

1 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 31ST OCTOBER,  
2 2001, AT 10:30 A.M.:

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4 CHAIRMAN: Good morning everyone.

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6 MR. HANRATTY: Mr. Owens, please.

7 .

8 MR. FINLAY: Mr. Chairman, I wonder, before the  
9 evidence of Mr. Owens continues, if I might briefly  
10 announce myself.

11 .

12 I appear on behalf of Mr. John Caldwell, instructed by  
13 Miley & Miley. Mr. Caldwell is here today because, as  
14 you know, Mr. Chairman, he is specially fixed as a  
15 witness for today.

16 .

17 CHAIRMAN: Yes.

18 .

19 MR. FINLAY: I understand that Mr. Owens is still  
20 giving evidence. And I understand from colleagues that  
21 it might take a little while. I was wondering, in  
22 those circumstances if you might possibly indicate a  
23 time not before which it might be appropriate for  
24 Mr. Caldwell to be available.

25 .

26 He is here, of course, at the moment.

27 .

28 CHAIRMAN: One moment, Mr. Finlay.

29 .

30 MR. HANRATTY: I think it would be safe enough to say

1 not before half past 11.

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3 CHAIRMAN: Half past 11, Mr. Finlay.

4 .

5 MR. HANRATTY: As you are aware, Sir, you usually take

6 a break around that time. So if you wish to say not

7 before 12 o'clock.

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9 CHAIRMAN: We'll say not before 12.

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11 MR. FINLAY: Most obliged.

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13 CHAIRMAN: Most obliged. Thank you.

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1 MR. HUGH OWENS RETURNS TO THE WITNESS-BOX AND CONTINUES

2 TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

3 .

4 1 Q. MR. HANRATTY: Good morning, Mr. Owens.

5 A. Good morning.

6 2 Q. Yesterday we had dealt with the various land  
7 transactions in which you had an involvement, up to and  
8 including the transaction in St. Stephen's Green, and,  
9 as you are aware, there was a borrowing in the  
10 St. Stephen's Green transaction by Green Trees Limited,  
11 which was used to discharge the first two payments that  
12 were made on the Sandyford property.

13 A. Correct.

14 3 Q. Now, can I ask you, in relation to the Sandyford  
15 property, what was the essential nature of the scheme  
16 which you put together?

17 A. Well, in relation to the Sandyford property, the money  
18 was coming from Jersey, so it was natural for the land  
19 to be bought by a Jersey company. There wasn't any  
20 written scheme about it at all.

21 4 Q. Then, what was your role, if any? You did have a role,  
22 clearly?

23 A. My role was to get a company formed, which was Canio.

24 5 Q. Yes.

25 A. And I am not sure where Ardcarne came into it, except  
26 that Canio, I think, was a subsidiary of Ardcarne, and  
27 Ardcarne, then, was owned by three other companies on  
28 behalf of the three individuals.

29 6 Q. Yes. Well, when you say "The money was coming from  
30 Jersey", by that I take you to mean that the €70,000

1 each and the ú50,000 each, which each of the three  
2 investors put in, came from accounts which were held in  
3 Jersey?

4 A. Yes.

5 7 Q. As we understand it, the contributions made by Messrs.  
6 Brennan and McGowan were originally held in Bruton  
7 Street, and transferred over to Jersey?

8 A. I am not aware, really, where they held their monies -  
9 once they put their monies into Jersey, I didn't care  
10 where they were.

11 8 Q. Yes. What was the extent of your instructions in  
12 relation to their intentions vis-a-vis this particular  
13 development?

14 A. Well, first of all, the land would go into Jersey, and  
15 then eventually would be sold back to Irish companies  
16 for development.

17 9 Q. Yes. And were they to be sold back at the price for  
18 which they were purchased, or at a premium?

19 A. Oh, at a premium.

20 10 Q. Yes. As you've indicated, there were two companies  
21 involved. There was Canio Limited and Ardcarne Limited?

22 A. Yes.

23 11 Q. Can you explain what the rationale or reason for that  
24 particular structure was? As we understand it, Canio  
25 was to hold the property on trust for Ardcarne Limited?

26 A. What Canio, in fact, did - became the legal owner of  
27 the land --

28 12 Q. It did?

29 A. Yeah.

30 13 Q. But Canio was owned by Ardcarne. And it appears that a

1 Declaration of Trust was executed indicating that the  
2 lands were held by Canio on trust for Ardcarne.

3 .

4 I am not sure that anything turned on it in the  
5 ultimate conveyancing, but that is the structure that  
6 was put in place.

7 A. I don't see - I personally can't, at this stage - I  
8 don't see any significance in it, or why it was done  
9 that way.

10 14 Q. Yes. Do you have any idea why Ardcarne was inserted at  
11 all, given that Canio itself or - sorry, given that  
12 Ardcarne itself was owned by three Jersey companies?

13 A. Well, I think that the timing of those companies,  
14 Mr. Hanratty - Canio was incorporated, say, in December  
15 '79, was it?

16 15 Q. Yes.

17 A. And I think Gasche and Kalabracki were incorporated in  
18 the following month.

19 16 Q. Well --

20 A. The whole structure wasn't in place by the time --

21 17 Q. I understand that, in fact, the lands had already been  
22 acquired by the time that Canio was formed?

23 A. Yes.

24 18 Q. What I am trying to understand, if you can help us; was  
25 there any particular reason why another layer was  
26 inserted, in the form of Ardcarne?

27 A. Well, I suppose you could say it's the same as having  
28 two locks on your hall door, that it removes - one way  
29 away from people inquiring who owned the company.

