

THE HEARING RESUMED ON THE 4TH OF DECEMBER, 2000, AS

FOLLOWS:

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CHAIRMAN: Good morning everyone.

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There are certain urgent matters that have arisen which need to be attended to forthwith. Accordingly, I am adjourning the sittings until not before 12 o'clock today.

Thank you.

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THE HEARING THEN ADJOURNED TO NOT BEFORE 12 O'CLOCK

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THE HEARING RESUMED AS FOLLOWS:

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REGISTRAR: The summons in respect of Maeve McManus?

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MR. HANRATTY: Sir, that matter will not be proceeding this morning. You will recall it was adjourned from last Friday and I would ask you now to put it in to Wednesday morning, by which time I expect it will be proceeding.

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CHAIRMAN: Very good. I will do that.

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MR. WALSH: I have no difficulty in doing that. Could I just make one request in relation to that proposed witness no statement has been made available. Now it could be because no statement is in existence, but as a materially affected party I would request that if any interviews have

taken place and transcripts of those interviews exist, they should be made available to the interested party, to the interests parties. Certainly, I would be one of those interested parties.

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I know Sir, that you have treated me very fairly so far, this I would submit is analogous situation that may have existed when Gabriel Grehan was giving evidence, in that there were two different statements, so they were fairly made available to both parties in the matter. I would submit here, since we haven't been given any statement, may be because no statement is in existence, if there are statements of evidence, of interviews, if there is any conflict there, we would be entitled to explore that conflict in cross-examination, as to whether the material if it exists, if it is relevant.

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I don't know Sir, you have conducted this Tribunal fairly and efficiently, and in the interests of my client and constitutional justice I am entitled to that material so I can decide whether or not whether any conflicts are relevant. It is analogous to the situation where the prosecution or the DPP have evidence which it does not propose calling in prosecution of a crime until the trial which may be relevant to the defence. It may be possibly relevant evidence that may go to towards the defence of the case. I say that could be the situation here, on that basis I would ask for disclosure of such information to me in sufficient time to deal with it on Wednesday morning.

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MR. HANRATTY: Well Sir, as I think Mr. Walsh very well knows, we have been over this ground before, Mr. Walsh I think has been told on more than one occasion that under no circumstances has the Tribunal ever agreed and has indicated that it would never agree to providing to any party the transcript of private interviews with the Tribunal or its legal team.

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What does happen occasionally and has happened in the past, again as I think Mr. Walsh will recall, that if any inconsistent statement is made by any witness, that is inconsistent can something that has previously been stated at a private interview that inconsistent statement will be put to the witness. But the question of transcripts being provided Sir, has already been dealt with before on numerous occasions, I believe.

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CHAIRMAN: Well for the moment I note the submissions that have been made, and they can be dealt with, if the matter should arise, on Wednesday morning.

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MR. HANRATTY: Sir, the next witness was on foot of a summons, as you are aware, was supposed to have been Maeve McManus. Unfortunately, that has not proved possible. The witness following that then is Mr. Oliver Barry. With your permission I would now call Mr. Barry, Sir.

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It may be necessary to recall Mr. Barry having heard Ms. McManus'evidence. That can be determined in due course. If it does become necessary to recall him, it would be a

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relatively short recall in any event.

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The second thing I should say in relation to Mr. Barry's evidence, is that as you will recall I think some time coming up to the middle of last year, Mr. Barry was requested by the Tribunal to provide a voluntary statement of his evidence to the Tribunal and through his then solicitors he declined to do so on the grounds that he was legally advised that he was not obliged to do so.

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On Friday afternoon at about half four, we received a narrative or what purports, appears to be a narrative statement from Mr. Barry. It is a statement which is of no practical use to the Tribunal because we have, effectively, done our work in relation to Mr. Barry, and had already made our preparations to call his evidence. And insofar as the calling of his evidence is concerned, it will be done not by reference to the statement.

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In any event, the statement does not appear to contain any information which the Tribunal had not already discovered itself. It will, however if it hasn't already been done, be circulated to the parties for what it is worth during the course of the morning. But I will be leading his evidence, Sir, in the first instance not by reference to the statement, but by reference to the inquiries of the Tribunal.

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Mr. Oliver Barry please.

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HAVING BEEN ALREADY SWORN MR. OLIVER BARRY RETURNS TO THE  
WITNESS-BOX AND IS EXAMINED BY MR. HANRATTY AS FOLLOWS:

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CHAIRMAN: Mr. Barry, I think you have been already sworn.

You gave evidence, I think, before us already. That oath  
is still extant and you are bound by it?

A. Pardon me?

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CHAIRMAN: That oath is still extant and you are bound by  
it.

A. Thank you.

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MR. HANRATTY: Mr. Barry --

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CHAIRMAN: I would appreciate if you would may be make a,  
say a few words to you before I start my evidence? Is that  
in order with you? I would not like to - first of all to  
embark on some new procedure as I have no notice of what  
this statement may or may not contain or what it may be, I  
just literally don't know what you are going to say?

A. I'm sure I won't detain you very long.

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CHAIRMAN: As I have no notice of it and I want to say if I  
find you in any way acting adversely to the interest of any  
other party who has no notice of what you are about to say,  
I will restrain you and I want to be quite fair to you?

A. That is absolutely very fair.

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CHAIRMAN: I want you to be absolutely certain about that,

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that is only fair procedures to fellow witnesses?

A. I fully appreciate that Chairman.

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CHAIRMAN: Secondly, I want to be courteous to you and give you every opportunity possible, whatever you are going to say to me must be relevant to the proceedings.

A. Absolutely.

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CHAIRMAN: On those two limitations I will permit on this occasion only, and I do not intend to create a precedent.

A. Chairman, if you wish to stop me at any time I will be happy to do so.

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CHAIRMAN: Very good. What do you want to say Sir?

A. My reputation has been seriously damaged in the course of the hearings of this Tribunal and I want to put on record in my own words my response to the allegations that have been made against me.

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MR. HANRATTY: Sir, with respect, this looks like a prepared speech and it appears to be in writing. In those circumstances, I am objecting because we have been given, as I have just indicated to you a moment ago, what appears to be a statement on Friday afternoon, which does not contain any new material. Mr. Barry has now indicated) part of what he is now going to say is his answer to what he says are matters which he says damage his reputation. In fairness Sir, I don't think that is fair or reasonable to any of the parties concerned or indeed the Tribunal, who have been trying for a very long time to obtain a detailed

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statement from Mr. Barry, and I would not, I would ask you not to receive such a statement before until at least the Tribunal have had an opportunity to consider it in advance of it being tendered as evidence.

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CHAIRMAN: I agree. I think that is only fair. Secondly, may I point out that you have representation before the Tribunal, and in any matter which affects you personally, your counsel is there to clarify it, to bring to the notice of the Tribunal your approach and the reasons why. You are fully represented. You are fully - I don't think using the word "defended" but you have complete assurance that whatever you want to say can be said through your counsel at the end of your evidence and he can question you on these matters, provided they are relevant to the evidence you have given or to evidence that has been given in this Tribunal in relation to this matter. I want to be fair to all parties, so I am declining to receive your statement, if it is simply an apology for your- for the situation you find yourself in at the moment.

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In due course of time an adjudication will be made about that, and it is what I am here to do, to look into, to fairly assess the situation on the entire of the evidence before me. In those circumstances, I think he will just give evidence and answer the questions. Your counsel will be monitoring what is happening and he will clarify or clear up any ambiguities that may arise in the circumstances.

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MR. HANRATTY: Yes. I think Mr. Barry is represented, in fact, by his solicitor.

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Mr. Barry I want to ask you first of all when did you first become involved in discussions with any other party in connection with a proposed national radio station?

A. I can't not remember really the date. I am sure in our earlier discussions with the group of people, including Gay Byrne, that the possibility of a national station was discussed but I couldn't be specific about which date.

1 Q. Well, the information which the Tribunal has received from other witnesses suggests that it may have been in the latter part of 1987?

A. I couldn't recall. My guess would be that it would be in 1988 some time, but I --

2 Q. Could we just look at document 3608. This document appears to be a fee note from Quinlan Ryan, chartered accountants, for fees in respect of Century Communications Limited, which was a company of course which was not formed until the latter part of 1988, but it is, nonetheless, in connection with Century, for a period from the 4th of November, 1987 until the 31st of March of 1988. So that would seem to suggest that these people provided services to the persons involved with Century during that period, isn't that so?

A. Yes. That looks correct, yes.

3 Q. And that would seem to imply, therefore, that by the time that Quinlan Ryan were engaged, there already had been discussions, that is by the 4th of November of 1987?

A. Yeah, there would be, Derek Quinlan became involved because



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he was Gay Byrne's advisor. That is correct. Yes, we had some meetings with him at the time.

4 Q. And Mr. Byrne has told us that?

A. Yes, OK.

5 Q. Presumably, in a normal course of events there would be some discussions among the parties themselves. They would have decided to engage Quinlan Ryan. They would have done so and Quinlan Ryan then, as we will see here have now invoiced for services they have provided during this particular period?

A. That looks correct, yes.

6 Q. So that would seem to confirm that there must have been some meetings at least between you and others, or another, some time prior to the 4th of November, of 1987?

A. Yes, I can remember having meetings with Derek Quinlan and Gay Byrne.

7 Q. Yes?

A. And a number of other people.

8 Q. Sorry?

A. And a number of other people.

9 Q. Who were the others?

A. At that early stage I would say. Again I am guessing, Gay Byrne, maybe John Mulhearn, maybe Enda Marren and myself.

10 Q. Yes. And what was it that you were discussing?

A. We were discussing, I suppose the advent of independent broadcasting.

11 Q. Yes.

A. Or the possibility of independent broadcasting some coming on stream in the future.

12 Q. Who was the first person that you spoke to in connection

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with this matter?

A. To the best of my recollection, the first person that I spoke to about this matter was Gay Byrne.

13 Q. Yes. And when you discussed it with him, were you talking about a proposal in respect of a local radio station or a national radio station?

A. Mr. Hanratty, I cannot remember. I think I was talking about the advent of new, of pirate radio being taken on by independent broadcasting. I can't remember exactly which, just in general I say the conversation was about the new independent broadcasting coming on stream to counteract pirate radio.

14 Q. Did you discuss it with Mr. Burke at the time?

A. No. I don't remember discussing it with Mr. Burke at the time.

15 Q. Well, Mr. Burke was the Minister for Communications at that time, isn't that so?

A. I don't recall. No. May be --

16 Q. You don't recall that he was the Minister for Communications?

A. When, in 1987?

17 Q. Yes. Since March of 1987.

A. Yes, if he was I have no difficulty with that.

18 Q. I take it you would have been aware of that?

A. Oh absolutely if he was Minister at the time I would have been aware of it.

19 Q. I think you were a close friend of Mr. Burke?

A. I knew Mr. Burke very well.

20 Q. And it appears that you were meeting Mr. Burke on a regular basis?

A. I wouldn't say regular, but I used to meet him occasionally.

21 Q. Well, there was an election in the early part of 1987, did you not provide assistance to Mr. Burke in the course of that election campaign?

A. I would have, but funnily enough during an election campaign you wouldn't meet him too often.

22 Q. Yes. And what form of assistance did you provide to him?

A. I can't fully remember the '87 one in particular but there were elections where I provided him with some people to canvass for him, may be a few cards on election day to help him to get voters out. Things of that nature.

23 Q. Yes. And we know that he got elected and subsequently, shortly after the election, became Minister for Communications, isn't that so?

A. If you say so, yes. I just can't recall the sequence of - .

24 Q. I think Mr. Wilson may have been the Minister for Communications for, approximately, a fortnight or slightly longer and then was in a shuffling of the cabinet. Mr. Burke was appointed to hold that portfolio, isn't that so?

A. If you say so Mr. Hanratty.

25 Q. Certainly I take it that you were aware that moving on into 1987 that he was in fact at that point the Minister for Communications with responsibility for bringing forward such legislation as was being brought forward in connection with radio?

A. Well, I don't really know if the legislation was - I can't recall really in '87, I think the legislation wasn't introduced until '88.

26 Q. That is true, but it was under preparation, were you not aware, in 1987?

A. I can't recall to be honest with you.

27 Q. Did you, at any stage, indicate to Mr. Burke that you were interested in national radio as opposed to local radio?

A. No.

28 Q. You never indicated that to him?

A. No. I don't - .

29 Q. Did you ever indicate in 1987 that you were interested in any kind of radio?

A. I certainly would have indicated to him when, later on in '88 when it was public knowledge that independent broadcasting was going to come on stream. I am sure I probably mentioned to him that I might have an interest in getting involved.

30 Q. Yes. In November, sorry October/November of 1987 it appears that somebody introduced for the first time the concept of national radio into the memoranda for government that were then being considered by government. All previous discussions having been in connection with local and community radio. Did you have discussions with Mr. Burke as to whether national radio was possible under the legislation then under consideration?

A. Not to - not that I can remember.

31 Q. Well, in view of your interest in the subject and the fact that you were putting together a consortium or a proposal, it seems likely that it is a subject which would have come up, does it not?

A. Not really. I mean independent broadcasting was coming on stream, whatever was going to come was going to come.

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32 Q. Among the documents which you have provided to the Tribunal, is a document entitled, "Study of Local Radio Commission and a Local and Community Radio Network".

It is dated - sorry it came in from your solicitor's discovery, Mr. Marren, - " Study of a Local Radio Commission and a Local Radio Network". The first page is 3208.

If we can just scroll up the page we can see that it is described as a " strictly private and confidential document", and it appears to be a report from the Local Radio Commission to the Department. Could you assist the Tribunal as to how that document might have come into your possession?

A. I have no recollection whatsoever.

33 Q. Well, presumably it was you to gave it to Mr. Marren?

A. I can't remember giving it to Mr. Marren.

34 Q. Well, he was your solicitor at the time, was he not?

A. Yes, he was.

35 Q. And Mr. Marren, as you are aware, has provided his documents to the Tribunal that relate to Century, and this document was among those documents which he provided to the Tribunal. Apart from documents which he generated himself or which were expressly obtained by other parties, we assume, incorrectly or correctly, am I not right in thinking that this document came from you to Mr. Marren?

A. I have no recollection whatsoever of this document, no.

36 Q. Well, do you recall receiving any documents from Mr. Burke in 1987 or in 1988?

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A. I don't.

37 Q. This document appears to be a confidential report from the Local Radio Commission. You are aware that there was, under the previous administration, a Local Radio Commission established to look into the whole issue of local and community radio, isn't that right?

A. I think - yes. , I think there was a Commission before the IRTC.

38 Q. It was an on-going controversy, as to how to deal with the pirate radio stations, isn't that right?

A. Yeah. I mean there was, there was a view that pirate radio stations should be stopped and that a new independent broadcasting system should be become legal, which would counteract the pirate radio.

