I describe them
16 as that because in Gibraltar there appears to be a joint profession of
17 barristers and solicitors. So, there is a firm of lawyers in Gibraltar named
18 Triay, T-R-I-A-Y, who interestingly reside in an area of Gibraltar called Irish
19 Town. And Mr. Miley on Mr. Caldwell's behalf corresponded with that firm in
20 their capacity as the representatives of the co-beneficiary of the lands, and
21 the Tribunal may see the potential significance of that function in the present
22 circumstances. And that correspondence, I think, could fairly be described as
23 trenchant and ultimately acrimonious. I don't think that would be an over
24 description of the correspondence. And the net result of that correspondence
25 was that Triay & Triay, on behalf of Maskani, and whatever beneficial owner
26 stands behind Maskani, which Mr. Miley in writing to them had understood to be
27 Mr. Kennedy, trenchantly refused to assist and respond to requests to Mr. Miley
28 on Mr. Caldwell's behalf.

29
30 Having given that outline of some of the steps taken by Mr. Caldwell, I should

1 also perhaps remind the Tribunal of the following: Before Mr. Miley came off
2 record as the solicitor representing Jackson Way Properties Limited before this
3 Tribunal, a substantial quantity of Jackson Way documents had in fact been
4 secured by Mr. Caldwell from the company's representatives in England, as a
5 result of the efforts which I have just described. And all of that material
6 has of course been furnished to the Tribunal. It consists, just for
7 identification purposes, I think, of some six lever arch files of documents,
8 Jackson Way documents. And insofar as it may be of relevance to the Tribunal,
9 from Mr. Caldwell's knowledge of the company's affairs prior to these disputes
10 and difficulties, it is Mr. Caldwell's view, and I merely offer it as
11 Mr. Caldwell's view, that the vast bulk of the documents which Jackson Way
12 would have had are, in fact, included in that documentation which is furnished
13 to the Tribunal. And I just mention that by way of expansion of the other
14 matters.

15
16 But, in any event, that's an outline of the steps taken by Mr. Caldwell to
17 secure compliance with the order against Jackson Way.

18
19 What happened in December 2002 was that despite the fact that -- and this is
20 perhaps important, despite the fact that at that stage that substantial volume
21 of documentation had been sent here, or was being sent here and did go to the
22 Tribunal, the lawyers for Jackson Way indicated in writing, and all of this I
23 think has been made known to the Tribunal by Mr. Miley, that the company, and
24 here I always intend to refer to Jackson Way, would not swear an Affidavit of
25 Discovery. And I will come in a moment to the -- Mr. Caldwell's best knowledge
26 or belief in relation to the circumstances of that decision, because that
27 arises under the Tribunal's letter of yesterday, in a moment.

28
29 But to try and follow the sequence of the four queries raised by the Tribunal,
30 I will now turn to the question of steps, if any, which were opened or would be

1 open to Mr. Caldwell, beyond those that I have already outlined to the
2 Tribunal.

3
4 Now, in this regard I think that it's essential that the Tribunal looks
5 backward in time, because there was a period in time, as I understand it, and
6 as would appear from documents before the Tribunal, when there was no
7 particular issue or dispute between the entities and ultimately I think the
8 persons behind any entities who were the beneficial owners of the lands owned
9 by Jackson Way. And at that time, up to I think at least 2001, as I think has
10 already been indicated to the Tribunal, in practical terms, Mr. Caldwell had an
11 active role in the running of the company, insofar as the company required
12 running.

13
14 I think it is important for this Tribunal to realise, that this was not a
15 trading company. It appears, in as far as I understand, to have been a company
16 which simply owned these lands in respect of which no particular development or
17 trading activity was taking place. So, the amount of activity that would arise
18 in such company would of necessity be minimal. Insofar as issues did arise at
19 that time Mr. Caldwell played that role.

20
21 What appears to have occurred, insofar as Mr. Caldwell understands it, is that
22 an issue arose between Mr. Caldwell as a person associated with the
23 co-beneficiary Renzenbrinck and Mr. Kennedy, Mr. James Kennedy. And arising
24 out of that and leading ultimately to the problems which arose at the time of
25 the discovery issue, the controlling structure of the company became highly
26 relevant. There is a document which -- the existence of which and the nature
27 of which has already been advised to the Tribunal, Chairman, called a
28 Mandator's Agreement, and it is an agreement between the co-beneficiary
29 entities and in effect the directors of the company, Jackson Way. And that
30 document becomes of particular relevance in a moment in this respect.

1
2 As I say, initially Mr. Caldwell sought to secure compliance with the order
3 through steps which I have described, and in terms of obtaining a significant
4 volume of documents his efforts were successful. However, it became clear,
5 circumstances which I will come to in a moment, that the company would not
6 swear an Affidavit of Discovery in respect of Jackson Way documents. In those
7 circumstances Mr. Caldwell through Mr. Miley very properly, very properly, took
8 advice as to his legal position and in particular his legal entitlement or
9 power to procure the making of an Affidavit of Discovery and compliance with
10 the order by Jackson Way, absent the agreement of the co-beneficiary and other
11 party to the Mandator's Agreement.

12
13 And the Tribunal will see now why I mentioned the correspondence with Triay &
14 Triay, the firm of lawyers in Gibraltar, because they represented the
15 co-beneficiary. And advice was taken in that regard from an English Queen's
16 Counsel, I have it say a distinguished Queen's Counsel, and the actual text of
17 that advice is already with the Tribunal. Because it's legal advice, I don't
18 at this moment propose reading it out again, though I would be perfectly happy
19 to do so if the Tribunal requires. But it can be found, Chairman, in a letter
20 of the 12th of December 2003 from Mr. Miley to the Tribunal. And if I may
21 attempt to summarise the effect of that advice from the English Queen's
22 counsel, it was as follows.

23
24 That absent the agreement, absent the agreement of the co-beneficiary of the
25 other party to the Mandator's Agreement, it was not open, Mr. Caldwell had no
26 legal entitlement to unilaterally procure the making by the company, by Jackson
27 Way, of the affidavit, and that is the advised position under English law. It
28 happens insofar as it is relevant, Chairman and Members of the Tribunal, that
29 advice happened to coincide with views on the agreement by Mr. Miley's -- I
30 mention that in passing, that coincided with a view already taken on the effect

1 of that agreement.

2

3 So, the position in law, is that Mr. Miley -- Mr. Caldwell has been advised by
4 Queen's Counsel, and insofar as it is relevant by his Irish lawyers, that he
5 has no legal right and therefore no legal power to procure any further
6 compliance by Jackson Way Properties Limited, that's the company, with the
7 order of the Tribunal.

8

9 The advices I have indicated to you is predicated on a position in which there
10 is an absence of consent from the co-beneficiary, but as I have already
11 indicated to the Tribunal, perhaps the most trenchant correspondence which was
12 exchanged in the course of these events was the correspondence between
13 Mr. Miley and Triay & Triay in Gibraltar representing the co-beneficiary. And
14 in the course of that correspondence Mr. Miley pointed out, in the clearest
15 terms, that in his view they or -- perhaps it is more appropriate to say their
16 client would in his view be obstructing the workings of this Tribunal, and
17 indeed in that correspondence Mr. Miley went so far as to indicate that it
18 would be, it could amount to professional misconduct on their part. And that
19 correspondence provoked equally trenchant and entrenched responses for the
20 legal, the lawyers acting for the co-beneficiary.

21

22 So that, Members of the Tribunal, is the position in relation to the second
23 query raised in the Tribunal's letter.

24

25 If I might now, with your permission, turn to the third and fourth queries, to
26 some extent they are closely connected and would propose to deal with them
27 together.

28

29 Insofar as these two queries are concerned, Mr. Caldwell's instructions to me
30 depend to some extent on his belief, he can not be categorical in relation to his

1 views on these matters, but for what it is worth I will of course relay his
2 views to the Tribunal and the Tribunal can assess that as best it wishes.