30 19 Q. Well, just on that point. Obviously, in relation to

1 all of these companies in relation to the first five  
2 land transactions, the companies which were formed were  
3 owned beneficially, albeit in the case of Arippe, Mr.  
4 Finnegan and Mr. McGowan were not registered as such,  
5 but appear to have been owned beneficially by the three  
6 partners, albeit that none of them were either  
7 directors or shareholders of the company in question.

8 Isn't that right?

9 A. Yes.

10 20 Q. In the case of company or - sorry, in the case of  
11 Canio, the position was somewhat different, in that the  
12 shareholding in that company through Ardcarne was held  
13 by companies owned by the three individuals?

14 A. Correct.

15 21 Q. Was there any particular reason given to you as to why  
16 these layers of concealment were imposed or required by  
17 them?

18 A. Well, I think at the time I advised them that they  
19 should - their holdings should be in a limited company  
20 in Jersey, rather than individual - as individuals.

21 22 Q. Indeed. But the holding was held not by them, but was  
22 held by partners, in most cases of Bedell & Cristin,  
23 who signed Declarations of Trust that they held them on  
24 behalf of each of the three of them?

25 A. Yes, but the beneficial holding was, in the case of  
26 this transaction, was held by companies, which in turn  
27 were owned beneficially by the individuals.

28 23 Q. Yes. The point I am really trying to get at is that,  
29 quite clearly, that the structure was put in place,  
30 both in relation to the ones in which as individuals

1 they were beneficial owners, and in the case of Canio,  
2 and Ardcar, where the ownership was held through their  
3 own companies, it was done in such a way that their  
4 association, as it were, with the companies could not  
5 be traced by any official search, if you know what I  
6 mean, in an official registry?

7 A. Yes.

8 24 Q. What I am seeking to elicit from you; was any  
9 particular reason given to you by them, particularly by  
10 Messrs. Brennan and McGowan, and particularly, I  
11 suppose, by Mr. Brennan, since he is the person with  
12 whom you had your dealings, as to why they wanted those  
13 layers of secrecy?

14 A. No. I think I advised them that it would be in the  
15 interest of privacy or secrecy, whatever you like to  
16 call it --

17 25 Q. Yes.

18 A. -- that those two companies should be interposed rather  
19 than they appearing as beneficial owners. They never  
20 appeared as the actual owners, always Jersey  
21 individuals who were the shareholders.

22 26 Q. Yes. As I understand your - what you are saying to the  
23 Tribunal in your statement, and as I understand your  
24 evidence yesterday, the various schemes which you put  
25 together were designed to be tax efficient schemes?

26 A. Correct.

27 27 Q. And were designed, as far as possible, to avoid tax,  
28 within the limits of what was permissible?

29 A. Yes.

30 28 Q. They are what is known as tax avoidance schemes?

1 A. Exactly.

2 29 Q. But on the assumption that you are correct in that,  
3 there would therefore be no Revenue reason for the  
4 secrecy or the various layers of concealment of their  
5 involvement in these Jersey companies, isn't that  
6 right?

7 A. Yes.

8 30 Q. Did they give any other reason as to why they wanted  
9 this secrecy?

10 .

11 MR. HAYDEN: Sorry, Sir, if I might just object in  
12 relation to this.

13 .

14 Mr. Hanratty has mentioned a Revenue reason. But also  
15 the witness, he's asked the witness the same question  
16 twice, as to why there was these layers, to which the  
17 witness has answered twice, because he advised them in  
18 the interests of "privacy or secrecy", "whatever you  
19 wish", is the phrase he used. This is the third time  
20 for the same question. And at this stage, Sir, I  
21 wonder if it is appropriate that there be a number of  
22 occasions that the same question is put to this  
23 witness, when he has clearly answered the question.

24 .

25 It was on his advice, in the interests of secrecy or  
26 privacy.

27 .

28 Now, I understand the issue, Sir, in the context of the  
29 structure and where the monies went and didn't go, and  
30 why there was the necessity --



1

CHAIRMAN: In my opinion, the question is perfectly relevant.

4

MR. HAYDEN: In relation to which Term of Reference, Sir?

7

CHAIRMAN: It is relevant to requiring to know what was happening. We are investigating the entire transaction. And that's the matter. Proceed, Mr. Hanratty.

12

13 31 Q. MR. HANRATTY: You've indicated that there is no particular Revenue reason, or there was no particular Revenue reason for the secrecy or the layers of concealment and the arrangements which were made which did not reveal the involvement of Messrs. Brennan and McGowan, and also, of course, Mr. Finnegan.

19

20 What I am really seeking to elicit is, did Mr. Brennan, 21 or indeed any of the other two, give you any reason as 22 to why they had this requirement?

23 A. No, I advised them that they should have a company 24 which would have its own bank account, et cetera, 25 instead of having bank accounts in their individual 26 names.

27 32 Q. You are referring, I take it, to Canio and Ardcarne?

28 A. No, I am referring to Kalabraki and Gasche.

29 33 Q. Yes. Undoubtedly they did form those companies, and 30 Kalabraki ultimately became Beachside. And those were

1 the vehicles through which the shareholdings at Ardcar  
2 were held?

3 A. Yes.

4 34 Q. But I am talking about the previous ones, all of the  
5 other - the five previous ones, where they didn't have  
6 their holdings in these companies through companies.  
7 They had their beneficial interests in their own names,  
8 but they were not registered as such, because, as you  
9 know, the system in Jersey is that the beneficial  
10 owners are not discernible from search of the register.  
11 The subscribers are, and the subscribers were almost  
12 invariably Mr. Wheeler, Miss Mourant, Mr. Morin, and  
13 on some occasions one or two partners in Bedell &  
14 Cristin. And the invariable arrangement was that  
15 neither Mr. Brennan, nor Mr. McGowan, nor Mr. Finnegan  
16 were registered as a subscriber to any of these  
17 companies, although they were the beneficial owners,  
18 and none of them were registered as directors either.  
19 Isn't that right?