39 Q. Yes. And the coalition government which preceded the government when Mr. Burke become a Minister in 1987, they were also bringing forward proposals in how to deal with these pirate radio stations, isn't that so?

A. I think they made some attempt to do so, yeah.

40 Q. But the proposals up to that point in time, and it would appear certainly up until September at the earliest of 1987, was always in connection with local and community radio?

A. I can't recall that Mr. Hanratty.

41 Q. In any event, this document, which I have just mentioned to you, appears to be a report from that Commission to the Department or the Minister in connection with their researches and I am just wondering, can you not give the Tribunal any assistance at all as to how that document came to be among the documents contained on your solicitor's

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file?

A. I can't.

42 Q. You see that it describes itself as,  
"strictly private and confidential"?

A. I can't help you, I have not seen this document. It is 11  
years ago, I have no recollection of the document.

43 Q. It would be clear to the reader of that document that the  
subject matter of the considerations by the Commission were  
confined to local and community radio?

(DOCUMENT HANDED TO WITNESS.)

A. Would you repeat the question Mr. Hanratty?

44 Q. It would appear that to a reader of this document, that the  
proposals then under consideration by the Local and  
Community Radio Commission were confined to local and  
community radio and that they were not envisaging any  
national radio station, isn't that so?

A. That is certainly what that document says, yes.

45 Q. If you had read this document when you received it, if you  
received it, it would have been apparent to you that you  
would not have been in a position to bring forward any  
national radio station under the proposals contained in  
this document, isn't that so?

A. I have no recollection of reading this document.

46 Q. Well, do you recall ever having a perception that if you  
wanted to establish a national radio station that some sort  
of changes would have to be made in the legislation as it  
then was being considered?

A. I don't think I thought about it that deeply at the time.  
There was new legislation on the way. I didn't really know  
how it was going to pan out.

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47 Q. When did you first, as it were, settle on the idea of a national station, as opposed to a local station?

A. Well, I think that it would be some time in 1988, towards the end of '88 I am sure when the- when the ads, I think there was advertising in the paper for the various licenses, and there was a national, there was a national franchise advertised and at that stage I think we decided to go national.

48 Q. But did you have not have numerous discussions with your colleagues and proposed business partners prior to that about a national station?

A. I can't remember to be honest. I don't think we would have known until the actual legislation was introduced what way the government were going to proceed with independent broadcasting.

49 Q. But the draft legislation was published much earlier in the year than when it was passed in October?

A. I don't remember.

50 Q. And we know that the title of the legislation was in fact changed from - it was originally I think a Local Radio Bill and was subsequently changed to the "Radio And Television Bill", ultimately to become the "Radio and Television Act"?

A. I don't remember Mr. Hanratty. I don't remember. I wouldn't have --

51 Q. In fact it was originally called the "Sound Broadcasting Bill". You have no recollection of any of that?

A. None.

52 Q. And do you have any recollection of having discussions with your colleagues about national radio?



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A. Oh, yes I do. Oh, yes that was discussed the pros and cons  
I think national radio versus local radio was discussed.

53 Q. Well, we have heard, for example, from Mr. Gay Byrne, who  
--

A. Yes.

54 Q. Who told that you say all the discussions were about  
national radio?

A. I don't remember that. I think that he himself was pushing  
very much for to be involved in, may be or to consider  
local radio, that it might be just waiting to go.

55 Q. Yes. He was suggesting that local radio would be a more  
sensible option from his perspective because he felt that  
the costs would be much lower, isn't that right?

A. Yeah, that the costs would be lower for a local station  
versus a national station.

56 Q. And these discussions, as we understand his evidence, were  
well before the Act was actually passed?

A. I can't recall that Mr. Hanratty.

57 Q. I think even Mr. Stafford has told us that there were  
extensive discussions on --

A. I am not-.

58 Q. That he may not have become involved in 1988?

A. I am not contradicting anybody here. I am just saying to  
you my recollection wouldn't be, I wouldn't be able to pin  
dates as to when these things that you are asking me about  
actually happened.

59 Q. In 1988 did you have any discussions with Mr. Burke in  
connection with this proposed draft legislation?

A. Other than the fact that I may have told Mr. Burke, at some  
stage, that I was going to be interested in independent

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broadcasting if it ever came about. I may have told him that Gay Byrne might be involved with me. That is a possibility.

60 Q. Did you ever indicate to him that you were interested in a national radio station as opposed to a local radio station?

A. I have no recollection of any of --

61 Q. You know that originally that the primary purpose of this legislation was to provide an alternative to pirate radio?

A. That was certainly my memory, that the main reason was to take on pirate radio.

62 Q. And that the pirate radio stations were local stations; essentially, one transmitter stations?

A. They were local stations, yes.

63 Q. And that the original perception was that the way to deal with those was to facilitate the establishment of legitimate local radio stations?

A. Would you repeat that question?

64 Q. That the originally envisaged proposal to deal with this pirate radio problem, was to provide for the establishment of legitimate local radio stations?

A. Yes.

65 Q. While they were at it they also decided that they should legitimise community radio?

A. I don't recall that.

66 Q. Radio which was not necessarily being run on a commercial basis, but nonetheless permitting people, on a community basis, to broadcast in various contexts?

A. If you say so, I wouldn't --

67 Q. In any event, is it your evidence to the Tribunal that you have no recollection of any discussions with Mr. Burke in

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1988 in respect of your proposal to establish a national radio station?

A. I would say may be towards the end of 1988 I may have said to Mr. Burke, in the course of conversation, that we were going to apply for the national license, or the national franchise.

68 Q. Well, at the end of 1988 you would already have applied for it, in the sense that you would have sent in your notification of interest to the IRTC in October, November, isn't that right?

A. Towards the end of 1988 --

69 Q. The IRTC was established in October?

A. Yeah.

70 Q. They advertised virtually immediately for the National Radio Franchise?

A. Yes and then we would, we then prepared our document I think, for the National Radio Franchise.

71 Q. This is the submission which went in on the 16th of December, isn't that right?

A. Yes.

72 Q. But when you say you spoke to Mr. Burke, I think towards the end of 1988, if it was at the end of 1988 you would presumably be telling him that you have already applied?

A. I may have told him that we were in the process of getting our proposal together and that I was going to have an interest in the national franchise.

73 Q. What meetings did you have with Mr. Burke at the end of 1988?

A. I can't recall, to be honest with you. I met him on a number of occasions but I couldn't tell you how many times

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I met him.

74 Q. At the time that you were involved in, at the time you were involved in concert promotion isn't that right?

A. That's right.

75 Q. Up until that point in time that had been the business that you were engaged in?

A. Yes. I was also involved in the management of artists as well as concert promotions.

76 Q. Event management?

A. No, management of artists, artistes management.

77 Q. Yes. That essentially involved from a business perspective, a one-off event or perhaps a two-day event or a three performance event but generally speaking one event to be promoted in respect of one artist or set of artists, isn't that so?

A. In the concert business, yeah I usually tried to do, you know, outdoor concerts, and they were usually one day or two-day events.

78 Q. Yes. But running a radio station would be a completely new departure and something which is totally unrelated to your previous business, isn't that so?

A. Absolutely so, to my regret.

79 Q. And insofar as you were proposing to become involved and indeed to make a substantial investment in a new venture, I take it it would have been a matter of considerable interest to you and would have taken a considerable amount of your time and attention in 1988 and in 1989?

A. Not really 1988. In 1989 may be towards the end of 1989, certainly in the beginning of '90 it played a big part in my life.

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80 Q. Well, the first hurdle that you had to cross was that you had to get a radio franchise from the IRTC, isn't that so?

A. That is correct, yes.

81 Q. Without that the proposal was never going to proceed?

A. That is true.

82 Q. So that it was necessary, in the first instance, to put together a credible proposition to put to the IRTC?

A. That is correct, yes.

83 Q. That involved taking advice from a number of external consultants and advisors, didn't it?

A. Yes, it did.

84 Q. It involved an element of expenditure on your part and on Mr. Stafford's part and on Mr. Mulhearn's part, isn't that so?

A. Yes, it did.

85 Q. That expenditure manifested itself in the form of the investments which you put into the company, the capital investments, and also out-of-pocket expenditures as you went along?

A. Yes.

86 Q. Was Mr. Mulhearn involved prior to Mr. Stafford's involvement or after Mr. Stafford's involvement?

A. Mr. Mulhearn was involved prior to Mr. Stafford's involvement and Mr. Crowley's involvement.

87 Q. Yes. Can you just briefly tell us how and when Mr. Mulhearn became involved?

A. I can tell you how. I probably can't tell you exactly when. I can tell you how it happened. I was travelling on the train to Cork and I bumped into him and I knew him socially and we sat together and I mentioned to him that -

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talking about various things, just in the course of conversation I mentioned to him that independent broadcasting was a possibility in the future and that I had some discussions with Gay Byrne about it and that we were thinking of getting involved in independent broadcasting.

I may have suggested to him would he be interested in getting involved and- to my surprise- he said he would be.

88 Q. Yes. And could that have been in the latter part of 1987 or do you think it was in 1988?

A. I haven't got a clue.

89 Q. Yes. On what basis then was it ultimately agreed that he would, in fact, become involved?

A. It just evolved. I mean I suppose I probably had a meeting with Gay Byrne, and with, I invited Mr. Mulhearn along to one of the meetings. I think Gay Byrne might have had Derek Quinlan at the meeting. I might have had Enda Marren at the meeting.

90 Q. Yes. Well, it was ultimately agreed, of course, that he was going to be involved as an investor?

A. That is correct.

91 Q. And that he would put up money, essentially, on an equal footing as between himself and yourself and Mr. Stafford?

A. That is absolutely correct.

92 Q. And that ultimately manifested itself in a 51 percent shareholding in the company, albeit that he wasn't to be a registered shareholder?

A. Well, the three of us that owned the company. Sorry, the three of us owned the company entirely.

93 Q. You owned the company entirely?

A. There was a three-way split.

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94 Q. Yes. But?

A. It just wasn't 51 percent.

95 Q. Well, the registered shareholding of yourself and

Mr. Stafford was 51 percent of the equity in the company,  
was it not?

A. Not initially.

96 Q. Yes?

A. I think initially the company started out that the three of  
us owned the company.

97 Q. Yes. But while the three of you" owned" the company, as  
you say, Mr. Mulhearn as we know did not, in fact, become a  
registered shareholder of the company?

A. That's correct.

98 Q. It appeared that his shareholding in the company, if I  
might use that in the loosest sense, was held by yourself  
and Mr. Stafford?

A. That is correct.

99 Q. What was the reason for that arrangement?

A. The reason for that, the reason for the arrangement? At  
the time I think we were putting our proposal together for  
the IRTC. And I think it was his wish to remain private  
and I suppose at the time having his name publicly  
associated with the proposal wouldn't have helped our  
chances maybe of getting the national franchise, because he  
happened to be the Taoiseach's son-in-law at the time.

100 Q. Yes. But that gave to the difficulty, did it not, that  
the information which would be given to the IRTC in respect  
of the ownership of the company, was to put no higher than  
that, incomplete?

A. It was - I would go further Mr. Hanratty, it was totally

wrong of us to do so.

101 Q. Yes?

A. In hindsight it was totally wrong of us to do so. The only thing that I would say is that, the reason why I suppose the IRTC were looking for who the exact people behind the venture was, at that time they were, you know, worried about people from the media world get getting involved in the radio broadcasting business, and it was a wrong thing for us to do, but Mulhearn, John Mulhearn did not have any other interest in the media business and even though I will admit it was wrong, I don't think - it was innocently wrong, if you know what I mean. He qualified, let's say, in all areas to be an investor in Century Radio. We took a view because he was the Taoiseach's son-in-law it might prejudice us, I suppose. I am sorry for it, I regret it and I know we were wrong about it.

102 Q. And I think it is true to say that in view of the decision which was made, fairly elaborate arrangements were made to conceal his involvement, isn't that right? For example, the company's solicitors were not even told about it?

A. We did conceal his involvement. That was the wish of Laurence Crowley, Jim Stafford and myself and himself at the time and I went along with it. I am sorry for it, as I say and I regret it.

103 Q. When the time came to, as it were, put your hands in your pockets, I think that came in 1989, isn't that right, after the franchise was awarded?

A. Yes.

104 Q. And it appears that each one of you put in to the capital account of the company a substantial sum of money?



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A. We put in ú275,000 each, but I think Mr. Mulhearn put in an extra ú25,000 in August, I think.

105 Q. Yes. What appears to have happened is that each of the three of you put in your money in various lump sums, isn't that so?

A. Yes.

106 Q. If I could refer you, for example, to page 99? It is a memorandum from Ms. Hynes to both yourself and Mr. Stafford, but it does, among other things, set out the various sums that went into the capital of the company, isn't that so at that time or up to that point in time? And it indicates that on the 15th of March, 1989, you put in ú33,333.33, isn't that so?

A. That's right. Well I have --

107 Q. It indicates that that sum went in and it appears that that came from you?

A. I don't see it - there is another sheet.

108 Q. There is but you can take it from me that it appears that that money came from you?

A. OK.

109 Q. That the second figure of ú66,667 that came in on the 31st of March 1989, came in from Mr. Mulhearn?

A. That's correct.

110 Q. And that the third sum of ú33,333.34, that came in on the 12th of April, 1989, came in from you?

A. That's correct. Well - there is a sheet in front of me that will tell me that. That is correct. If you say so it is correct, Mr. Hanratty.

111 Q. What I want to put to you is the information which the Tribunal has. If you consider that it is incorrect in any

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way?

A. No, I don't. I am not for one minute saying that. There is a sheet I think that I sent to the Tribunal which gives a breakdown of these.

112 Q. We will deal with those in a moment in a slightly different context. I just want to deal with it in the context of this particular memorandum?

A. I am taking your word that the 22,000 in April is mine.

113 Q. I take that you agree that the £250,000 lump sum came in in June from Mr. Stafford?

A. No doubt about that.

114 Q. That the 148,334 of the 11th of July came in from you?

A. That's correct, yes.

115 Q. And that the £233,333 odd of the 18th of August 1989, came in from Mr. Mulhearn?

A. That is correct.

116 Q. And that the £19,787 pounds that came in on the 8th of January of 1990 came in from you?

A. That is correct.

117 Q. And from whom did the £25,000 on the 1st of May of 1990 come in?

A. I guess that was from Mr. Stafford, I guess.

118 Q. Yes?

A. To bring him up.

119 Q. Was there some arrangement that yourself and Mr. Stafford would, in the first instance, put in £275,000 each and subsequently - sorry £250,000 each and subsequently a further sum of £25,000 each?

A. Not really. Well, I mean we knew that there was - I think the investment was £275,000 each. But there was trust

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between us and we put it in as it was needed, I suppose.

120 Q. Yes. That document indicates that the share capital was divided at that stage into 1.8 million shares at 50 pence each, isn't that right?