3
4 Mr. Caldwell's belief as to why the company, Jackson Way Properties Limited,
5 has not complied with the order, especially given that substantial quantities
6 of documents of the company were furnished by the company and are already with
7 the Tribunal, his belief as to why no affidavit has been sworn is that that is
8 largely as a result of legal advice obtained in England from English lawyers by
9 Mr. Holland, the sole director of Jackson Way Properties Limited. It seems
10 clear from the correspondence that Mr. Holland did seek and obtain legal advice
11 in England. And it is Mr. Caldwell's belief that his decision not to make an
12 affidavit on behalf of the company may have been based on that legal advice.
13 But perhaps because this is an area, to some extent, of conjecture, I ought for
14 completeness to mention one other aspect to the Tribunal.

15
16 Mr. Caldwell recalls that in a telephone conversation of the 19th of November
17 2002 with Mr. Nicholas Morgan, of whose identity and function the Tribunal will
18 already be aware, an English lawyer, in a telephone conversation with Mr.
19 Morgan on the 19th of November 2002, Mr. Morgan told Mr. Caldwell that
20 Mr. Holland was reluctant to expose himself to the media frenzy in Dublin. I
21 think that was a note that Mr. Caldwell may have taken of that conversation,
22 but in any event I believe that to -- I understand that to be an accurate
23 representation of what Mr. Morgan told Mr. Caldwell on the 19th of November
24 2002.

25
26 So, in any event, insofar as Mr. Caldwell can assess those, he believes maybe
27 either or both of those may be the reason why Mr. Holland, the sole director of
28 this company, would not swear an affidavit, despite having furnished
29 substantial quantities of company documentation to Miley & Miley which found
30 its way then to the Tribunal.

1

2 That, to some extent, also deals with the fourth query, which wished to
3 ascertain whether Mr. Caldwell knew the reason why, and on whose instructions,
4 on whose instructions and on whose behalf the order has not been complied with.

5

6 All I think one can say in addition to what I have just outlined is that
7 Mr. Holland, the director, has taken a decision not to swear an affidavit. The
8 reasons behind that decision may be covered by what I have just mentioned to
9 you, but with a view to ensuring the maximum completeness of this matter, and
10 with a view to being of most assistance to the Tribunal in these circumstances,
11 today the 30th of July, I am instructed that Mr. Miley, Mr. Miley made direct
12 contact by telephone with Mr. Holland in England, with a view to discovering
13 whether in the interim, since December 2002 there had been any change in
14 Mr. Holland's position. And Mr. Miley has instructed me that Mr. Holland
15 informed him by telephone today that there was no change in his, that is
16 Mr. Holland's position.

17

18 So, coming then to the concluding section of the Tribunal's letter where the
19 Tribunal wished it to be confirmed that it was Mr. Caldwell's wish that the
20 order should be complied with by Jackson Way, I think one can summarise the
21 position as follows: Members of the Tribunal, it is Mr. Caldwell's clear wish
22 that the order should be complied with, but not only is it his wish that the
23 order should be complied with, but that at all times relevant to this
24 discussion that has been his clear and stated wish. I think in the short time
25 available to me I have been able to review some of the correspondence and I
26 think that that latter observation is most clearly supported by a passage, a
27 sentence in a letter of the 20th of November 2002 written by Mr. Martin Bullock
28 in his capacity as a director of Renzenbrinck Investments Inc, copied to Miley
29 & Miley, and written to Mr. Holland in his capacity as the director of Jackson
30 Way Properties Limited. And that letter referring to the Jackson Way files

1 includes the following sentences, Members of the Tribunal: "We must impress
2 upon you the urgency with which these files must be provided to Miley & Miley.
3 We hereby call upon you to provide the files immediately. Further, we hereby
4 advise you that it is our expressed wish that you fully cooperate with the
5 requirements of the Flood Tribunal." And that letter, as the Tribunal may
6 already be aware, was written on the instructions and at the request of
7 Mr. Caldwell who had written on the previous, to that letter, I think on the
8 17th of November, possibly, to Mr -- on the 17th of October, I beg your pardon.
9 On the 17th of October Mr. Caldwell had written to Mr. Bullock in his capacity
10 as director of Renzenbrinck, asking him to write to Mr. Holland to -- with a
11 view to providing all the documents, files, papers in his possession, power or
12 procurement with regard to Jackson Way and its predecessor Paisley Park
13 Investments Limited.

14
15 So, insofar as the Tribunal needs to ascertain Mr. Caldwell's views, either
16 stated or unstated, they were most clearly stated at that time. They have
17 never changed and that remains his view today.

18
19 Insofar as it may be relevant to the Tribunal's requests, Mr. Caldwell has
20 asked me to mention to the Tribunal that he personally cannot see any reason
21 why Jackson Way should not make an affidavit. I want to be quite clear what I
22 mean by that, or what Mr. Caldwell means by that. He is not talking about
23 whether there is any legal impediment or not, it is rather that he is not aware
24 of any reason, if one likes, of substance why an affidavit shouldn't be sworn.
25 That's not expressing any view on the legal situation in England or commenting
26 on any advice which may or may not have been given to the company, but that is
27 his personal view. That's his view particularly in the circumstances, in his
28 belief, that the bulk of the Jackson Way documents are already with the
29 Tribunal.

1 So, Members of the Tribunal, in the short time that has been available, and I
2 am aware that it is short and the amount of time I have had to research some of
3 the correspondence and material has been limited, I have attempted in as far as
4 I can this afternoon at short notice on Mr. Caldwell's behalf deal with those
5 four queries that the Tribunal's letter raised.

6
7 CHAIRMAN: Thank you, Mr. Finlay. Well, as we understand the position then,
8 Mr. Caldwell wants the Tribunal to be aware that he personally is anxious that
9 Jackson Way should make and complete an Affidavit of Discovery but he is not
10 now in a position to ensure that that be done. That's his position stated
11 simply, is that it?

12
13 MR. FINLAY: That's entirely correct. I am sorry if I stated it so unsimply
14 but that is the effect of what I have said. But I didn't wish to in any way
15 state that so baldly, I wished the Tribunal to be fully aware of the reasons
16 why that is the position.

17
18 CHAIRMAN: Can I refer you, Mr. Finlay, to a letter written by Miley & Miley
19 Solicitors on the 31st of January 2002 to Ms. Howard, solicitor to the
20 Tribunal, and have you got a copy of that letter?

21
22 MR. FINLAY: I am not sure whether I have a copy of that letter.

23
24 CHAIRMAN: It's a long letter, I think eight pages.

25
26 MR. FINLAY: I don't think I have that letter here, Chairman, but --

27
28 CHAIRMAN: I will just read out perhaps --

29
30 MR. GALLAGHER: I can get a photocopy printed out for Mr. Finlay if you can

1 bear just for a moment --

2

3 CHAIRMAN: I will give Judge Keys' copy to Mr. Finlay for the moment.

4

5 MR. GALLAGHER: It is being printed at the moment in any event.

6

7 CHAIRMAN: All right. I think it has a red tab on it, Mr. Finlay, if you look,
8 this is a letter written from Miley & Miley Solicitors to the Tribunal, headed
9 "Our client: John Caldwell. Dated 31st of January 2002". Paragraph, page
10 four of that letter states in the third paragraph, second paragraph, this is
11 referring to Mr. Caldwell and his involvement in Jackson Way, and it stated:
12 "He has, however, always exercised complete control over Jackson Way Properties
13 Limited in the sense that all of Mr. Harker, Mr. Bullock and Mr. Holland have
14 conducted affairs in accordance with his instructions," that's Mr. Caldwell,
15 "and left it to him to decide how affairs should be conducted. Mr. Kennedy has
16 also left it to our client," that's Mr. Caldwell, "to decide how the affairs of
17 Jackson Way Properties Limited should be conducted. We ourselves have taken
18 our instructions from Mr. Caldwell in relation to Jackson Way Properties with
19 Mr. Holland facilitating the implementation of those instructions."

20

21 Can you explain or is there an explanation as to why that statement was made in
22 2002, which is in marked contrast to the position now stated on behalf of
23 Mr. Caldwell?

24

25 MR. FINLAY: Yes, indeed I can, Chairman. And I touched on that earlier in my
26 submission, I cannot remember my exact words, I apologise for that. But I
27 think I attempted to describe earlier in my submission that before the dispute,
28 and it is a dispute, arose late in 2002, as a matter of practicality
29 Mr. Caldwell had in fact controlled the running of the company.