20 A. Correct.

21 35 Q. But they were, nonetheless, the beneficial owners. And  
22 the way that that was achieved was by these partners in  
23 Bedell & Cristin executing a Declaration of Trust?

24 A. Yes.

25 36 Q. In those cases, was there any particular reason why  
26 they wanted to conceal their association with these  
27 Jersey companies?

28 A. Well, in the earlier cases?

29 37 Q. Yes.

30 A. Yes. Again, privacy.

1 38 Q. Well, there is privacy, in the sense that anybody - for  
2 example, in most cases in this country where there are  
3 associated companies; if they are a director, they are  
4 registered as a director. If they are a shareholder,  
5 they are on the register of shareholders, unless there  
6 is a nominee system or a trust involved in the shares.

7 A. Correct.

8 39 Q. And in most cases, in commercial dealings, there is  
9 generally not - there doesn't appear to be a need for  
10 such secrecy as would conceal the identity of the  
11 subscribers, shareholders and directors of the company.  
12 But in this case you are saying that you advised  
13 Messrs. Brennan and McGowan, and I take it not Mr.  
14 Finnegan, but Messrs. Brennan and McGowan that they  
15 should have secrecy in relation to their association  
16 with these companies. Is that right?

17 A. Yes.

18 40 Q. And was that simply because they were off-shore  
19 companies, or was there a specific reason that  
20 Mr. McGowan or Mr. Brennan intimated to you, or a  
21 concern that they intimated to you that was addressed  
22 by these arrangements?

23 A. No, because they were off-shore companies.

24 41 Q. Yes. But there is nothing inherently wrong with having  
25 an off-shore company in itself. Did they, for example,  
26 indicate to you that they wished these companies to  
27 make payments to anybody, and for that reason they  
28 required secrecy?

29 A. No.

30 42 Q. Well, if you had no specific instructions as to why

1           they required such secrecy, and if there was no Revenue  
2           reason as to why such secrecy would have been required,  
3           what other reason was there?

4    A.   I can't remember.

5 43 Q.   But is it your recollection, from what you can  
6           remember, that the initiative or suggestion of this -  
7           these arrangements which achieved this secrecy was  
8           yours rather than theirs?

9    A.   Yes.

10 44 Q.   But when you say you can't remember, you can't remember  
11          what your reason was, is that correct?

12   A.   Well, I've already told you the reason, it's privacy.

13 45 Q.   Yes, but why was such privacy necessary? I mean, for  
14          example, Brennan and McGowan, as you are aware, had a  
15          whole raft of companies in Ireland.

16   A.   Yes.

17 46 Q.   In which you could go to the Companies Registration  
18          Office and find their involvement in various  
19          capacities, directors, shareholders, so on.

20   A.   Business people like to conduct their business in  
21          private. They don't want everybody to be knowing what  
22          they are doing. I mean, that's standard business  
23          practice.

24 47 Q.   Well, it wasn't standard business practice for Brennan  
25          and McGowan, insofar as their Irish companies were  
26          concerned, by and large?

27   A.   Correct.

28 48 Q.   So why did it have to be their standard business  
29          practice in Jersey?

30   A.   Because in the Irish companies they were the registered

1 shareholders, they were the registered directors.

2 Everybody knew that particular company was a Brennan  
3 and McGowan company.

4 49 Q. Yes. But not in Jersey?

5 A. Not in Jersey.

6 50 Q. Did you receive any instructions from Mr. Finnegan?

7 A. No. Well, yes, the reply to that telex of the 14th of  
8 November. I received an instruction from Mr. Finnegan.

9 51 Q. Which one was that? Can you remind me?

10 A. It was the one where Mr. Wheeler sent a telex  
11 regarding, to reserve ú60,000 for --

12 52 Q. Oh, yes. We'll be dealing with that correspondence in  
13 detail in a moment. But apart from that, did you  
14 receive any instructions from Mr. Finnegan?

15 A. Not that I can remember.

16 53 Q. Would you, for example, have been in regular contact  
17 with him?

18 A. I can only positively remember meeting him twice over  
19 the entire period.

20 54 Q. Yes. And would you have assumed that insofar as you  
21 were receiving instructions from Mr. Brennan, that you  
22 were receiving instructions on behalf of all three?

23 A. Yes.

24 55 Q. Yes. In relation to the - if I might generically call  
25 it the "secrecy issue". We do know that there was  
26 correspondence between yourself and Mr. Tracey at one  
27 stage in relation to two particular transactions, one  
28 was the ú350,000 transaction, and the other was the  
29 ú672,000 transaction in relation to Donnybrook?

30 A. Yes.

1 56 Q. And Mr. Tracey had a number of queries from you in  
2 relation to those transactions, which he set out in his  
3 correspondence. If I can just refer you to one of them  
4 in relation to the 350. It's at page 3739.

5 .  
6 In fact, that was a response to an inquiry he had at  
7 page 50 - no. Just bear with me, I'll find the  
8 inquiry. 5054. Yes.

9 .  
10 If you just look at paragraph 1 of that. It's not  
11 terribly distinct, but one of the items - he was  
12 looking at the accounts of Green Isle Holdings Trust  
13 Limited, and he was inquiring from you in your capacity  
14 as auditor of the company. Isn't that right?

15 A. Yes.

16 57 Q. And in Item No. 1 he's - he deals with an issue called  
17 "Land at cost - ú575,628." And he says:

18 .  
19 "As requested in my letter of the 20th June, please  
20 forward a copy of the purchase contract. Analyse the  
21 cost as between purchase price, fees, Stamp Duty, et  
22 cetera."