A. That's right.

121 Q. We understand that 150,000 of those were to be allocated to or at least it was intended at that time that they would be allocated to Mr. Wogan as to 100,000 and Mr. De Burgh as to 50,000, isn't that right?

A. I don't have all those in my head, if you say so, that is correct, yes.

122 Q. That would leave 1,650,000 to be divided equally between yourself, Mr. Mulhearn and Mr. Stafford, isn't that so?

A. That's right, yes.

123 Q. That would work out as 550,000 shares each?

A. That sounds right to me, yes.

124 Q. And that figure, I think, as we subsequently see appears in a number of the balancing documents that you produced in September of 1990, isn't that right?

A. I can see --

125 Q. You remember the figure of 550,000 shares each in any event?

A. I don't to be honest with you.

126 Q. Yes. We do know that in fact, when you look at those figures, albeit that the division by three would suggest a figure of 275,000 each and indeed that your contributions and Mr. Stafford's were 275, subject to certain deductions which you made which we will come back to, but that Mr. Mulhearn, in fact, put in ú25,000 more. In fact, he put in ú300,000?

A. That's correct.

127 Q. Why did Mr. Mulhearn, when he was taking an equal shareholding, as it were, to you and Mr. Stafford, put in ú25,000 more?

A. Well, I can't remember exactly the reason but if you want, I assume that Mr. Mulhearn took a view that Jim Stafford and myself were incurring personal expenses in both of our offices. He may have anticipated that some of the 25,000 would go towards this payment that has led to this part of the Tribunal. I am not too sure, but that is, he probably felt that Jim Stafford and myself were putting more time in our offices into it. He might have decided to put in a bit extra.

128 Q. Yes. We will come back to the question of the transmission charges in a moment, but at this stage I just want to stay with the question of the shareholdings in the company, and the respective contributions of the three parties.

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You have already given evidence to this Tribunal, Mr. Barry, that you made a payment of ú35,000 to Mr. Ray Burke, isn't that so?

A. That is correct.

129 Q. And if I can just ask you that again briefly, you have given the detailed evidence on the transcript, what you have told the Tribunal is that you went to your bank and that you withdrew it on a debit slip in cash?

A. Yes, I think the Tribunal has the debit slip.

130 Q. And that you placed it in a container, that you brought it to Mr. Burke's office, isn't that right?

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A. That's correct.

131 Q. And that you handed over this €35,000 in cash to Mr. Burke in his office?

A. That is correct.

132 Q. And that he made some comment to you about a second seat in his constituency?

A. That is correct. He said it would ensure a second seat.

133 Q. Yes. We have been told that this was included in a lodgement which Mr. Burke made of 39,500 on the 31st of May?

A. I wouldn't be aware of that.

134 Q. Well, I think you are aware of it, or at least we are told it, but what I want to ask you is: Why did you give the money to Mr. Burke in cash?

A. I assumed, I assume that he asked for it in cash. Otherwise I wouldn't have given it to him in cash. It was a huge amount of money.

135 Q. Yes?

A. I assume that he asked for it in cash.

136 Q. Yes. You have told the Tribunal in your previous evidence that this was a political donation?

A. That is what it was.

137 Q. And you have told the Tribunal in your previous evidence that it was a political donation by Century Communications Limited?

A. Yes, I claimed credit for it in my investment in Century in July.

138 Q. Yes. And you have told, you have told the Tribunal that this was done on the basis that you would make the payment but it was done on behalf of the investors in the company?

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A. Would you repeat that Mr. Hanratty?

139 Q. It was done on the basis that you yourself would make the payment but it was not only on your behalf but on behalf of the others?

A. That is correct, yes.

140 Q. Could I ask you first of all, was there any discussion between yourself and Mr. Stafford and Mr. Mulhearn in connection with this payment prior to it having been made?

A. Well, there is a difference of evidence I suppose between the three of us on this matter, which I suppose I can understand because it is so long ago. But I believe that I would not have paid this large sum of money out without informing Jim Stafford and John Mulhearn about it and then claim credit for it in July. I don't think I would have done that.

141 Q. Are you --

A. But I mean, I regret that the other two gentlemen or one of them any way, doesn't accept that.

142 Q. I understand that. Are you reading from a document Mr. Barry?

A. No.

143 Q. I am sorry. Well, did you have their prior approval, to put it that way, for the making of this payment?

A. I don't think I would have made a payment on behalf of the two of them without their approval.

144 Q. When the payment had been made, did you inform them that you had done so?

A. I think I informed them before the payment was made.

145 Q. Yes. That you were about to make it?

A. Yes.

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146 Q. What arrangements then were agreed or settled between you as to how you would get your money back?

A. I don't remember any definite agreement being made between the three of us. There was a lot of trust between the three of us at the time. I don't think there was any objection from them about it. When I put in the ú148,334 in on the 11th of July, that brought me up I think to ú215,000 and the ú35,000 that I paid to Ray Burke brought me up to 250.

147 Q. Yes. We will deal with that in detail in a moment. But at this stage I just want to concentrate on the actual payment itself. Mr. Stafford, as you are aware, has told this Tribunal, that the first he heard this of payment was on the 20th of March of 1991.

A. I wouldn't agree with Mr. Stafford there.

148 Q. Mr. Stafford's evidence, sorry Mr. Stafford's accountant, Mr. Tom Moore, has given evidence that he was told by Mr. Stafford in advance of the payment being made, that you were going to make a payment, although he was not told any amount and that he was told by Mr. Stafford some time in 1989, after the payment had been made, that a payment of ú35,000 had, in fact, been made by you to Mr. Burke. And just to complete the evidence that we have heard on that, Mr. Mulhearn says that he believes that he was told for the first time in 1989 that a payment had been made but after it had been made. That's what the evidence of the other witnesses, so far, has been?

A. Well, I am afraid that is not my recollection.

149 Q. Whose idea was it to pay Mr. Burke ú35,000?

A. It was my idea.

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150 Q. And was it your idea to pay it as a donation from Century or at least from the investors in Century?

A. It was my idea, yes.

151 Q. And what was the idea?

A. Well, I figured at the time that it was Ray Burke asked me for the subscription, for a donation to the party. He put a figure on it. He asked me actually for \$30,000, I was a bit taken aback by the sum. And I probably went and thought about it and said "OK, well, it is a three seat constituency out there. They have two seats, it was very marginal". He believes that they can retain the second seat. He needs some financial help, and I thought it was a good idea to do it.

152 Q. When did he ask you for \$30,000?

A. I can't recall the date exactly, but it was some time, you know prior to - I think I gave him the money on the 26th of May.

153 Q. The 26th of May

A. Yes, he would have asked me may be a few days previous to that may be.

154 Q. Well, he having asked you to give him \$30,000, did you then discuss it with your colleagues?

A. If you said to me "when" and "how" and "where", I discussed it with them, I honestly cannot remember.

155 Q. I didn't say "when", "how" and "where", I simply asked you did you?

A. I assume I did.

156 Q. It is conceivable that you decided off your own bat to give it to them and then charge it to your colleagues afterwards?



A. No, I wouldn't do that.

157 Q. Well, is it your belief that you did discuss it with them?

A. It is.

158 Q. And how did the figure translate from 30,000 to 35,000?

A. I suppose when he asked me for 30,000 I thought about it. I said, " well, look, that is too, it is a lot of money for me to, personally I wouldn't". I mean I couldn't do it personally. Then I thought that may be it would be a good idea for Century to do so. They were - the government was in power, had brought in independent broadcasting. The opposition government failed to do so over a number of years and I felt that it would be very disadvantageous to our investment in Century if Fianna Fail didn't get back into power. I was a Fianna Fail supporter. I took a view that it was a wise thing to do, not alone did I give him 30,000 but I decided to put it through Century but I increased it to 35,000.

159 Q. You said originally that you were taken aback when he asked for 30 because it was such a large sum. You are now saying that you then decided to increase it to 35?

A. When I thought about the Century dimension to it, I said, " look, it is pretty serious. We have a lot of money involved here, there is a lot at stake, and I will give him 35".

160 Q. But what difference would it be to Century, for example, if there were a change of government at that stage you had received your franchise, the directive had been issued in respect of the transmission charges and you were in the course of your negotiations with the IRTC and RTE?

A. I just felt that the opposition government, especially the

Labour Party, were anti independent broadcasting, and that the Fianna Fail Party were committed to it. The Minister obviously was committed to it because he introduces the legislation. He happened to be in my constituency and I suppose I took view that it was a wise thing to do.

161 Q. At the point in time when Mr. Burke asked for €30,000, according to yourself, he had already given a directive on the 14th of March which was greatly to Century's advantage, was it not?

A. I don't think so. You see --

162 Q. Well we know that he had given the directive?

A. I don't think it was to our advantage, honestly, I don't think that directive was that advantageous to us at all.

163 Q. Well the figure that Century had provided for transmission charges in its submission to the IRTC, was €375,000., isn't that so?

A. That is so, yeah.

164 Q. The figure which Mr. Burke directed, comparing like-with-like, was substantially less than €375,000?

A. That is not my recollection, no. I thought he, I thought he asked for €640,000.

165 Q. No, RTE had agreed with- indeed the Minister himself and his Department on a figure of €692,000 in respect of certain categories of, and equipment, but comparing like-with-like, what I am suggesting to you, that the figure that he actually provided for in his directive was less than the figure that even Century were offering?

A. That is not my recollection Mr. Hanratty.

166 Q. I see. Then what we will do after lunch is we will bring down the figures and go through them in detail because we

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have an analysis of them. What I will just put to you at this point is the proposition that comparing like-with-like, the ministerial equivalent, if I might put it like that, to the Century breakdown is about ú190,000?

A. That is certainly not my recollection.

167 Q. One way or the other, it is true to say that the Minister and his Department had, in fact, agreed a figure of ú614,000 with RTE in respect of FM in February of 1989, isn't that so? You subsequently felt that out, found that out I think?

A. If you say so. I think our stand- I wasn't too closely involved in the financings as far as transmission was concerned. I remember that we put in a figure in our proposal to the IRTC and we were granted a license with that figure. We more or less stood our ground on that figure?

168 Q. Mr. Barry, are you seriously suggesting to this Tribunal or are you contending that the Ministerial directive was not advantageous to Century Communications Limited?

A. I am saying to you that I thought that the Ministerial directive was in excess of the figure of ú375,000, that we submitted to the IRTC, but if you say there was ú190,000 that surprises me.

169 Q. Whatever it was, do you not consider that it was advantageous to Century, the figure in the directive?

A. In if I know exactly what the figure in the directive was, I will answer the question.

170 Q. We know, for example, in a memorandum of a meeting that took place in Century, I think in perhaps in the offices of Arthur Cox, on the 14th of February, the figure, it is

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recorded that Century could go to 500 - I think it was 520,000, and you describe it as a "a steal" at 375,000?

A. I don't accept that at all.

171 Q. You don't accept that?

A. No.

172 Q. All I am saying is that is what is recorded in a memorandum of a Century Communications meeting on the 14th of February by the Secretary of the company who was also the solicitor of the company?

A. I would like to know his source, where he got that information from, that it was "a steal". We had pretty high powered people from the UK who we paid a lot of money to and they gave us a figure that we submitted to the IRTC in our proposal. I think we said that there was a bit of a difference between our figure and RTE's figure and they granted us the license, and I think, especially Mr. Stafford, took a view that that is what we should be paying for our transmission.

173 Q. Were you not pleased when you heard the figures that were contained in the Minister's directive on the 14th of March?

A. On the 14th - you see I am not too clear what those figures are, if you say that they were close than 375 --

174 Q. They were hugely less than the figure that had been previously agreed with RTE for a start?

A. I think the figure that was agreed between the Minister and RTE was irrelevant because we had submitted a figure to the IRTC that they had accepted.

175 Q. Who accepted?

A. The IRTC accepted.

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176 Q. But the IRTC were not in a position to accept any figure?

A. Well, they granted us the license on the figure. It went up from the figure --

177 Q. I think if you understand, Mr. Barry, the nature of the arrangements with the IRTC under the statute, that they had the statutory obligation to vet applications for various franchises, including a national franchise, but that they had no function whatsoever in determining transmission charges?

A. I couldn't, I wouldn't know enough about it Mr. Hanratty.

178 Q. Would you not?

A. No.

179 Q. Perhaps we will come back to that when we are dealing with transmission charges. Going back to the capital contributions, you said that it was agreed or that you believe that it was agreed in advance by the three parties, three investors, that you would go and make this contribution, is that right?

A. That is my recollection of it.

180 Q. Did you indicate to them that the figure which the Minister had sought was actually 30,000 but that you thought it would be prudent to increase it to 35,000?

A. I don't, I have no recollection of saying that to them. I don't have any recollection of saying that to them, no.

181 Q. Would it possible that you would have unilaterally decided to increase the figure?

A. 5,000 wouldn't have been a huge amount. I wouldn't deny that, that that is possible, that I took it on myself to do so.

182 Q. In any event, the first two figures that we have just come

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across a moment ago, that you put into this company were  
ú33,333 twice, once on the 15th of March and next on the  
12th of April of 1989?

A. That's correct.

183 Q. Mr. Stafford put in ú250,000?

A. Yes.

184 Q. And the next sum which you put in was ú148,334?

A. That's correct.

185 Q. Yes?

A. That's correct, yes.

186 Q. And when one adds that to the two previous sums of  
ú33,333.33 pence that you put in, you get a total of  
ú215,000?

A. That's correct.

187 Q. So that it appears that you withheld a figure of ú35,000  
from your capital contribution to the company or, put it  
another way, you took credit for ú35,000 in your capital  
contribution to the company?

A. Yes.

188 Q. You regarded your investments up to that point therefore as  
equivalent to the ú250,000 that Mr. Stafford put in, except  
that you were taking credit for the ú35,000 which you paid  
to Mr. Burke?

A. I felt I had the same amount invested in Century as  
Mr. Stafford had at that time.

189 Q. Yes. Did anybody come to you and say, "Mr. Barry you are  
ú35,000 light"?

A. No.

190 Q. Or at any subsequent time?

A. I think when the rights issue with Capital Radio was done

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on the 4th of September, that credit was taken away from me.

191 Q. Well, we will come to the capital situation in a moment, perhaps this is an appropriate time to break, Sir?

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CHAIRMAN: If it is convenient to you at this moment in time. I don't want to interrupt the topic. If you want to continue for a few moments by all means do so?

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MR. HANRATTY: No.

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CHAIRMAN: Very good. We will say a quarter past two.

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THE HEARING THEN ADJOURNED FOR LUNCH AND RESUMED AGAIN AS FOLLOWS:

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THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:

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MR. OLIVER BARRY RETURNS TO THE WITNESS-BOX AND CONTINUES  
TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

192 Q. MR. HANRATTY: Mr. Barry please?

Mr. Barry, one of the matters we were discussing just before lunch was whether or not the directive issued by Mr. Burke was of benefit or advantage to Century. I just want to ask you to look at the figures, if you could look at the table of figures. Not taking in subdivisions but just take them in their totality. This is an absolute comparison with like-with-like. You will see there are two dates there and there are two columns under each date. The first date is the 15th of February 1989, the second one is the 14th of March, 1989.