30

1 It's crucial to remember that this is a company which is a trust company, it
2 owns lands and the lands are held in trust for two beneficiaries, Mr. Caldwell
3 is associated with one of those two beneficiaries. It is unremarkable and
4 unsurprising that in circumstances in which, in a trust company situation, the
5 two beneficiaries are ad idem, or at least not at loggerheads, it is
6 unremarkable that Mr. Caldwell, who may at that stage have been the beneficiary
7 more familiar with the workings of companies or the administration of companies
8 in such matters, might have been the person to deal with the every day running.
9 Why should two beneficiaries deal with a matter that one can deal with in
10 circumstances in which there is no issue or dispute between them?

11
12 However, it is clear, abundantly clear, that that situation radically altered
13 and it may well be that that situation altered as a result of the existence and
14 certain workings or inquiries of this Tribunal.

15
16 As I have indicated to you already, the co-beneficiary of Jackson Way
17 Properties Limited is Maskani and it appears, and has been Mr. Miley's
18 understanding in his correspondence with Triay & Triay, that Mr. Kennedy is
19 associated with Maskani, it is abundantly clear from correspondence which I
20 have reviewed, and I haven't in the time available to me been able to
21 establish, nor has Mr. Miley, whether all of that correspondence with Triay &
22 Triay is already with the Tribunal or not. There is a volume of correspondence
23 about this discovery issue with the Tribunal, we haven't in the time available
24 been able to establish whether the correspondence with Triay & Triay is there,
25 so I simply don't know. But having reviewed it myself this morning, it is
26 quite clear that Triay & Triay on behalf of the co-beneficiary, whoever the
27 co-beneficiary ultimately relates to, it would appear from the correspondence
28 that Triay & Triay do not resile from the assumption that they represent
29 Mr. Kennedy. It would appear, it is clear from that correspondence that they
30 are categorically refusing to assist Mr. Caldwell or cooperate in any way.

1 And, therefore, there has been, as I say, acrimonious exchanges.

2

3 CHAIRMAN: But presumably there is correspondence between Mr. Caldwell and his
4 co-beneficial owner or with other parties which would indicate and highlight
5 the breakdown or the change of control which was stated clearly to be in the
6 hands of Mr. Caldwell in early 2002, between then and some more recent time
7 when it appears that Mr. Caldwell has lost control.

8

9 MR. FINLAY: Well, what I have indicated is this, Chairman: The structure of
10 the company, as I understand it, and this is to be obviously careful in what I
11 say, I don't wish to venture into any area in respect of which I didn't take
12 specific instructions, relates to the four specific queries I have been asked
13 to come here today to deal with, and I don't intend to do so.

14

15 But what is, it seems clear to me, is that once the co-beneficiary were to take
16 the view that it did not wish to cooperate with the Tribunal, and the
17 co-beneficiary is Maskani as I understand it, once that entity took that
18 decision, for whatever reason, that would inevitably, must inevitably lead to a
19 fundamental issue between Mr. Caldwell, who is here cooperating extensively,
20 enormously with the Tribunal - as the Tribunal will be aware from the events of
21 the last few days in terms of volume alone, I will come to that in a moment -
22 and the co-beneficiary entity which has taken precisely the opposite view and
23 may have no presence or representation here and decided not cooperate at all.

24

25 CHAIRMAN: I understand that. Clearly something happened. In early 2002
26 Mr. Caldwell's position was that he effectively didn't even have to make
27 contact with Mr. Kennedy or Maskani Limited, he was able to instruct directly
28 Mr. Holland to do his will in relation to Jackson Way Properties. And Judge
29 Faherty just reminded me there is a letter of the 15th of October, which is ten
30 months later, and on that occasion Mr. Miley writes again to the Tribunal

1 saying: "I am instructed to advise that Jackson Way Properties Limited will
2 consent to an order for discovery and/or production of documents."

3 So, the position ten months later, after that letter is written, would appear
4 to be that Mr. Caldwell still has effective day to day and full control of
5 Jackson Way Properties. Something has happened between October of last year
6 and now to change that position. I don't know whether you are in a position to
7 indicate what has happened and if there is correspondence which would enlighten
8 us as to steps that might have been taken by Mr. Caldwell to ensure that
9 discovery was completed?

10
11 MR. FINLAY: Coming to your last observation, Chairman, I have outlined in
12 detail steps that were taken to ensure compliance with the order, including
13 reference to the various correspondence. Now, I haven't been able to establish
14 in the time available whether the Tribunal has already seen all of that
15 correspondence. If there is any of it which by any chance which has not yet
16 gone to the Tribunal, obviously that can be done. That includes, by the way,
17 correspondence with Mr. Bullock, Mr. Holland, Mr. Morgan, Mr. Shaffey, Isadore
18 Goldman.

19
20 CHAIRMAN: This is since October of last year?

21
22 MR. FINLAY: Most of it since --

23
24 CHAIRMAN: Since that last letter --

25
26 MR. FINLAY: I think to my recollection most of it is in that period, yes.

27
28 CHAIRMAN: All right. Obviously --

29
30 MR. FINLAY: As I say, I just don't know, and Mr. Miley has not been able to

1 check this morning because there has been a lot to do, whether all of that is
2 already among the documents which would have gone to the Tribunal last
3 December. I believe some of it has, possibly not all of it. But for example
4 the -- I am unaware whether the correspondence with Triay & Triay -- but I
5 would have thought that the Counsel for the Tribunal raising this matter this
6 afternoon would be fully aware of what was and wasn't with the Tribunal, maybe
7 that can be clarified.

8

9 CHAIRMAN: On the 12th of December of last year --

10

11 MR. FINLAY: Yes, there were several letters that date, Chairman.

12

13 CHAIRMAN: -- there is a letter written to the Tribunal by Mr. Miley.

14

15 MR. FINLAY: Yes, indeed, I am aware of that.

16

17 CHAIRMAN: And in that letter turning to the last paragraph, on page one
18 Mr. Miley says: "As material will not now be forthcoming from Jackson Way
19 Properties Limited on a voluntary basis I have had to look at Mr. Caldwell's
20 position in relation to his power of procurement. As you know Mr. Caldwell's
21 only avenue into Jackson Way Properties Limited is through Renzenbrinck
22 Investments Inc, apart from the rights which accrue to Renzenbrinck Investments
23 on foot of the transfer of the lands in 1993 and on foot of the declaration of
24 trust dated 4 of August 1993 not relevant to the question you raise. The only
25 rights which Renzenbrinck Investments has in relation to Jackson Way Properties
26 Limited are those which arise on foot of the Mandator's Agreement." Which is
27 the one I think you mentioned.

28

29 MR. FINLAY: Yes, indeed.

30

1 CHAIRMAN: Which is contained page 226 to 331 of the book. Mr. Miley goes on to
2 indicate or to quote from that opinion of Queen's Counsel where he is advised
3 that where there are two mandators one cannot issue or insist that a particular
4 act be done against the wish of the other, isn't that effectively --

5

6 MR. FINLAY: That's indeed the effect of that advice as I understand it,
7 Chairman.

8

9 CHAIRMAN: Well, can I refer you back again to the letter of the -- this is the
10 long letter of the 31st of January of 2002? And page three of that letter, and
11 I might just read out the full paragraph, this is paragraph (vii), Roman
12 numeral 7, have you got that? Page three of that letter.

13

14 MR. FINLAY: Yes, I do. I have that.

15

16 CHAIRMAN: Paragraph (vii) states at follows: "Following the acquisition of
17 lands by Paisley Park Investments Limited and having regard to our client's
18 determination," that's Mr. Caldwell, "to cease relationships with Mr. Stanley,
19 Paisley Park involvements Limited was put into liquidation and the property was
20 distributed to Jackson Way Properties Limited nominated by Maskani Limited and
21 by Renzenbrinck Investment to hold the property as nominee on their behalf.