23 .  
24 And you responded to that by letter dated the 5th  
25 November, 1980. At page 337 - 3739. You gave a  
26 breakdown, which included the price of the leasehold  
27 from the Sacred Heart nuns, the ú350,000 paid to  
28 Bouganville, and Stamp Duty and legal fees and  
29 interest. Isn't that right?

30 A. Yes.

1 58 Q. But in relation to the ú350,000, you described it there  
2 as, "Freehold Bouganville Investments Limited." Isn't  
3 that so?

4 A. Yes.

5 59 Q. That was the subject - that particular one, and indeed  
6 some others were the subject of some further  
7 correspondence, when he wrote to you at page 3742, on  
8 the 20th of November, 1980, and staying with the  
9 numbering, "No. 1: Land at cost - ú575,628.

10 .

11 A. Through what bank account was the ú210,000 paid?" -  
12 the 210 for the leasehold - "And what date was the  
13 conveyance taken from Green Isle direct from the  
14 vendors, Mary Henry and Others?"

15 .

16 Then at "B" he says: "Through what bank account was  
17 the ú350,000 paid? To whom and on what date? From  
18 whom were the 12 shares in Bouganville Investments  
19 Limited purchased, and on what date? What was the  
20 cost, and through what bank account paid and the date?  
21 Let me have a copy of the relevant contract."

22 .

23 And I think you responded to him on the 17th of  
24 December, 1980. You dealt with the queries in relation  
25 to the leasehold interest from the Sacred Heart  
26 Society. And then at - sorry, in what - what you told  
27 him in that paragraph, 1 (A), you said,

28 .

29 "Paid by Vincent and Beatty Solicitors, November 1977.

30 The conveyance was from the Sacred Heart nuns to the

1 company." And you enclose a copy of the apportionment.

2 .

3 But then - sorry, it's page 3753.

4 .

5 And at "B", then, you say:

6 .

7 "The ú350,000 was paid to Bedell & Cristin, solicitors

8 for Bouganville Investments Limited, on the 13th

9 December, 1977."

10 .

11 You say:

12 .

13 "The 12 shares of Bouganville was purchased from LA

14 Wheeler, HO Dart, ER Morin and MR Mourant, three each.

15 The cost was ú12, which was paid by Miley & Miley on

16 the 10th November, 1977. There is no contract. The

17 acquisition of the shares was by correspondence, of

18 which copy was enclosed."

19 .

20 And then you enclosed with your letter a copy of the

21 correspondence which was exchanged between the

22 solicitors on both sides, which you had drafted. Isn't

23 that right?

24 A. May I see the correspondence, please?

25 60 Q. Yes. If you go to page 3754, you actually list out, at

26 the end of your letter, the enclosures. And if you

27 start from No. 4: "Miley & Miley letter, dated the

28 27th of July, 1977.

29 .

30 No. 5: Copy of Bedell & Cristin letter, dated the 4th



1 August" -

2 A. Sorry, I don't think that's up on the screen, is it?

3 61 Q. 3754. Yes.

4 .

5 Start again, at Item No. 4. You can see there, those  
6 are the letters which were, in fact, the letters  
7 drafted by you and exchanged between the solicitors, on  
8 your instructions, on the dates ordained by you. Isn't  
9 that right?

10 A. If I could see the letters, I would know.

11 62 Q. Well, let's just take them one-by-one, then.

12 .

13 If we go to page 160. That's Item 4. And just to  
14 remind you, "Copy Miley & Miley letter, July 27th,  
15 1977."

16 .

17 Page 160. This is a letter, Miley & Miley to Bedell &  
18 Cristin: "We have been instructed by Green Isle  
19 Holdings Trust Limited to write to you in connection  
20 with the above premises. Apparently clients of yours,  
21 Messrs. Bouganville Investments Limited, are the owners  
22 of the fee simple interest in the land, and we will be  
23 obliged if you will let us know whether they are  
24 prepared to sell, and if so, perhaps you would contact  
25 us to discuss terms."

26 .

27 That's the first in the series between the solicitors,  
28 isn't that right?

29 A. And the others are all the same?

30 63 Q. They correspond to the dates set out in the schedule in

1 the letter. And they are, in fact, if you wish to take  
2 my word for it, you can, but they are, in fact, the  
3 letters which were drafted by you and sent by the  
4 solicitors on the dates, and the --

5 A. I accept your word.

6 64 Q. What you are, in effect, doing was sending  
7 correspondence to Mr. Tracey, which is the  
8 correspondence, in fact, which you had yourself drafted  
9 on previous occasions when you were setting up the  
10 scheme?

11 A. Yes. I don't think it was Mr. Tracey who was dealing  
12 with this, actually, Mr. Hanratty. It was the  
13 Investigations Branch we were corresponding with.

14 65 Q. You think he may not have been involved at that point?

15 A. I don't think so. Maybe he was.

16 66 Q. Well, he certainly was involved with the 672, but that  
17 was a separate issue. And it may be that he became  
18 involved in this one at a later stage. He did at some  
19 stage become involved as a liquidator of one of the  
20 companies, I recall that.

21 A. I understand.

22 67 Q. You also enclosed a Declaration of Trust and a site map  
23 at No. 12. Isn't that right?

24 .

25 Then, I think, Mr. Tracey wrote to you, or not Mr.  
26 Tracey, in this case it's Mr. O'Connor, wrote to you on  
27 the 8th of January - I think it's 1984. It might be  
28 '81, I think, it's quite indistinct, but page 3755.

29 And his query in this case was again at 1(B):

30 .

1 "Through what bank account did the company pay the  
2 ú350,000? Was payment made direct to Bedell & Cristin?  
3 Forward a copy of the documents enclosed with the  
4 letter of the 24th October, 1977. Presumably your  
5 clients obtained a professional valuation of the  
6 freehold. A copy is requested."