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The 15th of February, 1989 is the figures agreed with the Department, but reduced further after an intervention by Mr. Burke, and pursuant to which RTE reduced their FM annual charges from ú692,000 to ú614,000. The 14th of March 1989, is the column indicating the figures implied in the directive. Do you understand that?

A. I do. Yes.

193 Q. Now, for, just going through it very, very quickly because we have had it before. For FM and AM access, the figure which was agreed with the Department was 252,000. The figure agreed permitted in the directive was ú35,000. Isn't that right?



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A. Yes, that looks like it, yes.

194 Q. The figure for maintenance in the agreement between the Department and RTE was ú355,000. The figure in the directive was ú30,000 pounds plus, depending upon how many visits there would be above.

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Linkage and power and spares were figures in respect of which I don't think there was any disagreement and those are the actual figures.

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There was an overhead of 5 percent, both in the directive and in the agreement.

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So the total difference between the figure which was agreed between the Department and RTE was ú871,350, plus a figure for linkage for AM, but in the directive it was ú273,000 and that the difference on an annual basis, was ú598,350.

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Now, I presume you appreciated the difference in the scale of the difference between what had been agreed and between what the Minister allowed in the directive at the time that it happened?

A. Mr. Hanratty, I wouldn't have been totally up to speed and aware of all these figures.

195 Q. Mr. Barry, this is one of the most significant cost items for a national radio station, isn't that right. If it was a local station you would have one transmitter and it is a fixed cost?

A. Yes, as far as I am concerned about our transmission which

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I know this Tribunal has spent an awful lot of time on, we had a figure, I believe, in our submission to the IRTC, of €375,000. I think we also mentioned, from memory, that we didn't agree with RTE about this, that the matter the between ourselves and RTE hadn't been resolved and that RTE were looking for extra money. We were granted the license by the IRTC. I think that 375 was the figure that we were more or less holding to.

196 Q. Was what?

A. We were holding to that figure.

197 Q. I know the company was holding to that figure. We will come to that in due course. What I want to draw your attention to, surely you knew at the time first of all that the biggest difference between yourself and RTE were on access charges and maintenance?

A. I wouldn't have been really aware of the breakdown of all those figures, Mr. Hanratty. I would have known about the overall --

198 Q. Mr. Barry, I am not going to debate on the cost with you. I simply want to get on the record what your evidence to the Tribunal is. Is it your evidence to the Tribunal that you did not understand that there was a huge difference between what the Minister directed and what his Department had previously agreed with RTE?

A. I am sure that is the case, yes, if the figures say that here, yes.

199 Q. What I want to know Mr. Barry is, is it your evidence that you were aware or not aware at the time of this enormous difference?

A. I can't remember whether I was fully aware of these figures

or not Mr. Hanratty, because transmission was an area that I would probably look at what is it is going to cost us.

Mr. Stafford felt that 375 was a figure that was agreed between himself and Mr. Hills. That was the figure we put to the IRTC and I was reasonably happy with that.

200 Q. You know, for example, that the only figure ever mentioned by the IBA was ú30,000?

A. I wouldn't accept that. I mean we, we spent a lot of money with Mr. Hills and we sent him substantial fees. I myself drove him around the country. He did a pretty big survey of the country. He was quite an expensive gentleman. Our submission on the 375, as far as I was concerned was his figure.

201 Q. You knew that RTE had agreed a figure of 614 to you for FM charges, didn't you?

A. That figure, they had agreed with who, I don't know.

202 Q. With the Minister?

A. If you say so, I don't --

203 Q. You were given these figures by the IRTC yourself?

A. Yeah, well. Yes. As I say, I wouldn't have been up to speed in all the correspondence between the IRTC and Jim Stafford in relation to transmission things. If you say that is the case that is case. I don't have any problem with that.

204 Q. Mr. Barry, you applied to the Minister in February for a directive. He issued a directive in March?

A. No, I believe the IRTC applied to the Minister, is that correct?

205 Q. What do you intend to convey to the Tribunal by saying that?

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A. Well, Century couldn't apply to the Minister for a directive, I believe.

206 Q. At whose initiative or instance was this directive applied for?

A. Well, I have been reading the evidence so far. My memory is totally different to what has been said here.

207 Q. By whom?

A. If you like I will, by Jim Stafford I think.

208 Q. Well, just tell us what your memory of it is?

A. I will tell you what my recollection of it is. Is that having got the license, I would say probably a week or two afterwards, Enda Marren, who was my solicitor and our solicitor at the time, both of us went to see the Chairman of the IRTC, Judge Henchy, and the reason why we Enda and myself went was because Enda Marren knew him on a personal basis. I think we had a discussion with him, there might have been one meetings or two meetings with him, I am not sure.

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We had a discussion with him about the renewal of the license after seven years, and we had a discussion with him about the transmission charges. And my recollection of it is, that it was Enda Marren who pointed out to Judge Henchy that there was power within the IRTC to apply to the Minister for a directive. The reason why I have a recollection of it is that I was surprised that Judge Henchy didn't seem to know about it. I remember coming out of the meeting saying to Enda, "you know that was marvellous the way you were able to tell the ex Supreme Court Judge, who you would expect to be familiar with this

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legislation, that he had this power". That is my  
recollection of it. I could be totally wrong. That is my  
recollection of it.

209 Q. So Mr. Marren drew Judge Henchy's attention to the fact  
that this section existed in the Act?

A. That is my recollection, Mr. Hanratty.

210 Q. And it was your perception that he was otherwise unaware of  
it?

A. That is - yes, that is my memory of it.

211 Q. Whose idea was it to apply for a directive under Section  
16?

A. It was Enda Marren brought it to attention, from my  
recollection. My recollection is that Enda Marren was the  
first man that mentioned any possibility of a directive to  
me, and that it was at the meeting with the Chairman of the  
IRTC. I can't give you a date for it, but it was certainly  
after we getting our license.

212 Q. Well, we know that under the section the request for the  
directive has to be made through the IRTC; it has to be at  
the request of the IRTC?

A. That's correct, that is what Enda --

213 Q. So that if a person who has a franchise or is interested in  
a franchise requires a directive they have no alternative  
but to put their request through the IRTC, isn't that so?

A. That is the position, yes. That is what Enda outlined to  
the Chairman, as far as I remember.

214 Q. It doesn't alter the fact, does it, that the person seeking  
the directive is Century?

A. Oh, yes surely, that was the whole point. Enda says,  
" look, we're having a disagreement over our transmission

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charges. We say they should be 375,000. RTE are looking for a lot more. It is within your power to do this for Century".

215 Q. I am going to leave the transmission charges for a moment Mr. Barry because I want to finish off on this capital contributions and its relationship to the money that was paid to Mr. Burke.

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You have told us already that you took credit, as it were, for €35,000 in making your capital contribution. So that your first tranche of €250,000 was, in fact, 215 making due allowance for the 35, isn't that right?

A. That's correct, yes.

216 Q. Now, the next tranche to bring you up to 275 would have been €25,000, isn't that right?

A. Correct.

217 Q. But the figure you put in wasn't in fact 25, it was €19,787?

A. Yeah.

218 Q. And am I correct in thinking that the reason for that is that again you were taking credit, on this occasion for two payments you had already paid made?

A. Yes, one or RTE and one for an airline ticket.

219 Q. In fact it appears from the documents that you had provided to the Tribunal, that one was for the donation of €5,000 to Fianna Fail, and the other was for the airline ticket of €213. We will just get rid of the €213. You did, in fact, it appears, incur an expense of €213 on behalf of Century by paying for an airline ticket?

A. That is correct.

00047

220 Q. That would bring the 19,787 up to €20,000, in fact?

A. That is correct.

221 Q. But you then withheld a further €5,000 from this tranche of 25?

A. Mm-hmm.

222 Q. Now, it seems from your own document that is the 5 which you withheld was the €5,000 to Fianna Fail?

A. Well, could I see the documents Mr. Hanratty?

223 Q. Yes, but can I draw your attention to the fact that even on your own information which you have given to the Tribunal, the €5,000 to RTE didn't happen until August?

A. Didn't happen until August, that's correct.

224 Q. Yes?

A. But the €19,000 I think went in on the following December or January, is that correct?

225 Q. Yes. Well, perhaps we could just have a look at one of your documents because you seem to - yes, what appears to have happened, you remember you dot paid €26,250 in June of 1989?

A. I do indeed.

226 Q. Century Communications Limited paid a cheque to QAM for €26,250?

A. That is correct.

227 Q. €21,250 of that was a reimbursement for the monies which you had paid to Pascal Taggart?

A. That's correct.

228 Q. And €5,000 of that was the donation to Fianna Fail, is that correct?

A. That is correct.

229 Q. So do you now say that the €5,000 which you withheld from

00048

your €25,000 capital investment was in respect of the RTE money that you say you paid in August?

A. As far as I remember the €19,000, the 827 - to make it up to the 5,000, to the 25,000 I charged Century the €5,000 cash that I paid to RTE and the airline ticket.

230 Q. Yes. So what you were deducting, in other words, was the €5,000 that you say you paid to RTE in August?

A. In August.

231 Q. Of 1989

A. Yes, because I would have got back the Fianna Fail donation at that stage I think QAM --

232 Q. When would you have got it back?

A. In June of '89, on the 26,250, the 21 to Pascal Taggart and the 5 to Fianna Fail.

233 Q. The 21 figure was included in the 26,250, is that what you are saying?

A. That is what I am saying.

234 Q. So the position was as at the time that you were making this payment of €25,000, is that you are making the payment of €25,000 by way of capital investment but taking credit for the €5,000 that was paid to RTE and the €213 air ticket?

A. That is correct, yes. That is my recollection of it Mr. Hanratty.

235 Q. Yes. And may I take it did Mr. Stafford know about this, what were the items that you were taking credit for?

A. I am sure he did, yes. I mean Mr. Stafford was the finance man. I am sure he did. I wouldn't have taken it otherwise.

236 Q. It is obvious from the figures that you took credit for



something?

A. Oh absolutely.

237 Q. And you reduced the capital input figures by certain amounts, isn't that so?

A. That's correct, yes.

238 Q. Was anything arranged or agreed between yourself and Mr. Stafford vis-a-vis this payment of €5,000 to Fianna Fail?

A. To Fianna Fail, it was.

239 Q. What was agreed?

A. To Fianna Fail now.

240 Q. Yes?

A. In June, I think we agreed that John Mulhearn and Jim Stafford and myself agreed at that we would make a donation to Fine Gael and Fianna Fail.

241 Q. Yes?

A. And --

242 Q. Did you agree the amounts?

A. I am sure we agreed the amounts, yes.

243 Q. What amounts were agreed?

A. I think it was €2,000 to Fine Gael and €5,000 to Fianna Fail.

244 Q. Well, Mr. Stafford has given evidence and produced documents in support of his evidence to the effect that €2,000 was sent to Mr. Enda Marren for transmission to Fine Gael, and it is your evidence that you paid the €5,000 to Fianna Fail?

A. It is. I believe I paid the €5,000 to Fianna Fail, yeah, because I charged it back to QAM. QAM probably paid it. I probably paid QAM.

00050

245 Q. In what manner was it paid?

A. I think it was paid by cheque or by draft may be.

246 Q. First of all, was this intended to be a Century payment?

A. Oh, yes.

247 Q. Well, how would Fianna Fail know that it was a Century payment if it came from QAM?

A. I don't know if it came from QAM. I think it might have been a draft Mr. Hanratty, I am not sure.

248 Q. Even if it was a bank draft how would the recipient know from where the money had, ultimately, come?

A. I can't remember how, I can't remember how I gave them the money, but I can't, I can't remember exactly, precisely what happened but it was definitely a Century donation to Fianna Fail, agreed by Jim Stafford, John Mulhearn and myself.

249 Q. And why did the three of you agree to pay €5,000 to Fianna Fail and €2,000 to Fine Gael?

A. I suppose, you know, political views come into the thing. We were pretty Fianna Fail people, I suppose. I mean I always voted Fianna Fail. I am sure John Mulhearn always voted Fianna Fail - Jim Stafford - I supported Fianna Fail all my life.

250 Q. What had this got to do with Century

A. The company, we were the main people in the company. We were going to support our party.

251 Q. But what was your perception as to how it might be of advantage to Century to be paying €5,000 to Fianna Fail and €2,000 to Fine Gael?

A. I wouldn't have even considered any advantage. I would have done it - I made personal donation to Fianna Fail

during the same election that you are aware of it Mr.

Hanratty.

252 Q. These are not personal donations?

A. I know, I did - my yearnings would be towards Fianna Fail and always were.

253 Q. When the time came in 1990 to - sorry, just before we leave that was that payment to Fianna Fail an anonymous payment?

A. An anonymous?

254 Q. Yes?

A. No, I don't think so. I can't really remember precisely where the money was paid or who the money was paid to, but it was a Fianna Fail payment, I have no doubt.

255 Q. Certainly it doesn't seem that there would have been much point in making it an anonymous payment if the idea was- if it was perceived to be a Century donation?

A. No, there wouldn't be. No.

256 Q. But Fianna Fail have told us that they have no recollection or no record of any payment of €5,000 or indeed any other sum from Century Communications Limited. They have a record of an anonymous payment in July of 1989 from an anonymous source?

A. I don't know whether that is the same payment or not. I can assure you, Mr. Hanratty, that the €5,000 was paid to Fianna Fail by Jim Stafford John Mulhearn and myself.

257 Q. Was it possible that it was paid to anybody in particular in Fianna Fail?

A. Is it possible? No. There was another cheque, you know, there was this other one that I got confused about at the private hearing, the one to CJH.

00052

258 Q. I am not talking about that one. That was a specific donation that you made. We will deal with that in a moment?

A. Yes.

259 Q. I am talking about €5,000, this particular €5,000. Is it possible that you may have given it to another individual?

A. It is possible that I may have given it to one of the Fianna Fail finance people. It is possible, yes.

260 Q. Is it possible you may have given it to Mr. Burke?

A. Not at all. Definitely not. Absolutely not.

261 Q. Why are you so sure about that?

A. Because he got 35 K, that was more than generous, wasn't it, Mr. Hanratty?

262 Q. Yes. So you are quite clear about that, that the €5,000 to whoever it was given, it certainly wasn't given to Mr. Burke?

A. I am absolutely certain Mr. Hanratty and I repeat this because I know it has given you a huge concern. You have trawled all my bank evidence, you are trying to seek evidence that I paid extra money to Mr. Burke. You made accusations and innuendos here in your opening statement. You will find not one shred of evidence whatsoever about any other payment that I made to Mr. Burke and the reason why you didn't find any evidence is because there is no evidence there. I didn't pay any more money to Mr. Burke than the 35 K.