22

23 A copy of the transfer made in 1993 in favour of Jackson Way Properties Limited
24 and a copy of the Declaration of Trust entered into by Jackson Way Properties
25 Limited is contained in the Jackson book, pages 219 to 225. It would be noted
26 that these set out the detail of the transaction. We have also included in the
27 Jackson Book, pages 226 to 231, an agreement made between Pertland Limited and
28 Renzenbrinck as mandators of the one part and Allen George Holland and Radovan
29 Vukovic as mandatorys of the other part. This agreement is undated but our
30 client believes it was completed between the 4th of June '93, the date upon

1 which Ari Cleaver Limited changed its name to Jackson Way Properties Limited,
2 and 30th of July '93, which appears from the Declaration of Trust at page 224
3 of the Jackson book, is the date upon which the transfer contained at page 219
4 of the Jackson book was completed."

5
6 Now, this is the important, the part I want to stress: "The agreement appears
7 to have been abandoned," that is the Mandator's Agreement, "as you will note
8 from the transfer page 219 of the Jackson book that the nominees are Maskani
9 Management Limited and Renzenbrinck Investments, not Portland Limited and
10 Renzenbrinck. Portland Limited is involved in the manner set out below at
11 nine."

12
13 Now, the position being stated on behalf of Mr. Caldwell in January 2002 was
14 that the Mandator's Agreement which Mr. Caldwell is relying on 12 months later
15 has effectively been abandoned, and if that is the case then how can that be
16 stated and relied upon as a reason why Mr. Caldwell cannot insure the
17 completion of the discovery process?

18
19 MR. FINLAY: Yes. Well, I think, Chairman, if you read this letter in it's
20 context it is perfectly clear that that sentence is an observation from
21 Mr. Miley and not an instruction from Mr. Caldwell. It is a comment by
22 Mr. Miley in relation to the names, it doesn't represent in any sense an
23 instruction from Mr. Caldwell.

24
25 CHAIRMAN: It is a statement to the effect that the agreement has been
26 abandoned.

27
28 MR. FINLAY: With great respect, Chairman, it's not. It's an observation that
29 the agreement appears to have been abandoned and goes on to say why
30 Mr. Caldwell, Mr. Miley has offer that had view, "the agreement appears to have

1 been abandoned. As you will note from the transfer at page 219 of the Jackson
2 book that the nominees are Maskani Management Limited and Renzenbrinck and not
3 Pertland and Renzenbrinck. Pertland are involved in the manner set out below
4 in nine."

5
6 I have taken instruction from Mr. Miley in that regard, and it appears that
7 subsequently it became apparent that Pertland in effect was representing
8 Maskani, there was no distinction between Pertland and Maskani, that's my
9 instruction. But I would be anxious that the Tribunal note that that is not a
10 statement from Mr. Caldwell or any instruction from him being relayed to the
11 Tribunal through Mr. Miley. That, as I see it, is an observation of Mr. Miley,
12 a legal observation based on certain descriptions of parties, the agreement
13 appears to have been abandoned and mentioned at that point.

14
15 CHAIRMAN: But the Mandator's Agreement which has been furnished to us states
16 specifically that the parties to that are Pertland, not Maskani, and
17 Renzenbrinck.

18
19 MR. FINLAY: That is presumably why Mr. Miley made that observation in the
20 letter.

21
22 CHAIRMAN: Well, does that not suggest that the opinion of the English Queen's
23 Counsel is somewhat irrelevant, in that we are dealing with Maskani Limited and
24 Renzenbrinck?

25
26 MR. FINLAY: Well, I am not, when you say you are dealing with Maskani
27 Chairman, I am not quite sure --

28
29 CHAIRMAN: Well, in the sense that as we understand the property was transferred
30 to Maskani and Renzenbrinck.

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MR. FINLAY: My understanding is that that has never occurred, Chairman. The -- there is a trust in favour of -- there is a Declaration of Trust entered into in favour of Jackson Way Properties Limited, there's never been a transfer, the transfer was in favour of Jackson Way Properties Limited and Jackson Way Properties Limited declared a trust, and that in fact I think is referred to earlier in that paragraph.

CHAIRMAN: Well --

MR. FINLAY: Nothing may turn on that but lest it be suggested that there has ever been a transfer as I think you indicated now, to either Renzenbrinck or Maskani, it appears that what happened following the liquidation of Paisley Park was that there was a transfer in favour of Jackson Way Properties and a Declaration of Trust then entered into by Jackson Way Properties Limited, and that is referred to and in fact is with the Tribunal, has been for some time.

CHAIRMAN: And is it Mr. Caldwell's position that if the company Jackson Way was being mismanaged or something was being done by Mr. Holland in relation to the assets of that company, which Mr. Caldwell felt were, might be injurious to the welfare of the company and the property it hold, is it your contention that Mr. Caldwell is helpless in relation to his own interests?

MR. FINLAY: I am not so contending, Chairman, and it's not an issue to which I have either turned my mind or in respect of which I have taken instruction

CHAIRMAN: But I understand Mr. Caldwell's position, it is because he can't persuade his co-beneficiary to cooperate with the Tribunal as was stated. And I assume, and I doubt if there is any question about it, I assume that Mr. Miley had full instructions to agree to discovery when he did agree to it.

1 If that's the case one might argue that the interests of Mr. Caldwell are being
2 mismanaged by Mr. Holland on behalf of the company, if he is now refusing to
3 comply with the undertaking that was given to the Tribunal last year, and is it
4 the case that Mr. Caldwell is -- is it part of Mr. Caldwell's case that in
5 spite of that he is helpless, because we know from Mr. Caldwell's -- we know
6 that it is Mr. Caldwell's position that he is owner in effect of 50 per cent of
7 the Jackson Way Property, he is the beneficial owner of 50 per cent of the
8 Jackson Way Property, and is it his case that he is now helpless in terms of
9 persuading Mr. Holland to do what any right thinking person would deem to be
10 the appropriate thing to do?

11
12 MR. FINLAY: Well, first of all, I don't wish to appear in any way either
13 semantic or pedantic, but as I understand it the 50 per cent beneficiary,
14 beneficial owner of the lands in respect of whom the -- or in respect of which
15 the Declaration of Trust was made by Jackson Way is Renzenbrinck, and I don't
16 wish to pre-empt any precise description of Mr. Caldwell's association with
17 Renzenbrinck, I don't wish by not making that comment to concede that he is a
18 direct beneficial owner, but that's not legally the position as I understand.
19 But all of that presumably is a matter which Tribunal will consider in due
20 course, because I understand that the Tribunal has envisaged a module of
21 hearings dealing with that issue.

22
23 CHAIRMAN: But is it Mr -- I don't quite follow, are you saying that
24 Mr. Caldwell is not a 50 per cent beneficial owner ultimately of the lands at
25 Jackson Way?

26
27 MR. FINLAY: No. I am not saying that, Chairman, at all. I didn't purport to
28 say that. What I am saying is that as a matter of law, the 50 per cent
29 beneficial owner under the trust, on each side is an entity and my
30 understanding is that one of the interests, one of the matters in which the

1 Tribunal is interested, is the human beneficial ownership on the other side.
2 And so it is important, therefore, to recognise that because of the structures,
3 the ultimate human beneficial ownership isn't necessarily established by the
4 entity beneficial ownership. I am merely making that point.

5
6 If, for example, by knowing that Maskani was the co-beneficial owner, one
7 automatically knew the entire human beneficial ownership behind Maskani that
8 might be a matter of assistance to the Tribunal, I am fully aware of that.

9 What I am saying is in relation to Mr. Caldwell, his beneficial interest in --
10 his beneficial interest in the lands is through Renzenbrinck as a
11 co-beneficiary, a 50 per cent beneficial owner of the lands.

12
13 CHAIRMAN: But do you not know what Mr. Caldwell's ultimate beneficial interest
14 in the property is? I mean, if you take a simple example, if there was 10
15 million euro available tomorrow to -- and the land was being sold, how much
16 would Mr. Caldwell be entitled to?

17
18 MR. FINLAY: My understanding is, if I can put it this way, not more than 50
19 per cent of that. But what I am saying is that I don't wish, because I do not
20 actually know, I don't wish to indicate to the Tribunal the precise legal or
21 structural relationship between Mr. Caldwell and Renzenbrinck Limited, because
22 I simply do not have those details. I don't wish to in any way muddy the
23 waters, and I am not in any way resiling from the proposition that Mr. Caldwell
24 has a beneficial ownership of the lands of Renzenbrinck. This is to do with
25 the actual way in which an individual may be associated with a legal entity, a
26 distinct legal entity which in turn is a 50 per cent co-beneficiary in a trust
27 company.