7 .

8 So that was his query.

9 .

10 And at page 3773 you replied on the 25th of March,  
11 1981, again at 1 (B):

12 .

13 "Payment made to Bedell & Cristin from Green Isle  
14 Holdings Trust book deposit account. Management  
15 agreement and Bouganville Investments Limited's account  
16 at 21st October, 1977, enclosed. No professional  
17 valuation."

18 .

19 I think you are indicating that the ú350,000 figure was  
20 not based on a professional valuation?

21 A. Yes.

22 68 Q. And that you didn't have a professional, or Mr. Brennan  
23 at least didn't have a professional valuation?

24 A. Yes.

25 69 Q. Sorry, Green Isle Holdings Trust, as it were, didn't  
26 have a professional valuation, I presume?

27 A. Yes.

28 70 Q. Is what you would have been intending to convey to him  
29 there?

30 .

1 I did briefly mention this to you yesterday, and as I  
2 understood your evidence, the basis upon which  
3 Mr. Brennan arrived at the figure of ú350,000 was on  
4 the basis of his estimate or guesstimate, whatever it  
5 was, of what the value of the sites would be?

6 A. Correct.

7 71 Q. Presumably, including figures for whatever expenses  
8 were paid out of that figure?

9 A. I don't know.

10 72 Q. What was the point or purpose of that particular  
11 exercise of Mr. Brennan's at that stage, after his  
12 Jersey company having bought the freehold for ú10,000,  
13 then immediately valuing the sites on a different  
14 basis? For what purpose did he do this exercise?

15 A. Because once he got the freehold, it had become  
16 building land, and it was in a very upmarket part of  
17 Monkstown. Carrickbrennan Road is one of the better  
18 parts of Monkstown, as I presume you know.

19 73 Q. And is it the position, therefore, that immediately the  
20 freehold and leasehold were brought together, that the  
21 sum of the parts was much greater in value than the  
22 individual --

23 A. Yes, indeed.

24 74 Q. -- ingredients going to make it up?

25 A. Yes.

26 75 Q. But, in any event, it was done by Mr. Brennan on the  
27 basis of his evaluation?

28 A. His valuation on what each site would be worth.

29 76 Q. Of what it was worth, yes.

30 .

1 Now, moving on to the Donnybrook issue.

2 .

3 The query was in relation to the ú672,000, which was  
4 described in the audited accounts of the company as  
5 "Site fines prepaid." And I think there was a query in  
6 relation to what that meant, and in relation to the  
7 payment of them.

8 .

9 If we can just very briefly refer you to --

10 .

11 MR. HUSSEY: I'm sorry, I think that's Newtownpark  
12 Avenue.

13 .

14 MR. HANRATTY: I beg your pardon. So it is.

15 .

16 MR. HUSSEY: Just to keep the record straight. Sorry,  
17 go ahead.

18 .

19 77 Q. MR. HANRATTY: If we could look at page 5083.

20 .

21 This is the balance sheet of the company. And you can  
22 see, about halfway down the page where this item  
23 appears, where it's described as: "Site fines prepaid -  
24 ú672,000" somebody has written in longhand there  
25 "Arippe", which we know was the Jersey company used for  
26 this particular property.

27 .

28 But in the letter which you received from the  
29 Investigation Branch of the Revenue on the 22nd of  
30 September, 1980 - it's from Mr. O'Connor - at paragraph

1 19, I think, he says: "Site fines prepaid - ú672,000.

2 To whom paid and on what date and where are the site  
3 numbers?"

4 .

5 I think there was on-going correspondence about that --

6 .

7 MR. HAYDEN: What page was that?

8 .

9 MR. HANRATTY: Sorry, I called it out. I'll give it  
10 again. It was at page 5102.

11 .

12 MR. HAYDEN: Sorry, we don't have that. The last  
13 documents we have go up to 5093.

14 .

15 MR. HANRATTY: It has been circulated some time ago.

16 This was simply a better copy, although it's not a  
17 great copy, at 3732.

18 .

19 CHAIRMAN: That's the difference.

20 .

21 MR. HAYDEN: You can understand, then, why I mightn't  
22 have picked up that.

23 .

24 MR. HANRATTY: But I don't think anything in particular  
25 turns on it.

26 .

27 It was replied to by your letter, which is legible, of  
28 the 15th of December, 1980, at page 3749.

29 .

30 If we turn to the third page of that letter, at page

1 3751. Under "Site fines prepaid" you simply say:

2 "Details to follow."

3 .

4 At page 5104, which is also a clear copy of the  
5 previously circulated document, it simply indicated the  
6 "Information requested is awaited."

7 .

8 These documents were all circulated before.

9 .

10 MR. HAYDEN: I am not sure why Mr. Hanratty keeps  
11 saying that. He gives me one number he knows I don't  
12 have, and then he gives out and says it's another  
13 number I should have made a connection with. I mean,  
14 it's one or the other.

15 .

16 78 Q. MR. HANRATTY: It's 3758.

17 .

18 And then on 3749, your response dated the 15th of  
19 December, 1980. You deal with it at paragraph 19,  
20 "Details to follow."

21 .

22 Then there is a letter at 3762. It's dated the 28th of  
23 January, 1981. This correspondence deals with a whole  
24 range of specific queries that he had, but in each case  
25 the numbering is preserved. And in this case it's No.  
26 19. And under the heading "Site fines prepaid" you  
27 say,  
28 "Northern Bank Limited - ú150,000 - 23rd November,  
29 1978.

30 Chase Bank loan - 400,000 - 3rd and the 28th November,

1 1978. "

2 .