263 Q. Did you make any other political donations in any amount to Mr. Burke in 1989?

A. No, there was another election in 1989, I don't think there was. No.

00053

264 Q. Did you make any donations to Mr. Burke in 1990?

A. Was there not an election in '90? No, no, there was not, sorry. If there was an election in '90 I might have given him a small donation. If there wasn't an election, I wouldn't have given him anything.

265 Q. Well, I am asking you did you give him anything in 1990?

A. I am 99 percent certain that I did not.

266 Q. Yes?

A. If you tell, if you tell me there was an election in '90, I am sure we can establish that.

267 Q. Well, I don't believe there was an election during 1990?

A. Well then I didn't. Then I am one hundred percent certain that I didn't.

268 Q. Is it your position that you were in the habit of perhaps making your donations only when there was an election?

A. That was normally what I would do, yes. Unless there was some function or --

269 Q. Yes. Just going back to the ú5,000 for a moment Mr.

Barry, if we could have page 1202. This is the bank draft which we have received from your bank which is the bank of Ireland, 28 Lower O'Connell Street. As you can see it is actually, it is a bank draft it is dated the 15th of June of 1989. It is made out to Fianna Fail, it is for ú5,000?

A. Mm-hmm.

270 Q. On the bottom of the page which shows the back of the bank draft it says "Paid P. Kavanagh."

A. That would add up, yeah, Paul Kavanagh.

271 Q. Yes. Is it possible that you gave this to Mr. Kavanagh?

A. It certainly is, yes.

272 Q. Do you know Mr. Kavanagh?

00054

A. I do.

273 Q. And was Mr. Kavanagh a Fianna Fail fundraiser?

A. Yes.

274 Q. And would you have given him this bank draft?

A. Oh quite possible.

275 Q. And would you have informed him when you gave him this bank draft that it was a donation from Century, as opposed to a donation from you?

A. I most certainly would I am sure.

276 Q. Well, can you recall whether you did or not

A. I can't recall when and where and how I met Mr. Kavanagh. Why would I hide it not coming from Century?

277 Q. I am just asking the question Mr. Barry. What I have in mind is this, the €5,000 in respect of which a receipt was issued and described as "anonymous" in July of 1989, approximately a month after this particular Instrument, I am just trying to ascertain why it would be recorded as "anonymous" if you provided that information to Mr. Kavanagh?

A. I don't know. You should ask Mr. Kavanagh that. I don't know why he would have put it in as "anonymous". I would have given it as "Century".

278 Q. If I just show you page 1203. This is the receipts book for Fianna Fail election fund donations and everything is blanked out on it except the last item at the bottom, this is the €5,000 that we are talking about. Do you see it there?

A. Yes.

279 Q. It says "anonymous" is written the No. 74 which we think is a receipt number. On the bottom, on the back of the cheque

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if you look at 1202 again, there is a number 4774. So the last two digits of that number appear to be written in in that column?

A. Yes.

280 Q. That would seem to suggest that these two are referred to, refer to the same payment. Can you give us any assistance as to what, if anything, you might have told Mr. Kavanagh about this payment when it was made?

A. I can't recall Mr. Hanratty but I am sure if the payment was paid by Century there would have been no reason in the wide world for me to tell Mr. Kavanagh that it didn't come from Century.

281 Q. Yes. Now moving along to 1990 for a moment, we know that arrangements were made to enter into a financing agreement and Shareholder's Agreement with Capital Radio, isn't that right?

A. That's correct, yes.

282 Q. That was done in September of 1990?

A. That was done in September of 1990, yes.

283 Q. Part of the package was that both yourself and Mr. Stafford and indeed Mr. Mulhearn, were to put their hands in their pocket again and provide further financing as well as capital bringing in financing, isn't that so?

A. That is true.

284 Q. Again you were to put it in on an equal basis?

A. That is true.

285 Q. And on this occasion the manner in which, as I understand, you made your investment was that each of you altogether, already having made your original investment, were now going to put in a further £230,000 each by way of cash

00056

backing to a bank guarantee to be provided to Capital?

A. My recollection is we put in €230,000, - yes.

286 Q. There was €690,000 to be put in?

A. If I can see the sheet Mr. Hanratty, it might be helpful to me?

287 Q. Is this your own sheet?

A. Yes.

288 Q. Yes. If you just put up 233? If we could just go to the top of the page for the moment?

A. Mmm.

289 Q. Now you see that, 550,000 shares at 50 pence each, do you remember this figure we referred to this morning?

A. Yes.

290 Q. That is €275,000?

A. Yes.

291 Q. Then you refer to another 125,733 at €2.50 which is 314,332.50, isn't that right? You refer to one-third of €40,000, that is 35,000, it says "equals" but I think that is the upper case equivalent of the plus sign, that is meant to be €35,000 plus €5,000?

A. It is.

292 Q. And you divide that by three, that is to apportion it, I take it, between yourself, Mr. Stafford and Mr. Mulhearn; is that correct so?

A. That's right. Yes.

293 Q. Moving down the page then, the next section of the document you said "first investment €275,000"?

A. Yes.

294 Q. Now in your case we have already- you have already agreed I think, that that is the equivalent of the value you put in,



00057

although you didn't, in fact, put in 275 in cash you put in  
215 in cash,?

A. And 19 something, yeah.

295 Q. 215 in cash, plus 35 which you paid to Mr. Burke plus the  
€19,897 plus the 213 you paid for the airline ticket plus  
the €5,000 you say you paid to RTE?

A. That's correct.

296 Q. That made up your 275?

A. Yes, that's right.

297 Q. Then you go on to mention the guarantee which is €230,000,  
isn't that so?

A. That's right.

298 Q. That is the figure that I suggest that each of you were  
putting in to, by way of a further investment as part of  
the agreement with Capital?

A. That is correct.

299 Q. And that was a cash backing to a guarantee which Bank of  
Ireland were giving to Capital, isn't that right?

A. I don't think I had the cash at the time, I think that --

300 Q. You didn't, in fact, put in your cash at that point in  
time?

A. No.

301 Q. There was a, there were arrangements made between yourself  
and the bank?

A. That is correct.

302 Q. But Mr. Stafford and Mr. Mulhearn did, in fact, put in each  
€230,000 at that time?

A. I believe they did, yes.

303 Q. And one-third cash to close, I believe refers to a  
shortfall on the capital account being a shortfall in the

00058

amount put in by institutional investors and arising from the fact that Mr. Wogan did not, as originally envisaged, put in €50,000 and that shortfall was being made up by each of the three of you, isn't that right. It amounted to €253,000 approximately, and €84,333 is a one-third apportionment of that figure?

A. If you say so, yes Mr. Hanratty.

304 Q. So it appears from other documents which you have which we will go through in a moment. Again you apportion the one-third of €40,000 being the deposit and €5,000 to Fianna Fail, so you are compositing these two figures of 35 and 5; isn't that so?

A. No. The 5 was to RTE I think.

305 Q. It says Fianna Fail?

A. That should be, that should be RTE I believe.

306 Q. Well, we have to take the document as we find it for the moment, Mr. Barry. That is what it appears to say?

A. Yes.

307 Q. Going to the bottom of the page, at this stage and this document - when do you say this document was produced?

A. I think we got a document - I think we received the document from Jim Stafford's office, outlining the situation of the rights issue and I think we just took the format that he had. He was pretty good with those things and we put our own document in a similar pattern, I suppose you would call it.

308 Q. Yes. Well what it sets out there was the amount of the guarantee first for each of you, that is Mr. Barry, Mr. Stafford and what, in fact, refers to Mr. Mulhearn, but he is there referred to as "joint", isn't that right?

00059

A. That's right.

309 Q. And the first item is the ú230,000, isn't that so?

A. That's right.

310 Q. Then there is the total lodgements which on Mr. Stafford's calculation each of you had made which are set out in the second line, then the total expenses which it is there stated each of you incurred, isn't that so?

A. Yes.

311 Q. Now that figure of ú76,542.71 expenses for you, does that include the 35 to Mr. Burke?

A. I think, I think I have a breakdown of that may be in my own - does it? I can't answer that. I mean why would I ask them for it then if it did include --

312 Q. Did you, in fact, have ú76,000 worth of expenses at that stage?

A. I am not sure, Mr. Hanratty.

313 Q. Perhaps we might come back to that?

A. I can help you on that I am sure.

314 Q. In any event, it appears that that document then at the bottom again apportions the ú40,000, that is the 35 plus 5, whatever the 5 may be, between the three of you?

A. Well then the 76 didn't include the 40,000.

315 Q. Yes. Yes. If we can just move for a moment to page 266?

.

Now, we see at the top of the page "Dublin 1 ú21,250," that is the money you paid or sorry QAM paid on the 28th of December, 1988 to Pascal Taggart, isn't that so?

A. That's right.

316 Q. That is under the heading "1988". I think the next heading

00060

while it says "1988", it is supposed to be 1989. It says, "April 3rd". It names a person there for an airline ticket, "ú213", isn't that right?

A. Yes.

317 Q. Just for the record, I think that was in respect of a meeting that person was to have with Mr. Wogan in London to explore possibilities which were subsequently not pursued, isn't that so?

A. Yes. That's right.

318 Q. May 26th, deposit ú35,000?

A. Mm-hmm.

319 Q. That is the Ray Burke money?

A. Yes.

320 Q. So it is included, you see the total at the bottom there, 676,000?

A. Yes. Yes.

321 Q. So the 35 is included in that figure. We will come back to the other page in a moment. Can I ask you why did you refer to the ú35,000 as a " deposit"?

A. I think I went through with that you. It got three different descriptions in my accounts. It is called, "a deposit", "a donation" and "a cash payment".

322 Q. Why did you refer to as to it as a deposit?

A. I can't remember why.

323 Q. Is it perhaps because it was a first instalment?

A. Absolutely not.

324 Q. Was it in fact a first installment of some further payments?

A. To Ray Burke?

325 Q. Yes?

00061

A. I have already told you Mr. Hanratty. How many more times do you want me to say it?

326 Q. I will come to it again in a moment, if I may, Mr. Barry?

A. Yes.

327 Q. But all these adjustments were being made, although never finally settled, as far as we can ascertain, between yourself and Mr. Stafford, is that right?

A. I will admit it was a rolling type of situation.

328 Q. Yes?

A. It came to a head.

329 Q. Going back for a moment, if we may, to page 233? Do you say that Mr. Stafford sent you this document?

A. Not that one, no. I think that is more- could I have the original may be and I will tell you the difference between Mr. Stafford's and ours. If could you give me the actual document?

330 Q. I think you are referring to a different document. Could we just stay with this one for the moment. Who produced this document or what is this document?

A. There is no heading on it at all, is there?

331 Q. No?

A. Could I see the original?

332 Q. Well this is the original of this document?

A. Could I just see it on paper I might have a better idea.

333 Q. A hard copy. Certainly (DOCUMENT HANDED TO WITNESS.)

A. That would have been produced in our office, I would imagine. I would say that was produced in our office, Mr. Hanratty.

334 Q. So that is your document. Can you just explain to us what you were doing in this document?

00062

A. This is the right, which one is it? I have the wrong one again, no, sorry.

335 Q. What exactly are you doing in this document?

A. I am just, just a moment there is a confusion about the document. My solicitor has handed me the incorrect document I think. What page is it, 239, is it?

336 Q. 233?

A. It is 239, I am looking at. So could I have the other one again please.

337 Q. That is the document on screen. We will have to take a photocopy for you. In the meantime perhaps we might be able to work with the screen while we are waiting for the photocopy.

Is this your document?

A. I am pretty sure it is, but to be absolutely sure I would like to see the hard copy.

338 Q. I see. While we are waiting on that, can you indicate to us what is the nature or what exercise was being done in this document?

A. I don't know. I don't know if there is no heading on the document I don't know. That strikes me as being unusual.

339 Q. (DOCUMENT HANDED TO WITNESS). Well, if you just look at the hard copy. You are aware, Mr. Barry, that there are a number of such documents included in the documents which you provided?

A. I still think I am looking - this is not the hard copy that I am looking at Mr. Hanratty.

340 Q. Well, you are looking at page 233, which is the page that is on screen. Can we just scroll to the top, that is page 233?

00063

A. Sorry, yeah. OK. Sorry, I am - you see, now that you are showing me the top of the page it makes a bit more sense to me.

341 Q. Yes. Well, would you mind walking us through it?

A. From the top?

342 Q. Well, we are trying to understand what is the nature of the exercise which is being done here in this document. I mean it clearly, if I might suggest to you, appears to be a document designed to, as it were, apportion the balance as it stands between the three investors in the company. Is that a fair description of it?

A. Yes, it looks like that, yeah. Yes. " First investment", " guarantee" --

343 Q. In doing that exercise it holds each of them liable for a one-third share of the contribution to Mr. Burke, isn't that so?

A. That is right, yes.

344 Q. And taking all of those matters, including the contribution to Mr. Burke into account, it works out a balance for each of the three investors, isn't that so?

A. There is a surplus you mean, is it?

345 Q. Yes. It is described as a "surplus" on the bottom line?

A. Yes.

346 Q. What was your purpose in preparing this document?

A. I am sure to try and find out where we stood, vis-a-vis one another.

347 Q. Yes. There is no doubt that vis-a-vis capital, each of you had to put in your 230,000, albeit that in your case you made an arrangement with your bank which was equivalent to the cash guarantee, isn't that right? You didn't

00064

actually put up the cash of 230 initially?

A. No, I didn't.

348 Q. Yes. But did you have to make an arrangement with your bank to provide the guarantee backing?

A. Yes, I did.

349 Q. And there was correspondence, I think between yourself and your bank in relation to it?

A. There was.

350 Q. There was also a balancing charge of ú84,000 each, a shortfall of investment funds of 253,000 which is shown in the middle of the page?

A. Yes.

351 Q. Isn't that so?

A. Yes.

352 Q. So these were over and above the original investment which was made by each of the three of you, isn't that right, the 230 and the 84?

A. Over and above the original investment, yes.

353 Q. Yes.

A. That's right.

354 Q. You see the reason I am putting it to you Mr. Barry is that we know for a fact that in addition to you having taken credit for the ú35,000, from the capital account, which you did in the middle of 1989 and in addition to the credit for ú5,000 which you took in your second tranche of investment in or indeed your third tranche in January of 1990, you-subsequent to the investment by Capital- received a payment from Century Communications Limited of ú40,000, isn't that so?

A. Yes, yes.



00065

355 Q. And that payment was received by you, I think on the 22nd of February of 1991?

A. That's correct.

356 Q. This payment was the subject of some correspondence between yourself and Mr. Taylor in the closing months of 1990, isn't that right?

A. I believe it was, yes.

357 Q. You wrote to Mr. Taylor after he had completed the agreement between Capital and Century, saying that you were owed ú40,000 and that you required payment of that sum?