28
29 CHAIRMAN: But surely, Mr. Finlay, you know what Mr. Caldwell's interest,
30 ultimate beneficial interest -- at a time, when was this on the 30th of October

1 of last year when you were applying for representation you said, and I quote:
2 "Mr. Caldwell is also one of the ultimate beneficial owners of Jackson Way
3 Properties Limited, so in those circumstances I apply for representation on
4 behalf of Mr. Caldwell. I also apply for representation on behalf of Jackson
5 Way Properties Limited."

6
7 So, I mean, if you don't know that's fine, but -- I mean, we are just
8 interested to know if you know what Mr. Caldwell's ultimate beneficial interest
9 is in the property.

10
11 MR. FINLAY: There is no -- I don't wish to create in a sense a mystery on this
12 side of the Jackson Way, Mr. Caldwell is an ultimate beneficial owner, it is on
13 that basis that I am here. All I am trying to do say and I am obviously doing
14 pretty badly, is to say that I do not know and have not yet had reason to
15 inquire, because it is never an issue yet before the Tribunal at this stage,
16 the precise manner in which his ultimate beneficial ownership is structured
17 through Renzenbrinck. He is a beneficial owner, Renzenbrinck is 50 per cent
18 beneficial owner of the trust lands.

19
20 CHAIRMAN: But I presume Mr. Caldwell knows?

21
22 MR. FINLAY: Of course. I am sure Mr. Caldwell knows. He must know. All I
23 am saying, Chairman, is without wishing to appear in any way difficult, the
24 precise structure, precise structure under which or through which Mr. Caldwell
25 holds his beneficial interests of Renzenbrinck is one which I do not know the
26 detail of and it has, to date in this Tribunal, in terms of what I have had to
27 do here, has not been relevant for me to do that. I simply haven't come -- I
28 have always worked on the basis, as is the case, that he is an ultimate
29 beneficial owner through Renzenbrinck. All I wish to do is to say that I
30 cannot tell you, not because I am refusing to tell you, only because I do not

1 know because I haven't had to inquire, the precise manner which he holds that
2 beneficial ownership through Renzenbrinck, but it is not a matter of -- I do
3 wish to emphasise it is not a matter of mystery. It can be elucidated when it
4 becomes relevant, but it is -- in my respectful submission, I do not believe,
5 and I am genuine about this, I do not believe that that structure, the
6 structure that he holds his beneficial interest through, in Renzenbrinck can
7 have any relevance to the issue that we are dealing with here.

8
9 CHAIRMAN: Well, it does possibly -- because assuming for the moment that
10 Mr. Caldwell is a significant beneficial owner, without giving him a
11 percentage, and not just simply a nominal beneficial owner, is it the case
12 being made for Mr. Caldwell by you, that there is nothing he can do to persuade
13 Mr. Holland to comply with an order of the Tribunal and one which Mr -- one
14 which Jackson Way itself instructed its solicitors to agree to comply with? I
15 mean, that's the point at the end of the day.

16
17 MR. FINLAY: Yes. And as I thought I had already tried to indicate, it is
18 Mr. Caldwell's view that there is nothing that he can do to persuade
19 Mr. Holland, the director, sole director of Jackson Way Properties Limited, the
20 company, to alter his position. As I say, only this morning Mr. Miley spoke
21 directly with Mr. Holland in that regard. But it doesn't end there, Chairman,
22 because it is not of course merely Mr. Holland. It is very important to bear
23 in mind that there are two relevant areas here. There is the company, which is
24 Mr. Holland, and there is the co-beneficiary.

25
26 CHAIRMAN: Well, Mr. Holland, as we understand it, has decided himself not to
27 comply with the order because he doesn't wish to face the publicity that
28 complying with it might bring.

29
30 MR. FINLAY: I think, Chairman, that I mentioned that as the second possible

1 reason which Mr. Caldwell believes may be behind the decision. The first
2 reason that I mentioned was that it is Mr. Caldwell's belief and is supported
3 by the correspondence that Mr. Holland sought and obtained his personal legal
4 advice in relation to his position as the sole director of the company, and
5 that that legal advice lead him either wholly or in part to make the decision
6 not to make the affidavit.

7
8 CHAIRMAN: But you say it is advice or a position being taken by Mr. Holland,
9 that Mr. Caldwell is not in agreement with?

10
11 MR. FINLAY: Yes. Yes, indeed.

12
13 CHAIRMAN: I am not saying he is disagreeing with the advice but it is a
14 position being taken that he is not in agreement with, so the thing that
15 puzzles me is what the position might be if, for example, Mr. Holland was
16 mismanaging the company or displacing or dissipating its assets or doing
17 something of that nature, would Mr. Caldwell simply sit and do nothing as is
18 currently the case? Would he not be off to court, would you not take all sorts
19 of legal steps to ensure that the company was managed correctly and that
20 Mr. Holland did what he was supposed to do?

21
22 MR. FINLAY: I think, of course, to some extent this is beyond my capabilities
23 because it involves some speculation as to English company law. If that
24 hypothetical situation were to arise one can, hypothetical situation were to
25 arise one could anticipate that a 50 per cent owner, I use the crudest layman's
26 language here, you will be well aware that what I am doing, a 50 per cent owner
27 of the company in such a situation where the agreement of the other 50 per cent
28 owner could not be obtained is what's typically described in company law in
29 circumstances as a situation of dead lock. It was one of the traditional
30 circumstances which might lead to an impression, partition or application -- I

1 am speaking of course under Irish law, an application for winding up of the
2 dead lock in an equally divided small company might lead to that if such a
3 situation arose of the -- but that is purely perhaps ill informed counsel's
4 comment on the matter of foreign law, I don't wish any note to be taken of that
5 at all.

6
7 CHAIRMAN: But assuming there is somewhat equivalent entitlements to beneficial
8 shareholder in the UK, why is it not that Mr. Caldwell is not making greater
9 steps to ensure that his wish that the Tribunal be provided with full discovery
10 is complied with?

11
12 MR. FINLAY: Well, Chairman, with great respect, to ask me why Mr. Caldwell is
13 not taking greater steps --

14
15 CHAIRMAN: I am only asking you on the basis that hopefully you might put these
16 questions to your client.

17
18 MR. FINLAY: Well, Mr. Chairman, with great respect, it would be difficult to
19 imagine a circumstance in this jurisdiction, whatever about anywhere else,
20 where one, as a senior counsel, could confidently advise any client to approach
21 the High Court in the face, in the teeth of written advice from senior counsel
22 advising that he had no cause of action. And that is the circumstances which I
23 have attempted to outline to the Tribunal this afternoon, and I am concerned to
24 hear after my lengthy attempt to do that, the Tribunal asking the question why
25 Mr. Caldwell has not taken greater steps given that what was said in the
26 correspondence in 2002, the trenchant correspondence written on his behalf by
27 Mr. Miley directly from him to Mr. Morgan and Mr. Bullock and through him to
28 Mr. Holland.

29
30 The letters to Triay & Triay in trenchant terms threatened to report them to

1 the Irish Law Society the subsequent advice from distinguished English Queen's
2 Counsel advising him, in effect, he had no course of action to achieve what he
3 wished to achieve, so I am very concerned, particularly concerned, Chairman,
4 for reasons which all three Members of the Tribunal will well be aware, that
5 any suggestion of this Tribunal that despite everything I have told you this
6 afternoon Mr. Caldwell might not have taken proper steps, and extensive steps
7 to secure compliance.

8
9 CHAIRMAN: Well, we are simply making the point that we are, as things stand,
10 not satisfied Mr. Caldwell has done everything that he should have done in
11 order to, or that he can do in order to ensure that Jackson Way would comply
12 with the order for discovery. So, do you want to add --

13
14 JUDGE FAHERTY: Mr. Finlay, could I ask you, your position or Mr. Caldwell's
15 position is that there isn't any cooperation between the co-beneficiary
16 essential, so, therefore, Mr. Holland can't on behalf of Jackson Way swear an
17 Affidavit of Discovery?