3 And "Northern Bank current account, 122,000", with two  
4 dates of the 30th of August and the 20th of November  
5 against them. That makes up the ú672,000 that was, in  
6 fact, we know, sent over to Jersey. Isn't that right?

7 A. Correct.

8 79 Q. And that was sent over to Jersey to Arippe Investments  
9 Limited?

10 A. Yes.

11 80 Q. And that was the company which had entered into a  
12 licence agreement with Lansdowne Construction Limited?

13 A. Yes. Sorry, does this letter refer to Lansdowne or  
14 Green Isle?

15 81 Q. It refers to Lansdowne. These queries in relation to  
16 this particular sum arise out of the accounts of  
17 Lansdowne in which this figure appeared.

18 A. Yes.

19 82 Q. And they are under the heading in the Revenue  
20 correspondence and in your response of Lansdowne  
21 Construction Limited.

22 .

23 And as you can see there, you have indicated by way of  
24 response to the queries that there were, in fact, three  
25 loans making up this sum of ú672,000.

26 .

27 Can you just explain what exactly did you mean by "Site  
28 fines prepaid" in reference to ú672,000?

29 A. There was a licence agreement.

30 83 Q. Yes.



1 A. And in the building trade, licences and site fines have  
2 exactly the same meaning.

3 84 Q. Yes. So it was - in fact, what you were referring to  
4 was the 672 that was sent by Lansdowne to Arippe?

5 A. Yes.

6 85 Q. And on the basis that what was sent was for 48 sites?

7 A. Yes.

8 86 Q. You referred to it as "Site fines prepaid"?

9 A. Yes.

10 87 Q. On the basis that it was a prepayment for the purchase  
11 of the property?

12 A. Yes. Well, they didn't purchase the property. The  
13 property remained in the ownership of Arippe --

14 88 Q. Arippe, yes?

15 A. -- until each sale closed, and then conveyed the title  
16 to the ultimate third party buyer.

17 89 Q. Is that, in fact, what happened?

18 A. Yes.

19 90 Q. And in what way were the sites sold off?

20 A. Well, when there is a licence agreement or site fine  
21 agreement, whatever you like to call it, the builder  
22 enters into a building contract with the house buyer,  
23 and the land owner, which would have been Arippe,  
24 conveys the site. It means, in fact, that if Lansdowne  
25 hadn't bought the land for 672,000, there would have  
26 been about 40,000 Stamp Duty saving as a result.

27 91 Q. Yes. If we could just get a reference for the licence  
28 agreement. 3984.

29 .

30 In paragraph 1 of the operative part of the agreement

1 you say:

2 .

3 "In consideration of the sum of ú48,000 now paid by the  
4 Grantee to the Grantor (the receipt of which is  
5 acknowledged) the Grantor licences the Grantee to  
6 enter the lands shown on the map for the purpose of  
7 building and constructing houses on them."

8 .

9 And paragraph 2 then says that, for the construction of  
10 each house the Grantee is entitled to call on the  
11 Grantor to make a conveyance of fee simple in a  
12 particular form, which is specified. And he has to  
13 have paid to the nominee of the Grantee - sorry, the  
14 Grantee has to have paid to the Grantor a sum of  
15 ú19,800 per site as a consideration.

16 .

17 And then, "On the completion hereof", that's of the  
18 licence agreement, "the Grantee makes to the Grantor an  
19 interest-free loan of ú624,000."

20 .

21 So the great bulk of the money that was actually  
22 transmitted under this agreement was in the form of an  
23 interest-free loan this was similar to the, if you  
24 recall, the licence agreement which was also used in  
25 the Donnybrook case?

26 A. Yes.

27 92 Q. Well, given that this was effectively a loan, or at  
28 least 624,000 of the 672 was in the form of a loan, how  
29 can you say that it was a site fine prepaid?

30 A. I can't, but it was. They had paid 624,000 over to

1 Jersey, so what was it? It was - they were entitled to  
2 get - for Arippe to convey to each house buyer a plot  
3 of land as a result of that agreement.

4 93 Q. Yes. I think the agreement goes on to provide that  
5 progressively, when each of these sums are received,  
6 that they are applied in discharge of the borrowing  
7 that goes to make up the loan. Nonetheless, the fact  
8 of the matter is that according to this agreement, if  
9 it is correct, is that the great majority of the money  
10 transmitted from Lansdowne to Arippe was by way of a  
11 loan?

12 A. On the basis of paragraph 3 there, that an  
13 interest-free loan of 24,000 --

14 94 Q. Yes.

15 A. But if it wasn't a valid licence agreement, none of  
16 those houses could have been sold. So it must have  
17 stood up to the scrutiny of every solicitor in Dublin.

18 95 Q. Well, as between an entity selling the property and  
19 putting themselves in a position to produce a title,  
20 that's one thing, but what I am dealing with here is as  
21 between Lansdowne Construction Limited and Arippe.  
22 And it appears from this document that the arrangements  
23 between them were in the form of a licence agreement?

24 A. Yes.

25 96 Q. Under which 48,000 was paid by way of a licence fee,  
26 but the vast bulk of the monies paid under it, 624,000,  
27 was paid by way of loan?

28 A. Yeah. And the loan was repayable by the Grantor to the  
29 Grantee at the rate of 13,000 from each payment -  
30 sorry, I can't read the next line.

1 97 Q. It says, "It shall be repayable by the Grantor to the  
2 Grantee at the rate of ú13,000 from each payment of  
3 ú19,800 which the Grantee shall receive from the  
4 nominees."

5 .  
6 So it's a loan, and it has to be repaid. And it goes  
7 on to specify the manner in which it is repaid. It is  
8 nonetheless a loan --

9 A. I don't see the significance of that, Mr. Hanratty.

10 98 Q. Well, I don't understand the significance of it.  
11 That's what I am trying to do. If it's a site fine  
12 prepaid --

13 .  
14 MR. HAYDEN: I wonder, might I put in my ha'penny's  
15 worth at this stage?