A. That's correct.

358 Q. He declined to pay it expressly upon the basis that he said that you had failed to provide any vouchers supporting the claim for ú40,000,, isn't that so?

A. It is in correspondence, it is so. I thought I did produce an invoice to him eventually.

359 Q. After it was paid I think?

A. I am not sure about that, Mr. Hanratty. I don't think Mr. Taylor is the kind of a gentleman that would pay you a cheque without an invoice in advance. He is a very meticulous financial man.

360 Q. Well, he certainly, I think it is fair to say, was resisting this particular payment, wasn't he?

A. Can I explain the payment to you and the reason for the payment?

361 Q. Yes, we will come to that in a moment. I just want to ascertain that you were in agreement that Mr. Taylor was resisting this payment because of the fact that he said that he hadn't been provided with any vouchers. I can refer you to a letter from him to you on the 21st of

December, 1990. Page 748.

.  
He says: "Dear Oliver, I refer to the sum of ú40,000 which we again regrettably failed to resolve yesterday. May I say that there is absolutely no intention on our part to delay the resolution of this matter. I am sure you will agree with me that to defer a settlement can only damage our relationship which certainly is not in the interests of Capital Radio. I am afraid the fact is, as evidenced by the discussion at our breakfast meeting yesterday, that there are other matters that take priority in our discussions at present time.

.  
It seems to me there are two stages to this matter. (A), is there a proper liability to the company? (B), if so was that liability properly disclosed at the time of our investment, if not then what redress exists under the investment agreement? As regards Item (A), I think it important that we deal with this matter as we would with any other provider of professional services. Would you please therefore let either myself or Colin have a detailed statement of the work that was done by your colleagues for the company? The more detailed you can make it the better. i.e. what was the nature of the services, were they provided on a regular or sporadic basis. From where was the work undertaken? Who actually provided the services? At what charge out rate. Were there specific projects that gave rise to the work. Also, we obviously need to receive a VAT invoice from your company before payment can be made.

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As regards item (B) I feel it may be better to leave Mark Ryan and Enda to discuss the matter and see whether they can establish a potential solution it.")

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I think that was in response to a letter that was sent by you and in fact draft bid Mr. Stafford claiming that this money was due on the basis of €1,600 a week for 25 weeks work, which you said you did, isn't that right?

A. Yes.

362 Q. Could we just look at page 750. This is Mr. Stafford's draft. I believe the letter was in fact sent. It says, "Dear Patrick, thanks for your fax of 21st December. I have already explained that these costs are my actual out-of-pocket expenses during the period for which I and my staff had to provide full-time engagement for the Company. With regards to costs which work out at €1,600 per week for 25 weeks you will recognise that they have been heavily subsidised by me personally by reference to your own Consultancy Agreement. There was never any question that these costs would be recovered from the company in the same way that something or other paid by James and myself would be. A point that can and will be confirmed at the January Board meeting after which I expect immediate settlement. I see no reason to involve Mark Ryan or Enda Marren in this matter."

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That letter, I think, was sent to Mr. Taylor and to which he responded in the letter that we have just had, isn't that so?

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A. Well, you see I am not sure that the letter went to Mr. Taylor, Mr. Hanratty.

363 Q. Well, do you agree that the claim was made to Mr. Taylor on the basis that you were now claiming ú40,000 on the basis that you had done 25 weeks work, and that you were claiming ú1,600 a week?

A. Yes.

364 Q. Do you agree first of all that there is no reference whatsoever to any such services having been provided or any such debt being due in the disclosure letter will to Capital Radio?

A. I wouldn't be up to speed on that.

365 Q. Well we have the disclosure letter. I am sure you have seen it. I am not going --

A. If you say so, I accept it.

366 Q. You can take it from me that there is no reference to any such indebtedness in the letter. There appears to be in reference to it in the due diligence performed by Capital Radio and Mr. Taylor took the point, did he not, that he had never been told about any indebtedness of Century to you in the sum of ú40,000, isn't that so?

A. I don't recall that he said he never had been told.

367 Q. Yes. That he had never been told about this ú40,000, and in fact he gave evidence here last week to that effect?

A. Well I am not aware of that.

368 Q. Yes. And Miss Noreen Hynes, who was the Financial Controller of Century Communications Limited, says that she never heard about the ú40,000 being owed to you?

A. That could be so, yes.

369 Q. And she said that she was unaware ever any services that

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could have been provided by you to which ú40,000 could apply?

A. Well, I would totally disagree with her there.

370 Q. Sorry?

A. I would totally disagree with her on that one.

371 Q. All she told us was that she never heard of it?

A. No, no. You said something different Mr. Hanratty now with respect.

372 Q. We have also had evidence --

A. No, hold on just a moment.

373 Q. Yes?

A. You are moving a bit fast for me. Would you just repeat again what Noreen Hynes said.

374 Q. Ms. Hynes said that she was unaware of any indebtedness of Century Communications Limited to you or QAM for ú40,000?

A. OK.

375 Q. She says that she was unaware of any services for which you were entitled to claim ú1,600 per week or indeed any other sum per week?

A. On the second point, I would totally disagree with her.

376 Q. I see?

A. Because I spent 25 weeks practically in the building of Century as Chief Executive of the company.

377 Q. Yes. There is no doubt that you came in at some stage and acted in the capacity as Chief Executive, but she said that her understanding of that arrangement was that that was to be free of charge?

A. Why should it be free of charge?

378 Q. Because no invoices were ever raised for it at the time. There is no reference to any record in Century

Communications Limited of any charge of £1,600 per week, there is no reference in any QAM document of a charge for £1,600 per week. In fact there is no reference in any of the records which this Tribunal has seen to any indebtedness of £1,600 per week for 25 weeks, except this draft letter which Mr. Stafford put together in December of 1989 to justify it to Mr. Taylor?

- A. Mr. Hanratty, do you realise that for six months in 1990, it must have been about the greatest nightmare in my life, I had to go into Century Radio, into a building, a business I was not familiar with, I had to get- to be polite about it- I had to negotiate with a number, a large number of people to leave the company, which took days on end. I was Chief Executive of the company. I was achieving sales for the company. I had staff with me in the building. In actual fact I think in all fairness to Jim Stafford, while we have our differences, I think he said in his evidence, which I do appreciate, that only for me the company would have gone under. The company was in dire circumstances, dire circumstances.

379 Q. What is your point, Mr. Barry?

- A. The point I am making is that I went in and saved the company and I believe that is the reason why I arrived at this figure in that the previous Chief Executive was earning something similar. And I am sure that Jim Stafford and myself came to some- may be it is sloppy accountancy practice, may be I am not too sure about it, but I certainly didn't pull this figure out of the sky and say I am due this money from Century. I can assure you I earned every single penny of it.

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380 Q. Well, whether you did or not Mr. Barry, the fact remains that at the time the services were provided you never sent an invoice for it. Are you in agreement with us on that point?

A. If you say so, of course I am. But can you-

381 Q. -- If we can just take it step-by-step. There is no record of it in any QAM account or document?

A. If you say so.

382 Q. There is no record of any such indebtedness in any Century document?

A. If you say so.

383 Q. There were certain services provided by QAM to Century which were invoiced and which were paid?

A. That was in connection with the All-Ireland football final in 1990, I believe.

384 Q. Yes?

A. Because Capital Radio went in in situ, in Century.

385 Q. They also provided tickets for the Frank Sinatra concert I think?

A. That was in '89, I think.

386 Q. Yes. But they were paid for?

A. Yes. They were paid for.

387 Q. They were invoiced and paid for?

A. Yes.

388 Q. So that it wasn't a case of "sloppy accounting" that when QAM did provide services or goods they invoiced them?

A. Obviously Mr. Hanratty you have no experience whatsoever in what running a company in absolute crisis is like. These are things that believe you me you put on the back burner when you are fighting day after day for survival.

389 Q. But Mr. Barry, what the Tribunal has to deal with, is what it finds in front of it. What I am drawing your attention to is the fact that there is, as you have agreed, no reference to any such services in the books of Century?

A. I accept that. I accept that.

390 Q. In the books of QAM?

A. I accept that it was wrong.

391 Q. It was wrong. What was wrong?

A. If we didn't enter it in the books the way you say we should have it, it was careless. It was wrong. We should have done it.

392 Q. What appears from the absence of any record of this, is not a question of it being wrong it is simply a question that it didn't exist?

A. What didn't exist, Mr. Hanratty?

393 Q. There was no indebtedness, in fact, because there was no services for which you and QAM were entitled to charge?

A. Oh --

394 Q. That is why there is no record for it that is why there is no invoices that is why the Financial Controller didn't --

A. How did all those unfortunate people from Century walk out the door?

395 Q. Mr. Barry, the fact that there was no such indebtedness appears to be consistent, I am putting to you, with the complete absence of any record of any such indebtedness, with the fact that the Financial Controller of Century knew nothing about it and with the fact that it did not appear either in the disclosure document or in the due diligence?

A. Then, I accept that.

396 Q. And the first time any suggestion was ever made that any



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such services had been provided or that any such sums were due for such services was in the draft letter produced by Mr. Stafford in September of 1990?

A. Mr. Stafford and myself were working pretty closely in early 1990. Mr. Stafford was the main man responsible for bringing Capital Radio on board. I would have to give him one hundred percent credit for that. However, I was left at home minding the ship and keeping the ship afloat.

397 Q. Well in any event, the upshot of it all was that in effect the matter was raised at Board level in January of 1991, isn't that right, and the Board decided that it would be paid pursuant to which it was paid in February of 1991?

A. It was paid to me, yes.

398 Q. And for the first time it was entered as an accrual in the books of Century Communications, isn't that so?

A. I wouldn't be familiar with that Mr. Hanratty.

399 Q. Well, it would have to be dealt with in some way if £40,000 went out, isn't that right?

A. If Patrick Taylor was in charge of it, believe me it would be dealt with in a very proper manner.

400 Q. He has told us that it was put into as an accrual to Century Communications Limited, having been paid in November 1991?

A. Yes.

401 Q. But the problem is that Mr. Stafford subsequently made reference to this payment in two documents. I just want to draw your attention to them

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He appears to have identified this payment as a payment to Mr. Burke, or at least a payment of which he disapproved.

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Can I refer you first to page 3897?

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This is a memorandum of a meeting that Mr. Stafford had with you on the 20th of March 1991. Just to put it in context and in fairness to you, it is at this meeting which Mr. Stafford says he was told, for the first time, about this payment to Mr. Burke. Now, we will go to another page which is a typewritten transcript of this document for ease of reading. It is 6300.

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A. I think this is where Mr. Stafford and myself parted our ways may be.

402 Q. It may well be. The date on the top is the 20th of March 1990, but we believe that it is in fact the 20th of March 1991.

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On the third line of that document you will see he writes in "Burke ú35,000, equals which was "which was supposed to mean "plus ú5,000 FF", isn't that right?

A. That should be RTE.

403 Q. Yes. But he is quite clearly talking about the payment to Mr. Burke, isn't he or a payment to Mr. Burke?

A. If that is his sheet, yes.

404 Q. And this was written within a month of you having, with his assistance, got out ú40,000 from the company?

A. Is this Mr. Stafford's sheet that I am looking at.

405 Q. No. It is a typed transcript. Do you want to look at his original handwriting?

A. If you don't mind, yes. No. The one that is on the

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screen will do me.

406 Q. That is a typed transcript of Mr. Stafford's handwriting just for ease of reading?

A. Pardon me. I didn't, I didn't know Mr. Stafford's typewriter. That is my question.

407 Q. This is what Mr. Stafford wrote?

A. Mm-hmm.

408 Q. It is, it was produced on a Tribunal computer in fact?

A. Yes.

409 Q. By way of a transcript of his handwriting?

A. OK.

410 Q. So he is writing down here, within a month of you having got out 40,000 from the company, and in circumstances where he was claiming that you sewed him money he wrote down "Burke 35,000 plus 5,000 FF"?

A. Yes.

411 Q. He did not write down "1,600 a month by 25 per month", isn't that so?

A. That is what it looks like. Yes.

412 Q. Looking at the bottom of that document, you see that he does an addition calculation of two sums and comes up with a total of 28,986.20 pence?

A. Yes.

413 Q. And the two sums there are 15,652.57 and 13,333.33 pence, isn't that so?

A. That's right.

414 Q. And that 28,986.20 is a sum for which he subsequently sued you?

A. That's right.

415 Q. After the collapse of Century?

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A. Yes.

416 Q. Claiming that you owed him that money?

A. That's right.

417 Q. One of the sums he claimed you owed him was 13,333.33,  
isn't that so?

A. That's right.

418 Q. Being one-third of ú40,000?

A. That's right.

419 Q. Why was Mr. Stafford claiming that you owed him ú13,333.33?

A. Because he didn't give me, because at the rights issue when we were closing I debited himself and John Mulhearn with ú13,333.33 which is the payment to Ray Burke and RTE. He obviously didn't accept it.

420 Q. He didn't accept it?

A. Obviously if he is, if he is saying he didn't owe it to me here. That is when my credit - I was giving credit, I was given credit for the ú35,000 in Century up until the rights issue on the 4th of September. Then that credit was taken away from my capital investment, I think.

421 Q. Yes. Well, Mr. Stafford subsequently referred to this ú40,000 which you received by way of a payment in the form of a cheque from Century on the 22nd of February of 1991. Mr. Stafford subsequently referred to this payment in a statement of instructions to his solicitor when he was instructing his solicitor for the purpose of suing you?

A. What Mr. Stafford did I don't know Mr. Hanratty. But I can assure you that the cheque I got from Century in February or March of '91, was--?

422 Q. '91?

A. '91 I think there was a VAT, VAT on top of it. I think

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there was a VAT, there was VAT on the cheque.

423 Q. Yes, yes the invoice had to claim VAT, because --

A. So it wasn't 40,000 it was 49,000, I think.

424 Q. It was 40 plus VAT?

A. Plus VAT, yeah.

425 Q. Can I refer you to page 591, where Mr. Stafford makes specific reference to this payment which you received in February of 1991 with his assistance. And at paragraph 16 he says: "Mr. Stafford maintained that he was entitled to the sum of ú40,000 in respect of certain payments he had made. He maintained that these payments were in cash, no invoices were issued and no receipts ever obtained. These payments allegedly made on behalf of the company were made without my being consulted or informed. And when I was put on notice of their nature, I refused to accept them or indeed to be associated with them in any manner. However, Mr. Barry pressed his claim against Century in October/November for ú40,000 but on the basis of his own staff costs and following exchange of correspondence with Patrick Taylor of Capital Radio plc on the 20th and 21st of December, 1990 he was paid the following February."

A. I wouldn't agreed with that at all.

426 Q. He is quite clearly referring to the payment that you received in February of 1991, this is obvious?

A. Yes.

427 Q. He is quite clearly referring to as a payment to which he disapproved, effectively describes it in the same terms as he always described the payment to Mr. Burke, isn't that right?