18
19 MR. FINLAY: Judge Faherty, thank you for that. I think that there is a
20 distinction between those two propositions, they don't actually follow one from
21 the other. It may be, it may be that the advice which Mr. Holland received in
22 England was based on the circumstances that there was a dispute between the two
23 beneficiaries, but in the absence of knowing that advice, which I don't know
24 what advice he received, I cannot say that his decision, or rather the advice
25 that he received, which lead to his decision, was necessarily based on the
26 circumstances that two beneficiaries were in disagreement.

27
28 Now, it may have been --

29
30 JUDGE FAHERTY: That's not my question, you said earlier in the absence of

1 any agreement of co-beneficiary Mr. Caldwell has no legal entitlement to get
2 Jackson Way to swear --

3

4 MR. FINLAY: That's correct. The advice --

5

6 JUDGE FAHERTY: That's what I want to ask you about, the first two sentence of
7 the what's noted in the letter of the 12th of December 2002 from the learned
8 Queen's Counsel is "In my opinion one of the mandators, i.e. Renzenbrinck or
9 Pertland, cannot give valid instruction to the mandators who I believe are
10 Mr. Holland and Mr. Vukovic. Thus, for example," and this is the second
11 sentence, "the mandators, that's Mr. Holland and Mr. Vukovic, cannot be
12 compelled by a single mandator to cause the company Jackson Way to disclose
13 documents."

14

15 What I want to ask really, Mr. Finlay, is this: That letter is written in the
16 light of disclosure of documents, this company -- has there been cooperation
17 between the co-beneficiaries on issues other than discovery since October 2002?

18

19 MR. FINLAY: I have no idea as to the answer of that question, it's not an
20 issue I was asked to take instructions in respect of that.

21

22 JUDGE FAHERTY: I am asking you in this context, it is known that the company
23 pursued an arbitration in this jurisdiction; isn't that correct?

24

25 MR. FINLAY: That's correct.

26

27 JUDGE FAHERTY: And I haven't the date to hand and I don't want to stand by
28 that, but I think it was going on last autumn and into this year.

29

30 MR. FINLAY: That's correct. A matter of public record and knowledge.

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JUDGE FAHERTY: Still not completed, it would follow if you read the second sentence of this learned opinion of Queen's Counsel that the mandators cannot be compelled by a single mandator to call the company to disclose documents. If that follows they couldn't be compelled by a single mandator to do a single thing on behalf of the company. I am just wondering is there cooperation between the co-beneficiaries on certain issues but no cooperation on the issue of swearing an Affidavit of Discovery to this Tribunal?

MR. FINLAY: I have no idea as to the answer to that question. It is not a query I was ever asked to take instruction in respect of that, of course that could be done. But I wish it to be very clear that I am here at extremely short notice, I rearranged a schedule to be here to assist the Tribunal.

JUDGE FAHERTY: You get the thrust of my point, Mr. Finlay.

MR. FINLAY: In order to deal with four specific queries, which I attempted to do --

JUDGE FAHERTY: I am putting it now. It would appear if this was going on, as we know it is and continues, the arbitration, there may be other issues in relation to the company, other matters on going, there has to be if one follows this to the letter of the advice, cooperation between the co-beneficiary for every act of the company, and it would seem strange that this seems to be the one area we know of where there seems to be a lack of cooperation between the two co-beneficiaries.

MR. FINLAY: Well, Judge Faherty, yes, indeed, I am fully with your analysis and it's -- your observations are perfectly sensible with great respect. However, although it may seem strange, it need not be entirely surprising in

1 the present context of which the Tribunal is well aware. The Tribunal is well
2 aware that there is an air of unreality about all these discussions, with great
3 respect, because the Tribunal is well aware that a critical player in all of
4 this, a critical witness, is not here and will not be here, certainly has not
5 been here, that's Mr. Kennedy. And I doubt very much whether I would be
6 sitting here this afternoon attempting to deal with this queries if Mr. Kennedy
7 appeared as a witness. The point is that that is part of the -- the reality of
8 the situation, I have said to you that the correspondence with Triay & Triay in
9 Gibraltar for Mr. Miley on Mr. Caldwell's behalf was written to them on the
10 understanding they act for Mr. Kennedy and that there is no distinction in that
11 correspondence made between their role as acting for Mr. Maskani, as
12 co-beneficiary, and Mr. Kennedy. That's an important factor which the Tribunal
13 should not loose sight.

14
15 In response to the point Judge Faherty just made, yes, it would be certainly
16 unusual that co-beneficiaries might agree in relation to certain matters but
17 not in relation to others. Unusual, yes, but perhaps in the circumstances
18 which the Tribunal is well aware of, and everybody is well aware of, not so
19 surprising.

20
21 If Mr. Kennedy has steadfastly -- Members of the Tribunal the reality is this:
22 Mr. Kennedy, for example, has absolutely refused to have any hand, act or part
23 in the workings of this Tribunal which the evidence to date would so suggest,
24 is it so very surprising that in aspects which relate to this Tribunal, he or
25 the beneficiary in which he is involved might not wish to cooperate. That
26 perhaps is not a very surprising circumstance. On the other hand, it may be,
27 this is a matter of speculation, it may be there are other areas of activity
28 which don't necessarily impact on this Tribunal where he may take a different
29 view, that's a mere speculation. So, that's my -- the only response I can
30 make. Not a matter of instruction, judge, it is merely a matter of comment in

1 the light of what everyone here knows.

2

3 JUDGE KEYS: Mr. Finlay, can I just ask you this, it appears to me, and I am
4 subject to correction on this, that Mr. Holland has been rather selective when
5 to cooperate and when not to cooperate? He has decided not to cooperate in
6 relation to the Tribunal vis-a-vis discovery and swearing an affidavit on the
7 part of Jackson Way, yet when the arbitration was held in Dublin, correct me if
8 I am wrong, but did he not travel over to give evidence at that arbitration?

9

10 MR. FINLAY: He did, indeed. That's my recollection.

11

12 JUDGE KEYS: He cooperated in relation to. That, obviously at the end of the
13 day there was a huge claim for compensation for lands acquired from Jackson Way
14 for the purposes of constructing the M50, part of the M50 for motorway, am I
15 not correct?

16

17 MR. FINLAY: All that is a matter of public record.

18

19 JUDGE KEYS: You may say what I am saying is a matter of comment, I find it
20 extraordinary, where at the end of the day there is millions of pounds
21 available for a company to obtain if they are successful to obtain, if they are
22 in an arbitration, you have Mr. Holland cooperating in relation to obtaining
23 that money, but when it comes to swearing an affidavit whereby solicitors
24 already on record for that company as I understand agreed to discovery, that he
25 then decides not to cooperate, and then gives the reason that he has an opinion
26 from Queen's Counsel to the effect that he can not do so.

27

28 Now, I find that very strange and cynical if I may say the least. And if you
29 look at either the Mandator's Agreement, as I understand it, Mr. Kennedy's
30 company as such, where he holds an interest in Jackson Way Properties is not

1 even a party to that agreement, do you not think that's of any relevance at
2 all? If he is relying on that agreement, if Queen's Counsel is relying on that
3 agreement for the opinion which was furnished to Mr. Holland, was it not
4 pointed out to the Queen's Counsel that, listen, Maskani are not even a party
5 to that agreement? That's on the copy which we have been furnished.

6

7 MR. FINLAY: Yes. , Indeed, you are quite correct, Judge, in relation to that.

8

9 JUDGE KEYS: So, there must be another agreement in existence somewhere?

10

11 MR. FINLAY: No, not necessarily. My understand something is that is the
12 agreement in question. I attempted to deal with that latter aspect of it in
13 discussions just now with the Chairman, may I come back to the point you made
14 about the arbitration?

15

16 JUDGE KEYS: Yes.

17

18 MR. FINLAY: I think it would be, your comments are quite understandable of
19 course, but I think it would be also relevant to put your comments about the
20 arbitration and Mr. Holland's visit to the arbitration in context in light of
21 what I told the Tribunal earlier this afternoon.

22

23 You will recall that Mr. Morgan told Mr. Caldwell on the 19th of November 2002
24 that Mr. Holland was reluctant to expose himself to the media frenzy in Dublin.
25 My understanding is that that may well be reference to a comment made in the
26 light of the experience which he had when he did come here for the purpose of
27 that arbitration.