16 .  
17 CHAIRMAN: As long as it doesn't add to the confusion.  
18 .

19 MR. HAYDEN: That's a fair point. I just wonder where  
20 this is going in the context --

21 .  
22 CHAIRMAN: That's hardly your ha'penny's worth.

23 .  
24 MR. HAYDEN: It might add to the confusion. What  
25 Mr. Hanratty is clearly doing is embarking upon a  
26 second line of inquiry following on from Mr. O'Connor.  
27 Mr. O'Connor is the Inspector of Taxes. There was a  
28 line of inquiry, questions raised, and - Mr. Hanratty  
29 has now put to this witness that he doesn't - the  
30 witness has called it a "fine", whatever way you want

1 to define "fine", site fine, licence fee, whatever.

2 It was the cost of having access to the sites, the cost  
3 of which was paid for out of the discharge of each  
4 site, once closed.

5 .

6 After that, Sir, the money is there, the money has gone  
7 left and gone right, it's gone forward and it's gone  
8 back on the basis of the agreement. Whether that's a  
9 fine, or a licence, or a loan, or any of those things,  
10 Sir, is not, in my submission, for this Tribunal. And  
11 it is clear what Mr. Hanratty is doing is inquiring  
12 upon the line of inquiry which Mr. O'Connor originally  
13 raised in the correspondence. We went through a whole  
14 lot - I was doing my level best to even write down,  
15 particularly when I was given one number, and it was  
16 meant to be another. I have no idea where this is  
17 going, other than from what I see Mr. Hanratty now  
18 indicating, which is, "This is a loan, the significance  
19 of that is what in the context of a structure?" Not,  
20 "This is a loan and where did the money go?" Which is  
21 what you, Sir, I entirely accept are entitled to  
22 inquire into. But if Mr. Hanratty could identify under  
23 what Term of Reference under the terms of inquiry here,  
24 what Term of Reference this inquiry goes under, i.e.  
25 whether this was a loan, a licence or a fine, then I  
26 would bow to that, Sir.

27 .

28 MR. HANRATTY: For a start, Mr. Hayden does not appear  
29 for this witness. That's the first point.

30 .

1 The second point is that this has been a recurrent  
2 theme of the interruptions by Mr. Hayden since this  
3 inquiry in relation to Brennan and McGowan started,  
4 that every time anybody mentions the word "Tax" or  
5 "Revenue" he is up on his feet like a jackrabbit  
6 drawing attention to something that I am not interested  
7 in, and I am not particularly trying to draw attention  
8 to.

9 .

10 I am simply inquiring into a transaction, and I am  
11 trying to understand the nature of the transaction.

12 .

13 In this case I am examining the witness about a  
14 document, which on the face of it calls itself a  
15 licence agreement, which on the face of it provides for  
16 a licence fee of ú48,000 and an interest-free loan of  
17 ú624,000.

18 .

19 This is the agreement under which ú672,000 was  
20 transmitted from an Irish company, Landsdowne  
21 Construction Limited, to a Jersey company called Arippe  
22 Investments Limited, which, after a return of a  
23 substantial proportion of that money, possibly to repay  
24 some of the borrowing used to raise it in the first  
25 place, was distributed among the three partners as to,  
26 I think, ú67,000 each.

27 .

28 I am examining the witness who was involved in the  
29 transaction, in that he put together the scheme under  
30 which the monies were paid over. He was involved in

1 the arrangements in Jersey with a view to getting a  
2 company established, and he might be in a position to  
3 assist us in relation to understanding the agreement  
4 and the application of the agreement. That is what I  
5 was asking him about. Whether or not it has any other  
6 implications, tax or otherwise, which I am not trying  
7 to draw attention to, but which Mr. Hayden is  
8 succeeding greatly in drawing attention to, I have no  
9 interest in. But I have an interest in the  
10 transaction, in the mechanics of the transaction, and  
11 in the actuality of what was done under the particular  
12 agreement.

13 .

14 It seems to me that's a perfectly legitimate line of  
15 inquiry, Sir.

16 .

17 CHAIRMAN: In my view it is.

18 .

19 MR. HAYDEN: Might I respond to that, Sir, before you  
20 make a decision? No. Not much point.

21 .

22 99 Q. MR. HANRATTY: There is one further letter, Mr. Owens,  
23 that I wanted to ask you about in this series of  
24 correspondence, and that's at 3810. It is a letter of  
25 the 13th of December, 1984.

26 .

27 I think it's - you'd already written to the Revenue  
28 informing them that you no longer acted for the  
29 company, it was hopelessly insolvent and so on.

30 .

1 You said, in relation to the particular inquiry:  
2 .  
3 "With reference to your letter of the 11th of December,  
4 we examined a form of Site Fine Agreement in support of  
5 the payment of ú672,000. The validity of the substance  
6 of the agreement was confirmed by subsequent sales by  
7 Landsdowne Construction Company Limited to third party  
8 purchasers of houses."

9 .  
10 Can you confirm to me that the agreement to which you  
11 make reference in that letter is, in fact, the licence  
12 agreement to which we've just looked at?

13 A. Yes.

14 100 Q. Thanks.

15 .  
16 Now, going back to the Sandyford deal, what, as you  
17 understand it, was the original intention of the three  
18 investors in relation to this particular property?

19 A. The land in Sandyford when acquired was - did neither  
20 have sewage nor water, both of which are vital for site  
21 development - for developing into a building site.

22 101 Q. Yes.

23 A. And the information at the time was that it's quite  
24 long down the road before it would have the necessary  
25 services.