A. I think he approved of my February payment, didn't he

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assist me to get it?

428 Q. He assisted you in getting the money out of Century?

A. Yes.

429 Q. And he is referring to that money now as a payment of which he disapproved?

A. Well --

430 Q. In other words, that the purpose for which the money was being paid back?

A. That is not consistent. I don't understand that.

431 Q. What I want to know Mr. Barry and what I want you to assist the Tribunal with?

A. Of course.

432 Q. Why were you getting a second €40,000 out of Century?

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MR. WALSH: Sorry Sir, just may I make a suggestion here.

Some of these were questions were put to Mr. Stafford. I think Mr. Stafford's reply to these questions should be put to the witness because when Mr. Stafford was asked about these questions he said that there were two separate sums. It wasn't just the one sum.

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MR. HANRATTY: Mr. Walsh can do that in due course. I do not have any single page of every single transcript at my finger tips.

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MR. WALSH: It is a wrong factual premise to be cross-examining this witness that it is one the €40,000 that we are talking about. The evidence is there were two separate sums. The first sum Mr. Stafford gave evidence was there was €40,000 for the Management Services of Mr.

Barry that was agreed and paid for by Century via Capital and that the other sum of ú40,000, which is the subject matter of the instructions to the solicitors and all the other documentation is a different ú40,000 altogether. That was Mr. Stafford's evidence, be it right or wrong.

MR. HANRATTY: I am simply putting to the witness what is contained in this document. I am putting to the witness that he received in addition to having taken credit for ú35,000 and ú5,000, that he also subsequently received a further payment of ú40,000. That is all I am putting to the witness at this stage.

A. Well, that is correct. I did receive the ú40,000 plus VAT for my services rendered and I did take credit for the 35 plus 5 and that credit was taken away from me the day of the rights issue with Capital.

433 Q. What I am saying to you is at that when Mr. Stafford identifies and discusses this payment of February of 1991 with his solicitor, he is not identifying it as a payment for services rendered?

A. Mr. Hanratty, I have no role whatsoever about what --

MR. GAVIGAN: Sorry to interrupt the witness in mid-flight. I have taken instructions from Mr. Stafford precisely in relation to that paragraph. He informs me that his evidence was that he was, he admitted in evidence that he was incorrect in relation to the ú40,000 referred to here in.

MR. HANRATTY: I think from recollection Sir, I put this

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specific paragraph to Mr. Stafford and the gist of his evidence, I am summarising it from recollection, I am subject to correction, was that he did not mean to write down what was meant, what was written down, and it did not accurately reflect what he was seeking to convey to his solicitor. I think that was the gist of his evidence. We can get the transcript in due course and come back --.

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CHAIRMAN: That is what I was going to suggest. We'll pass from it at the moment and check the transcripts. I don't want any unfairness through an error of recollection. We will check the transcript, get the situation resolved and come back to it to the witness?

A. Chairman, can I make my position clear here?

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CHAIRMAN: Certainly?

A. I am saying that the €35,000 plus €5,000 to RTE was a cash payment and the €40,000 plus VAT that came back to QAM from Capital Radio was a totally different thing and it was related to work, irrespective of whether there was proper documentation within the company accounts for it or not, work carried out by me for Century Radio.

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CHAIRMAN: I follow that all right. I have no problem with that. The question is what exactly was this €40,000 for? You say it was for work carried out for the company?

A. Without a doubt.

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CHAIRMAN: And you say it was, it was pointed out to you that there are no vouchers, for want of a better word, --



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A. Chairman, I fully appreciate that.

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CHAIRMAN: Presented to the company. That is as I understand the --

A. In all fairness, let's say there is a voucher, there is a voucher I believe which went to Patrick Taylor outlining 25 weeks at ú1,600 a week plus VAT. May be that wasn't sufficient, may be we should have been more - but as I explained, we had other things on our mind at the time.

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434 Q. MR. HANRATTY: I think what you are referring to, Mr. Barry, is the invoice that the company insisted on receiving when the Board decided that the money would be paid.

A. Well, whatever piece of paper.

435 Q. I mean I suggest to you that is not a voucher. It doesn't, in any way, support the basis of the claim?

A. OK. Then we were negligent and we should have done better.

436 Q. Could we just look at the ú5,000 for a moment.

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MR. CONNOLLY: Sir, I wonder before we move off the topic for the case of good order if we could refer to the invoice which is dated the 21st of February 1991.

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MR. HANRATTY: If My Friend could tell me the page?

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MR. CONNOLLY: It is CENT.COM 1-16-30.

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MR. HANRATTY: The page number?

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MR. CONNOLLY: The only reference I have is CENT.COM  
1-16-30.

437 Q. MR. HANRATTY: We will have to do a search for that. Could  
we just, for a moment, concentrate on the ú5,000 element?

A. Yes.

438 Q. Now, we know that you received ú26,250 by way of cheque  
from Century in June of 1989?

A. That's correct.

439 Q. And we know that that included the ú21,250 to Mr. Taggart,  
and ú5,000 to Fianna Fail?

A. That's correct.

440 Q. And it appears that this was a reimbursement to you for,  
among other things, the ú5,000 which you had paid to Fianna  
Fail?

A. Yes, probably the bank draft you just showed, yes.

441 Q. In the same month?

A. Yes.

442 Q. Now, we also know that you took credit for ú5,000 in the  
second capital investment or the third capital investment  
which you made in January of 1990. Do you remember that,  
the 25 less 213 less 5?

A. I am not sure on that. Can I see the sheet?

443 Q. The ú19,987 pounds. Do you remember, that was your 25 less  
5?

A. That is my 25 less 213.

444 Q. We can leave aside the 213. We know that is there was 5  
given credit for. We know there was a second five that you  
were given credit for?

A. That was the RTE five.

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445 Q. The third or if the payment of ú40,000 was in fact a 35 and a 5 and I have heard what you have said about it, that would mean that you got a third five out, isn't that right?

A. No, two 25's I believe.

446 Q. You got one by taking credit and one in a cheque for 26,250?

A. Could you repeat that.

447 Q. 26,250 was the first five?

A. Of that the 21 plus the 5 for Fianna Fail.

448 Q. The 19,987 was the second five?

A. That was the second five, yes.

449 Q. Now, I know you have told us, I appreciate your evidence is that the ú40,000 which you received in February of 1991 was for services rendered?

A. Yes.

450 Q. Did you have any discussions with Mr. Taylor at the time that Capital were coming in in relation to this matter?

A. I can't honestly recall, but I mean Mr. Taylor was fully aware of the work that I had put in to the company.

451 Q. But he says he wasn't aware of any work for which you were owed ú40,000?

A. May be, that is his recollection.

452 Q. But would you agree with me that you never told him at the time of the negotiations that you were claiming to be owed ú40,000?

A. I can't say I wouldn't be one hundred percent sure.

453 Q. Well, he himself --

A. If it is not in the disclosure letter, if he says it, it looks as if I didn't.

454 Q. Well it certainly isn't in the disclosure letter, I think

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his position is --

A. Well, then I didn't. I am sorry I didn't.

455 Q. Yes. Can we just deal with the ú21,250. That was a payment which you made to Mr. Pascal Taggart on the, I think it was the 27th or 28th of December, of 1988?

A. Yes.

456 Q. And that was for the investment in Dublin 1?

A. That's right.

457 Q. Can you just explain to us what that was about?

A. That was an application for a local license.

458 Q. Yes?

A. In Dublin, that Jim Stafford, John Mulhearn and myself were going to have an interest in and we approached Pascal Taggart. I think I approached him. I think it was Mr. Mulhearn suggested, because I didn't know Mr. Taggart at the time, and I went and I met with him, and we discussed the possibility. He said he was interested. Then he went about putting a presentation together. We gave him a lot of information from our document that we had produced for the national station, and he then hired a company called "Peter Owens Advertising Limited" to prepare the document. And at the end of the day we had a falling out because the figures that he produced, Mr. Stafford didn't agree with, and he said they were far too rich for a local station and the deal fell out of bed.

459 Q. Well, first of all is it your position that this was an intended investment by yourself, Mr. Stafford and Mr. Mulhearn?

A. Yes.

460 Q. Mr. Stafford has given evidence that this was an intended

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investment for Century Communications Limited?

A. I don't --

461 Q. And in other words it was the company that was making the investment?

A. I don't think that Century Communications, was it even formed at the time? I am not too sure.

462 Q. Mr. Crowley, who was the Chairman of the company, said that he knew nothing about it?

A. I didn't understand that it was, I thought it was a matter for the three of us. I could be wrong there. Mr. Stafford would be more accurate about this type of thing than me.

463 Q. Was it your intention to put funds up for this, your own funds?

A. It was. I didn't think it was going to be a beg deal this one.

464 Q. In any event, we know that €21,250 found was paid to Mr. Taggart. What was that for?

A. That was for the preparation of the document for the IRTC.

465 Q. Yes. And Mr. Taggart at the time was an accountant in practice?

A. That's right.

466 Q. Mr. Taggart has told us that he was engaged, essentially, as a professional consultant to put together a proposal?

A. Yes.

467 Q. And to do whatever research and to prepare whatever figures were necessary for that purpose?

A. Well, I feel that we probably had a lot of it done, with the Century document. I think we assisted him on it.

468 Q. Well, he says, for example, that he engaged another consultant in Dun Laoghaire to do market research?

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A. I wasn't aware of that, no.

469 Q. You weren't aware of it?

A. No.

470 Q. But he says that the figures they put together were, in his opinion, the appropriate figures and the relevant costs for a local radio station?

A. There was a disagreement between us over the figures.

471 Q. And he says that he decided to, as it were, pull the plug on the venture, certainly as far as his involvement was concerned because in view of the fact--?

A. Yes.

472 Q. -- as he understood it you were not prepared to put up the kind of money he considered were necessary, he didn't think it would work?

A. I don't think I would have any disagreement with that, no.

473 Q. He therefore did pull the plug on it and that was the end of it?

A. That was more or less it, yes.

474 Q. He says that in his opinion if it had gone ahead it would have been seriously underfunded?

A. Well, Mr. Hanratty, I don't know, you know that is a very debateable question. I mean Century was too rich with you know, - that is a different discussion.

475 Q. Mr. Laffan the Chief Executive of Century has said that in his opinion Century was underfunded?

A. I would disagree with Mr. Laffan.

476 Q. You don't believe that was it underfunded?

A. I don't believe it was underfunded. I believe in the long run it was underfunded but it was underfunded because there was too many people employed in the station.

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477 Q. You know that a document was prepared, the effect of which was to make it appear that Mr. Taggart was in control of Dublin 1 but the effect of which was, in effect, to give you control of Dublin 1 and Mr. Stafford?

A. Yes.

478 Q. And that the reason for that document appears to have been to conceal your involvement and that of Mr. Stafford from the IRTC?

A. That's right yes. That was wrong, that was similar to the John Mulhearn thing. I would put my hands up and say that was the wrong thing to do.

479 Q. You didn't appear to have any compunction about misleading the IRTC, if I may say so?

A. I think in that particular one we thought if we had our own on the wall for the national license it might prejudice it for getting- it was the wrong thing to do, Mr. Hanratty. I have to accept that. I wouldn't, I wouldn't do it again obviously.

480 Q. Without going into it in detail Mr. Barry, it appears from the records of Century, that the question of what this ú26,250 was for was raised on a number of occasions, in the first instance by Ms. Hynes in 1989 and also by Mr. Laffan?

A. I wouldn't be, if you say so, yes.

481 Q. Well,?

A. I don't object to that.

482 Q. It seems fairly clear that it was put into a suspense account?

A. That's right, yes.

483 Q. And it also seems clear that a number of queries were raised as to what it was for which were referred to you and

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which were not answered, as it were?

A. I don't think they would be referred to me. Jim Stafford and Laurence Crowley would usually deal with the accounts.

484 Q. Well the documents record that they were referred to you?

A. May be they were. I would then return, refer back to Jim Stafford about it, because he was the financial man.

485 Q. And in the, in the cheque payments journal, while the figure of ú26,250 was entered there was no entry as to who it was paid to?

A. That --

486 Q. The evidence has been that Mr. Gaffney, who was the auditor in Touche Ross, the auditors of the company, preparing the audited accounts of the company, he subsequently raised queries about this figure, again in 1990 with Mr. Crowley who, in turn, raised them with yourself and Mr. Stafford. Do you remember this?

A. I don't remember it.

487 Q. Do you not remember anything about there being a query as to why was it that there was no explanation for the ú26,250?

A. The one thing I remember about the ú26,250 was that I got a cheque from Century, I think, in June of '89 which I lodged to was 26,250 because the cheque originally came out of QAM, I think in December of the same year I re lodged the 26,250 back into Century because I must have been asked to do so by somebody in accounts.

488 Q. Well, what actually happened was that you first got paid 26,250 on the 20th of June of 1989. A number of queries were raised and the amount was put in a suspense account, and for some reason which I was about to ask you, you



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repaid this figure or QAM at least repaid this figure in  
January of 1990?

A. No, sorry I paid it, I paid it out initially in '88.

489 Q. Century paid it out to QAM?

A. No. Just let me finish. I will go through - I paid it  
out initially in '88 on behalf of Jim Stafford and John  
Mulhearn.

490 Q. You paid out ú21,250 in '88?

A. That's right.

491 Q. Century paid you 26,250 in June of '89?

A. Yes in '89, that included Fianna Fail.

492 Q. That included the 21?

A. Plus 5.

493 Q. The 26,250 went from sent to QAM in June '89?

A. That's correct.

494 Q. 26,250 went back from QAM to Century in January 1990?

A. In December was it?

495 Q. No, it was in January of 1990?

A. May be it was, yeah.

496 Q. Why was it paid back by QAM to Century?

A. To be honest with you, I must have been asked to pay it  
back by the accounts people in Century. May be it was just  
an accountancy thing that they wanted to clear up to the  
accounts for the end of year or something. I was asked to  
pay it back and I paid it back. I got it back again, if  
you know.

497 Q. Well, was it paid back on the basis that this was not an  
expense appropriate to Century?

A. No, I don't recall that because I got the money back again  
in December the following year may be.

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498 Q. No. It was December of the same year, December of 1990?

A. Yes, yes.

499 Q. After Capital had made their investment?

A. Yes.

500 Q. What was Capital told about the 26,250?

A. I can't remember really, other than it was a sum that was due to me or to QAM. I don't think there is any question about that.

501 Q. Let's go back to January 1990, when it was repaid by QAM to Century. Obviously somebody came looking for it for some reason?

A. I can't remember, to be honest with you. I must have been asked by somebody in accounts that this was it, that was in a suspense account. It looked bad in the books. The company was in a dodgy position with the bank at the time. May be it was something done from an accountancy point of view.