28

29 JUDGE KEYS: Can I just say one thing, why doesn't he resign and let another
30 director take his place, that will cooperate if that's the case? If he is so

1 concerned about the publicity, why can't he be replaced by another director,
2 and let him come over and let him swear the affidavit?

3

4 MR. FINLAY: Well --

5

6 JUDGE KEYS: I just --

7

8 MR. FINLAY: Yes, indeed, these are all questions which might very
9 legitimately be addressed to Mr. Holland. With respect, Judge, I am --

10

11 JUDGE KEYS: Or to Mr. Caldwell.

12

13 MR. FINLAY: That's a matter for the Tribunal, but the position is that I, as I
14 clearly indicated at the outset, have come -- I have come here today, not
15 Mr. Caldwell, I have come here, we were asked to come, not Mr. Caldwell, to
16 answer four specific queries to the extent that I am being asked to deal with
17 queries, and to some extent speculations, to the mind sets of other people not
18 Mr. Caldwell, which were not covered by the four points mentioned in the
19 letter. I am clearly in a position of difficulty, and I am very concerned that
20 my difficulty, because I am not here to deal with these questions, is in any
21 way to be misinterpreted.

22

23 I have been asked a range of questions beyond what was in the letter, some of
24 them involve speculation as to what's going on in the mind of Mr. Holland. I
25 haven't a clue as to what's going on in the mind of Mr. Holland. To that
26 extent my inability to answer such questions is really not to reflect either on
27 me and certainly not on my client.

28

29 Obviously, if there are matters arising from the information that I have given
30 the Tribunal this afternoon and particularly from the correspondence to which I

1 have referred, which needs to be further explored that of course can be done.
2 But I am most concerned that my inability to go beyond what my brief was for
3 this afternoon, should in anyway reflect adversely on anybody on this side of
4 the table, so to speak. I am very very concerned about that.

5
6 I do, with respect, I do believe that my initial submission this afternoon was
7 a very, was an attempt to find a comprehensive response to the four posed
8 questions, and obviously I can see how the Chairman and Judge Faherty and Judge
9 Keys have queries which they have subsequently raised in exchanges with me,
10 that's entirely predictable. But the fact that I may not at present be in a
11 position to answer those I hope you understand must not reflect on me or my
12 client because of the way we have come here this afternoon.

13
14 JUDGE KEYS: That's noted.

15
16 CHAIRMAN: All right. Thank you. Do you want to say anything, Mr. Gallagher,
17 no?

18
19 MR. GALLAGHER: The Tribunal has been told by Mr. Caldwell in his statement of
20 the 20th of November 2002 that Jackson Way Properties holds the land at
21 Carrickmines for Renzenbrinck Investments Limited and Maskani Management
22 Limited as tenants in common and equal shares. Renzenbrinck Investments
23 Limited is the beneficial owner of the land held for it. So, it appears that
24 the lands are owned by Renzenbrinck and Maskani as tenants in common in equal
25 shares, and that Pertland does not have any interest in those lands.

26
27 Pertland appears to be the company, one of the companies that Mr. Kennedy has
28 an interest in. It is a company, I think, which is represented by Gibraltar
29 solicitors that my Friend Mr. Finlay mentioned.

30

1 Perhaps there are a few things I should say in relation to what has been said
2 here this afternoon.

3
4 Mr. Finlay said that his client, Mr. Miley, had received or Mr. Caldwell, I am
5 not sure which, had received written advice that they had no, Mr. Caldwell had
6 no cause of action. Now, my reading of the letter of the 12th of December does
7 not satisfy me that that is what the advice is. The advice is, which had been
8 received from a QC in the UK are to the effect that one mandator cannot give
9 valid instructions to the mandatories, thus for example, mandatories cannot be
10 compelled by a single mandator to cause the company to disclose documents. It
11 is, in my opinion, clear if they did act on the base of instruction from one
12 mandator only that the mandatories would not be covered by the indemnity
13 provided at clause 3A.

14
15 The mandators -- sorry, the purpose of the opinion: "The purpose of the
16 agreement appears to ensure that the control of the company remains, in effect,
17 in the control of those who have the beneficial interest in the property held
18 by Jackson Way in trust. That, as I have, mentioned is a joint interest for
19 this purpose I have assumed that Pertland is or represents the other joint
20 owner."

21
22 That is advice which relates specifically to the position of the Mandator's
23 Agreement and not advices that Mr. Caldwell has no cause of action, as was
24 suggested by Mr. Finlay.

25
26 When I am dealing with the Mandator's Agreement and other matters I think it
27 perhaps might be of assistance if I were just to very briefly recap on what
28 appears to be the position in relation to Jackson Way. And I do that by
29 referring to Mr. Miley's letter of the 31st of January 2002, before I do so,
30 can I remind the Tribunal that (a) Jackson Way was struck off the register of

1 companies in the UK, and my understanding is that an application has been
2 brought presumably by Mr. Holland to have the company reinstated.

3
4 Now, presumably Mr. Holland was receiving instructions from somebody,
5 presumably one or both of the beneficiaries, ultimate beneficiaries, that is
6 Mr. Caldwell and/or Mr. Kennedy, to have the company reinstated.

7
8 Jackson Way continues to pursue a claim for compensation in respect of the
9 lands at Carrickmines and Miley & Miley, the solicitors who represent
10 Mr. Caldwell for this Tribunal and did formally represent Jackson Way, are the
11 solicitors acting for Jackson Way in relation to that arbitration. So,
12 instructions are being given by somebody to Mr. Miley, I don't want to delve
13 into that in any sense, but it clear Jackson Way is not dormant in the sense
14 that nothing is happening. My understanding, the Tribunal's understanding is
15 that Jackson Way's only asset is the lands at Carrickmines and apart from the
16 statement by Mr. Caldwell, submission to the Tribunal on the 20 of November or
17 thereabouts, 2002, that the lands are held by Renzenbrinck -- sorry, by Jackson
18 Way on behalf of Renzenbrinck Investment and Maskani, as tenants in common and
19 equal shares.

20
21 We have in the letter of the 31st of December 2002 confirmation from Mr. Miley,
22 on page one in answer to a question put by the Tribunal, he says: "The answer
23 to the question is yes. Our client has now and previously did have what amount
24 in his opinion to an indirect beneficial interest in the lands comprised in
25 folio 4940 County Dublin." Later on that page goes on to say that "company
26 was named Paisley Park," the company that bought the property in March '88.
27 "Mr. Kennedy informed our client he agreed to buy the lands and inquired
28 whether our client would take a 50 per cent interest in the transaction. Our
29 client agreed to the proposition."

1 He then goes on at a later stage in the paragraph I think that Chairman
2 Mr. Justice Mahon read to confirm that "Paisley Park Limited was put into
3 liquidation and the property distributed in specie to Jackson Way property,
4 nominated by Maskani and Renzenbrinck to hold property as nominee on it's
5 behalf."

6
7 He later on paragraph at eight of that page says: "Jackson Way Limited has a
8 sole director, Mr. Allen Holland, also the sole shareholder. This is of little
9 consequence, however, as Jackson Way Properties Limited hold the property
10 solely as nominee for Maskani Management Limited and Renzenbrinck Investment
11 Limited incorporated in equal shares."

12
13 He then goes on to deal with Maskani and the fact that Maskani is a company
14 which our clients believe is owned by Mr. Harker, and he later in that
15 paragraph says that "A letter of direction was completed by Mr. and Mrs. Harker
16 dated 6th of July 2001. A Declaration of Trust dated 7th November 2001 was
17 subsequently entered in by Mr. and Mrs. Harker in favour of Pertland Limited, a
18 company incorporated in Liberia. Under the letter of direction -- until the
19 letter of direction was completed our client had an arrangement with Mr. Harker
20 and through him with his wife, where our client had the power to direct the
21 transfer of shares in the company coupled with an informal arrangement, whereby
22 Mr. and Mrs. Harker agreed not to transfer the shares without consent of our
23 client. This was a loose arrangement, undocumented and based completely on
24 trust. It effectively gave our client control of the company until the
25 arrangement ended a few months ago with the completion of a Declaration of
26 Trust in favour of Pertland Limited. Our client believed this company is
27 associated with Mr. James Kennedy.

28
29 Our client acknowledges that at any time prior to the completion of the
30 Declaration of Trust in the name of Pertland Limited he would have used his

1 arrangement with Mr. and Mrs. Harker as directed by Mr. James Kennedy. Our
2 client never had any beneficial interest in the company.

3
4 Renzenbrinck Investments Limited is a company owned by Martin Bullock. in
5 respect of which he is the sole director. Our client has the power to direct
6 the transfer of shares in this company and Mr. Bullock agreed not to transfer
7 shares without our client's consent, until recently this arrangement was
8 undocumented and was based upon trust, but notwithstanding this our client
9 considers himself to have effectively been the beneficial owner of this company
10 at all material times.

11
12 A letter of direction dated 3rd of July 2001 which documents this arrangement
13 to some degree is contained at page 218 of the Jackson book."

14
15 And I just, looking at the 218 of the Jackson book, this is a document signed
16 by Mr. Bullock in the following form: "We confirm we'll transfer all our right
17 title and interest to, in the shares of Renzenbrinck Investments Inc. to your
18 designee when called upon to do so by you or your successors or assigns." It
19 is to -- and there is no name, doesn't indicate to what it was directed, signed
20 and sealed and delivered by Martin Bullock, 3rd of the 7th '01.

21
22 So, if I can then just point out to the Tribunal that on page five of page
23 eight Mr. Caldwell agreed on his own behalf and on behalf of Jackson Way
24 Property to copies of certain files which are in the custody of the Tribunal,
25 and in respect of which privilege was claimed being reviewed by the Tribunal on
26 a confidential basis.

27
28 Now, the Mandator's Agreement is one which is referred to also in the letter
29 from Mr. Caldwell. Mr. Miley I believe, and I believe, he says: "The
30 Mandator's Agreement is undated but our client believes it was completed

1 between 4 of June '93 and 30 of July '93."

2
3 Now, that Mandator's Agreement is one. As I say, which is between Pertland and
4 Renzenbrinck, care of David Morgan Whitehead, with an address in the Channel
5 Islands, and mandators and Mr. Holland and Mr. Vukovic of Birmingham as
6 mandators of the other side. But that it would appear to me on the face it it
7 is a Mandator's Agreement which does not involve or relate to Maskani, which is
8 the one of the two joint owners of the -- owners of common of the -- sorry, one
9 of the joint tenants in common of the lands which are held on their behalf by
10 Jackson Way Properties Limited.

11
12 If I can put it this way, if an application were to be made to the court, for
13 example, in relation to Jackson Way, it would appear to me, in the absence of
14 perhaps relevant documents and much of the relevant background information, to
15 be a situation where Pertland would not have a direct right to go to the court
16 in respect of Mr. Kennedy's share, it would have to be done by Maskani which is
17 the company which held, is beneficially entitled to the 50 percent share
18 holding, as a tenant in common.

19
20 So, given that the -- if the undated Mandator's Agreement had been between
21 Maskani and Renzenbrinck on the one hand and Mr. Holland and his partner on the
22 other hand, there might and I stress might be some validity to the submission
23 that is being made. But it seems to me this is a Mandator's Agreement
24 involving Pertland which is at least one step removed and, therefore, is not in
25 any way binding, that perhaps is a legal question and a legal issue that might
26 at some stage have to be resolved.

27
28 I suppose in summary one can say that the position of Mr. Caldwell appears to
29 be not of an oppressed minority, but of an oppressed joint shareholder.

1 I don't know that there is anything else I can add that might be of assistance
2 to the Tribunal.

3
4 CHAIRMAN: Mr. Finlay, we don't expect you to respond, given perhaps that you
5 have been asked a lot more than perhaps you anticipated you might be asked, so
6 --

7
8 MR. FINLAY: I am most obliged. Chairman.

9
10 CHAIRMAN: I think your client, Mr. Caldwell, has agreed to attend to give
11 evidence on the 23rd of September.

12
13 MR. FINLAY: That's indeed correct. That's what my understanding, however --
14 my understanding is that, if I can put it this way, and I am obliged for that,
15 my understanding is that the Tribunal proposes to resume in September, and my
16 understanding is that at present that is the plan of the Tribunal but subject
17 to the confirmation which I think you might have just given is that it would be
18 suitable or convenient that Mr. Caldwell's evidence could be -- is scheduled to
19 commence on the 23rd all going well in other areas of the Tribunal's activity.
20 Is that suitable?

21
22 CHAIRMAN: That's the plan for the moment. We can deal with some of these
23 issues with Mr. Caldwell no doubt when he is giving evidence.

24
25 MR. FINLAY: Very good. Might I just mention one aspect, Chairman, please bear
26 with me? It touches on matters that you were already associated with, I can't
27 recall in time, whether it postdates or predates your onerous appointment, but
28 the issue of sequence of hearings was discussed at some length by the previous
29 Chairman and was raised in certain context, also during hearings. One of our
30 understandings has always been that the Tribunal was quite clear in its

1 strategy to have two modules in relation to Carrickmines and that, I think it
2 is quite clear, is the decision of the Tribunal not any party or witness before
3 the Tribunal.

4
5 The second of those two modules has always been envisaged by the Tribunal and
6 as notified to us, as a module relating to the -- relating to Jackson Way and
7 the ownership of the lands, my understanding has been and my solicitor's
8 understanding has been that Mr -- the attendance of Mr. Caldwell to give
9 evidence in September or whenever is to be the next opportunity, is in relation
10 to Carrickmines 1. Now, there is a vast amount of material with which you need
11 to familiarise himself in order to be equipped to assist the Tribunal in that
12 regard, but if the Tribunal has in any way altered its original plan to
13 separate evidence on the ownership of the lands from the Carrickmines 1 issues,
14 and wishes to now deal with any of that on this side of the module, this
15 current module at this time. It would, I think, be most important for us to
16 know so that Mr. Caldwell could be adequately prepared for that.

17
18 CHAIRMAN: I think I can probably clarify that. The plan is that Carrickmines 1
19 issues would be dealt with on or after the 23rd, but also there may be
20 compliance issues relating to the Jackson Way Discovery Order, insofar as they
21 might involve Mr. Caldwell. I think the Tribunal would want to, would want to
22 be in a position, or would like to be in a position to ask him questions in
23 relation to it.

24
25 This is his capacity to, in line with what we have been discussing this
26 afternoon, his capacity to ensure compliance with the discovery order.

27
28 MR. FINLAY: Very good.

29
30 CHAIRMAN: Now that may touch on his ownership of, or his beneficial ownership.

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MR. FINLAY: Yes.

CHAIRMAN: But this wouldn't be a full scale inquiry in September.

MR. FINLAY: I hasten to add that is not with an view to avoiding the issue. It is to be adequately prepared to deal with it, only a question of timing really, but I fully understand, my understanding is, please correct me if I am wrong, that the Tribunal would envisage asking Mr. Caldwell in September about the area of issues that we have touched on in the discussion this afternoon.

CHAIRMAN: Yes, insofar as they relate to compliance.

MR. FINLAY: By Jackson Way.

JUDGE FAHERTY: Mr. Finlay, just to remind you what Mr. Justice Flood, Chairman, said on 18th of December, "in those circumstances we need to have Mr. Caldwell come and give evidence to the Tribunal as to what is the position, as to what is his capacity to give instructions, as to whether he has the authority as he said he has, that he is in a position to control the company in all relevant matters."

So certainly my understanding between the exchange between yourself and the submissions on the 18th of December last, and the Tribunal, it was certainly envisaged that Mr. Caldwell would be required by the Tribunal to give such evidence in addition to any other requirement of his to attend in relation to Carrickmines 1.

MR. FINLAY: No difficulty with that.

1 JUDGE FAHERTY: It is clearly set out in the transcript on Day 343.

2

3 MR. FINLAY: It is merely to know what it envisaged at any particular time, no
4 difficulty at all.

5

6 CHAIRMAN: All right. We appreciate yourself and Mr. Miley making yourself
7 available this afternoon.

8

9 MR. FINLAY: Thank you very much, Judge.

10

11 THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING DAY, THURSDAY, 31ST JULY,
12 2003, AT 10.30 AM.

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