502 Q. Why would it "look bad in the books"?

A. It was an extra, it would make the company 26,250 quid worse off.

503 Q. Undoubtedly so, but it was, on your evidence, an expense legitimately incurred by Century?

A. Yes.

504 Q. Is it the position that the reason that was paid back was because it wasn't, in fact, supposed to be an investment by Century, but it was supposed to be an investment by yourself, Mr. Mulhearn and Mr. Stafford?

A. Honestly, Mr. Hanratty, I can't recall that. I don't think there was anything sinister in it. I think it was an accountancy thing because I got the money repaid back to me

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eventually.

505 Q. We know that what was paid back to you eventually included the  $\text{€}5,000$  to Fianna Fail?

A. Yes, that was part of that 26,250.

506 Q. So why, you know, was the  $\text{€}5,000$  donation to Fianna Fail being paid back, if it was agreed between the three investors that this was a donation from the company, and it was in fact paid by calm on behalf of the company and then reimbursed by the company by this cheque, or included in this cheque of QAM of June 1989 of 26,250? Why would it have been paid back, I am talking about the 5 now in January 1990?

A. Because that was the figure that was in the suspense account. It was 26,250 was in the suspense. I am sure it was to clear up that matter.

507 Q. We know that there were two elements in that figure?

A. Yes.

508 Q. In the suspense account?

A. Yes.

509 Q. One was the Dublin 1 money, one was the  $\text{€}5,000$  to Fianna Fail?

A. Yes.

510 Q. But of course when the reimbursement was made, both of those figures were reimbursed?

A. That's right.

511 Q. So why was it that the  $\text{€}5,000$  donation to Fianna Fail was being reimbursed in January of 1990 by QAM to Century?

A. I cannot give you an honest answer to that. I am just assuming that somebody in accounts said that, "this figure is causing trouble, can we clear it up". I

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might have discussed it with Jim Stafford the cleanest way out of it was me to re lodge it.

512 Q. It is obviously an issue that came up and had to be the subject of discussion between somebody?

A. Yes. I can't fully recollect it, Mr. Hanratty.

513 Q. Why was it that was paid back again by Century to QAM in December 1990?

A. Because QAM were owed it.

514 Q. But if they were owed it why did they pay it back in January?

A. That is the question I can't answer for you. The only, the only stab I can have at it is that probably somebody in accounts wanted to clear up this figure for some accountancy reason and I went along with it.

515 Q. Well, Mr. Barry --

A. I can assure you there was nothing sinister in it.

516 Q. I am not suggesting there was. I am simply trying to understand it. It is quite obvious that in respect of these transactions a number of things would have to have happened in the normal course of events. Somebody in Century would have had to start requesting a repayment of a payment that had already been made. They, presumably, would ultimately have had to discuss it with you. You would have had to make a decision that it would, in fact, have been repaid. Somebody would have had to write out a cheque from QAM to actually make re payment?

A. Yes.

517 Q. All of these transactions would have appeared not only in the books of Century, but also in the books of QAM?

A. Yes.

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518 Q. They would have appeared in the cheque payments journal of QAM. They would have appeared in, presumably in the debtors ledger of QAM and elsewhere in the accounts, both of QAM and of Century. So it is not something that could easily escape your attention and it is something which I suggest to you you must have been aware of at the time, and you must have been aware of the reason at the time.

A. I am not aware of the reason for it, no.

519 Q. Do you accept that you must have approved its payment?

A. I have no doubt.

520 Q. And can you not offer any explanation to this Tribunal as to why you would have approved a repayment of ú26,250, which had been made to QAM by Century in June of 1989?

A. Other than obviously somebody in Century accounts either asked Jim Stafford for it or asked me for it, and we, and I agreed to pay it back to clear up an accountancy problem.

521 Q. Well, once it was repaid did you then consider that you were again owed ú26,250?

A. Absolutely.

522 Q. Well, did you tell Mr. Taylor about this when he was coming in?

A. I can't recall, but I don't think there was any difficulty in getting the ú26,250 from Century in December.

523 Q. You got it back in December?

A. Yeah.

524 Q. And on what basis did you get it back?

A. On the basis that it was owed to QAM.

525 Q. And was Mr. Taylor informed what was in the 26,250?

A. I can't remember that, Mr. Hanratty. I don't know that he got a detailed explanation for it. I can't remember.

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526 Q. It appears that a certain explanation was given for the shortfall in the capital account which we have been earlier discussing, to Mr. Taylor in the disclosure document. There were certain loans you made by the Directors to the company, isn't that right?

A. There were certain loans, yeah, during the period of the May, June when the company was- when the three of us- we made money directly to keep, to pay the wages.

527 Q. Yes. We know from your evidence this morning, for example, and indeed from Ms. Hynes' records, that there was a shortfall in the capital account. We know that part of that shortfall was the fact that Mr. De Burgh and Mr. Wogan had not yet paid their investments in at the particular time that she wrote her letters, isn't that right?

A. I don't know. I am not familiar with the dates of the letters.

528 Q. You can take it that it was?

A. Yes.

529 Q. We also know that part of the shortfall was, as you have told us, because you withheld ú35,000 and ú5,000 and ú213 for the reasons that you have already told us. They presented themselves as a shortfall on the capital account, isn't that right?

A. At what stage.

530 Q. At the stage that Ms. Hynes was raising queries in 1990 in relation to the shortfall on the capital account?

A. Was that prior to Capital?

531 Q. Yes?

A. There would have been a shortfall in the accounts then.

532 Q. Yes. From her point of view, the capital account should,

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there should be ú900,000 in it?

A. Let's not get confused here. Before Capital Radio.

533 Q. Before Capital Radio came in?

A. Yes.

534 Q. She was writing memos to various people saying that there was a shortfall on the capital account?

A. Yes.

535 Q. We know that the reason that she considered that there was a shortfall on the capital account was because from her perspective the capital account should have ú900,000 in it but it didn't?

A. If she says so.

536 Q. The reason that it didn't have ú900,000 in it was- among others- that you withheld 35, and 5 and 213?

A. Yes, that could be the reason.

537 Q. And also because Mr. De Burgh an Mr. Wogan --

A. When you say "withheld" now, you see I credited myself.

538 Q. Took credit for?

A. Took credit for.

539 Q. I am not saying it in any pejorative sense. I am simply saying it by way of what the shortfall, as she saw it, was made up of?

A. Yes.

540 Q. And that shortfall was never made up in the sense that the equivalent sums were never paid in by you because you considered at that time that you were entitled to take credit for these sums, isn't that so?

A. That's correct.

541 Q. And at the point in time that Capital came in with their investment?

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A. Yes.

542 Q. That situation had not changed?

A. Oh, I think it had. I think that the credit that I was claiming for the 35 and the 5 was not reflected on the day that we did the rights issue with Capital. The credit was taken away from me on that day I believe.

543 Q. In what way?

A. Well, I wouldn't have billed Jim Stafford and John Mulhearn with the 13,333 --

544 Q. It wasn't taken away from you in the sense that you were never required to put the money in. I mean the 35 and the 5 and the 213?

A. I believe that, that the credit, that I had given myself in the capital account, as you call it, was taken back from me on the day of the rights issue with Capital Radio.

545 Q. Well, do you mean by that then that you put the money in, that you put in another ú35,000 and another ú5,000?

A. I am sure I can help you with that Mr. Hanratty, but you might give me a few minutes or we will come back to it.

546 Q. Well, we will come back to it certainly in due course?

A. Yes.

547 Q. But as far as we understand it, you never put in that capital and therefore the credit --

A. I think that is wrong. I think I had to have put in the capital, because Capital Radio wanted all the share capital paid up before they invested.

548 Q. Yes. So?

A. So that is why I - it went back then to John Mulhearn, Jim Stafford and myself and we --

549 Q. Perhaps if we return to this tomorrow you might be in a



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position to inform us then how much you put in?

A. Yes, I am sure --?

550 Q. In cash terms in September, presumably, of 1990?

A. I am sure I can help you there Mr. Hanratty.

551 Q. Perhaps we will leave that over until you have had an opportunity to do that?

A. Yes, I am pretty sure of my facts.

552 Q. MR. HANRATTY: Could we have the invoice - sorry, Mr.

Barry just to go back to this invoice which somebody in the room requested. This is the invoice which was raised in connection with the ú40,000 payment in February of 1991.

Do you see the invoice on screen. It is a

"Quality Artistes Management" invoice. It is dated the 27th sorry, the 2nd of February 1991. It is addressed to Century Radio. It is for ú40,000 plus 23 percent VAT, isn't that right?

A. Yes.

553 Q. Making 492. Now, we understand the payment was actually made on the 19th of February of 1991, isn't that so, and --

A. Well the cheque says that, does it?

554 Q. Yes. I think what happened was you were actually paid, you were paid ú40,000 on the 19th?

A. Mm-hmm.

555 Q. And subsequently you were sent a further cheque for 9,000 200?

A. I see.

556 Q. To make up the VAT, isn't that so?

A. That looks like it, yes.

557 Q. And obviously VAT, if this was in respect of services

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rendered, VAT would have to have been applied. You couldn't just claim 40 on its own?

A. Yes.

558 Q. The company insisted on a proper invoice?

A. Yes.

559 Q. And ended up then having to payout 492, inclusive of VAT?

A. That's right.

560 Q. Which presumably it could reclaim?

A. The company could reclaim, yes.

561 Q. Yes. Now, moving on to the transmission charges and therefore moving back in time a little, we know that Mr. Hills was engaged in and was working for you certainly in November of 1988 isn't that so, and had been working some time prior to that?

A. Yes, he would have been working certainly in November. I don't know how long prior to that but certainly in November.

562 Q. We know that Mr. Hills attended, we think, two meetings in November with RTE personnel?

A. I wouldn't remember that.

563 Q. Well, he has told us that he did and that he was provided with RTE's figures?

A. Yes.

564 Q. Now, he has also told us that he never, at any stage, produced a figure of ú375,000, which is the one that Century included in their submission, isn't that so?

A. He has told you that?

565 Q. No, Century included 375 in their profit and loss account in their submission?

A. We included the 375 in our submission to the IRTC.

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566 Q. Mr. Hills has given evidence to this Tribunal that that was not his figure?

A. I wouldn't accept that.

567 Q. You wouldn't accept it?

A. No. There was no place else we could have got that figure except from between himself and the IBA. We made a presentation to the inaugural hearing to the IRTC, in January of 1989, and Ray Hills was on the platform with us as our transmission expert and consultant, and he was fully aware; in actual fact I am sure he wrote the section regarding transmission in the document.

568 Q. Yes he wrote the text and he sent it by fax to Mr. Stafford?

A. As far as I am concerned, he was one hundred percent behind the figure, because if any questions were going to be asked about our transmission charges on that particular day, Mr. Hills would be the only expert among us that could have --

569 Q. Whether he was behind it or in front of it, Mr. Barry, what I am saying to you is that he didn't produce it?

A. I --

570 Q. I don't

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MR. WALSH: I don't think that is an accurate summary. I know we don't have transcripts before us. That is not an accurate summary of Mr. Hills' evidence. Mr. Hills gave evidence that he had worked on RTE documents and he had done his own figures and they came to something like ú300,000. Then Mr. Stafford added ú75,000 to that to cover overheads that made up the 375. But the doodles that were on an RTE schedule were used. I remember he gave evidence

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of his homework, using the RTE quotation as the basis for the homework. The handwritten figures and we went through it at great detail at the time. That was where his calculations came from, there were a range of figures. There was a high figure and a low figure and a medium figure.

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Your Lordship will recall --

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MR. HANRATTY: I think, Sir, this is a matter on which there should be absolutely no ambiguity whatsoever. Mr. Hills absolutely denied that he produced a figure of 375,000.

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CHAIRMAN: That is my recollection also. Wait now gentlemen, this is a difference of recollections and there is a transcript and we are going to have to find it. It is certainly my recollection that Mr. Hills said that the figure of 375 was not his figure.

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MR. WALSH: But 300 was his figure.

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MR. HANRATTY: No. He denied that as well.

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CHAIRMAN: No, well at least I believe he did. I don't want to get categoric without having a transcript. So that as a matter of fact we are now coming up to ten minutes to four and perhaps unless there is something you can deal with between now and four o'clock, because I have reason to rise sharply this afternoon

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MR. WALSH: I have find found a transcript reference for the other disagreement between us on what the evidence was of Mr. Stafford that is his evidence on Friday the 22nd of December. That is the day he dealt with the ú40,000 and the two sums of ú40,000. And the instructions to his solicitors. You were asking Sir, that we get a transcript overnight. It is in the day for Friday the 22nd of September. That was when that was dealt with by Mr. Stafford.

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CHAIRMAN: We will take that note down.

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MR. WALSH: I haven't yet got a precise date for Mr. Hills, Professor Hills' evidence.

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CHAIRMAN: It is certainly my recollection that Mr. Hills said that he, that he had never actually gone back, that he had never got the figure from, or was it the other way around? Certainly I am relatively satisfied that there is no professional basis, may I use that phrase, for the 375.

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MR. WALSH: I think as far as --.

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CHAIRMAN: It is a composite figure. I know Mr. Stafford says he worked out and claim to a figure of 295.

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MR. WALSH: That's correct.

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CHAIRMAN: He rounded it up to 300 and added 75,000 so as

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it were, on the bargaining counter, if I may use the phrase. That is that is what I recall about it. Now I do not, at this moment, recall where he got the 295 from. That was certainly the figure from which Mr. Stafford started.

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MR. WALSH: Yes, that's correct, Sir.

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CHAIRMAN: At this moment I just can't recall what that was. That must be on a transcript.

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MR. WALSH: I think as far as Professor Hills, that he did not actually produce a definite report that said on the bottom line 300 or 375,000. The just of his evidence on my interpretation was that he --

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CHAIRMAN: Far be it for me to- without having a clear recollection and the transcript read --

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MR. HANRATTY: I think we will get the transcript overnight, Sir. I should say that you will recall that Mr. Hills evidence was lead by Mr. O'Neill. My understanding, from a reading of the transcript, was that Mr. Hills was absolutely clear that neither the 295 nor the nor the 300 nor the 375 were his figure and in relation to Mr. Stafford's evidence on the point, he was unable to point to any document where Mr. Hills is recorded as having agreed that or produced that figure. So I think we can dig up both of those transcripts overnight.

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CHAIRMAN: Without being categorical, I believe you are correct. I don't want to be categorical. There is a transcript there. We have to find it.

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MR. HANRATTY: Perhaps we will just leave it at that, Sir. I wish to canvass this particular point. I think rather than proceeding on an ambiguity I think we would want to clear it up.

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CHAIRMAN: Half past ten tomorrow morning. Continuing this witness?

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MR. HANRATTY: Yes.

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THE HEARING THEN ADJOURNED UNTIL THE FOLLOWING DAY, TUESDAY, THE 5TH OF DECEMBER, 2000.

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