26 102 Q. Yes.

27 A. And apart - sorry? What exactly did you ask me?

28 103 Q. Well, I was inquiring about what was the, as you  
29 understood it, the original intention of the three  
30 investors vis-a-vis this particular property?



1 A. The only intention was to hold it until they got  
2 planning permission, and then either to sell it to one  
3 of the Brennan and McGowan companies, or sell it to a  
4 third party.

5 104 Q. This particular one differed from, certainly, the first  
6 four, in that there was no substantial borrowing in  
7 Ireland which was transferred and distributed in  
8 Jersey. Isn't that right?

9 A. That's correct.

10 105 Q. In the course of the - when the land had been purchased  
11 and after it had been effectively bought and paid for,  
12 and was brought into Canio and so on, at some point a  
13 difficulty arose, we believe in the beginning of 1984,  
14 where Mr. Finnegan has told us he was concerned about  
15 his interests being properly protected.

16 A. Yes.

17 106 Q. Do you recall that happening?

18 A. No. I wasn't directly dealing at that particular time

19 --

20 107 Q. Were you aware of it at the time?

21 A. No. I have seen the correspondence in the Brennan and  
22 McGowan brief file.

23 108 Q. I understand that. But you weren't involved yourself?

24 A. No. No.

25 109 Q. All right. Did you subsequently become aware of it?

26 A. Only when the court case came.

27 110 Q. This was in 1985?

28 A. Yeah.

29 111 Q. And in the course of that, did you discover that

30 Mr. Finnegan had a problem vis-a-vis Messrs. Brennan

1 and McGowan?

2 A. Not then. I only discovered it when I read the brief,  
3 the Brennan and McGowan brief.

4 112 Q. So even at the time that the matter was being  
5 litigated, which was substantially between the banks  
6 and Brennan and McGowan, and involving to some extent  
7 Mr. Russell, you weren't aware that there had been an  
8 episode, shall we say, where Mr. Finnegan was uneasy  
9 about the protection of his own position?

10 A. Well, I was requested in 1984 to produce a set of  
11 accounts for Canio, which is the company that owned the  
12 land.

13 113 Q. Yes.

14 A. And it was by - well, it came from Bedell & Cristin,  
15 but it came to them from Mr. Barry.

16 114 Q. Yes.

17 A. Who was --

18 115 Q. He was the person dealing with the Foxtown interest at  
19 the time?

20 A. Yes.

21 116 Q. And he was corresponding with Mr. Wheeler, apparently?

22 A. Yes.

23 117 Q. On behalf of, effectively, Mr. Finnegan?

24 A. Yes.

25 118 Q. So was it your understanding, then, when you were  
26 requested to produce these accounts, that it was for  
27 Mr. Barry, or as a result of an inquiry that he had  
28 made?

29 A. Yes.

30 119 Q. And were you given to understand that Mr. Barry was, in

1 a sense, checking on the situation?

2 A. Yes.

3 120 Q. What can you recall that Mr. Wheeler told you was the

4 concern that Mr. Barry had?

5 A. I can't recall anything in particular, except that they

6 wanted the accounts of Canio produced.

7 121 Q. Did Mr. Wheeler tell you anything in relation to his

8 dealings with Mr. Barry?

9 A. No.

10 122 Q. So as far as you were concerned, he simply produced a

11 set of accounts. What sort of an account would you

12 have produced?

13 A. I produced three years of accounts to the 31st

14 December, 1983, which set out - it set out the various

15 costs, the maintenance costs of the company, and also

16 where the money came from to fund the purchase of the

17 land.

18 123 Q. Yes. But it undoubtedly would have shown, presumably,

19 the land as an asset of the company?

20 A. Yes.

21 124 Q. And it would have shown what the liabilities on the

22 land were, or would it?

23 A. Yes. The liabilities on the company were loans from

24 the shareholders.

25 125 Q. Yes.

26 A. The purchase of the land was funded by loans from the

27 shareholders.

28 126 Q. Would the accounts have shown, if you had been aware of

29 any other liabilities?

30 A. They would have --

1 127 Q. In other words, if further borrowings had been made or,

2 sorry, if further borrowings had been secured --

3 A. Yes.

4 128 Q. -- they would have shown that?

5 A. They would.

6 129 Q. Because it appears that Kilnamanagh Estates Limited

7 did, in fact, have substantial borrowings, in respect

8 of which it appears that a solicitor had given an

9 undertaking by way of security. Had you been aware of

10 that, would you have shown it in any way in the

11 accounts that you prepared?

12 A. I would have, yes.

13 130 Q. How would it appear in the accounts?

14 A. Sort of contingent liability.

15 131 Q. I see. By way of a footnote?

16 A. Yes.

17 132 Q. Yes. But am I correct in thinking that that was not

18 shown in the accounts because, as far as we can see,

19 you were not aware of it?

20 A. I was aware of it in 1983, because I wrote a letter to

21 Ken Wall of Lombard & Ulster, setting out the various

22 assets and liabilities of Kilnamanagh.

23 133 Q. Yes.

24 A. And under the heading of Allied Irish Finance, part of

25 their security was 86 acres in Sandyford, which is the

26 Canio land.

27 134 Q. Yes.

28 A. So at that time I was aware that there was - that they

29 had security, or I thought full security, but obviously

30 they didn't, on that land. And then subsequently I

1 heard from Tom Brennan and Joe McGowan that George  
2 Russell had told not only Laurence Wheeler but John  
3 Finnegan that there was no charges on the land. And  
4 furthermore, he produced the title deeds and had given  
5 them to Mr. Wheeler.

6 135 Q. Yes.

7 A. And that was in June 1984, I think.

8 136 Q. Was that before you produced your accounts?

9 A. Yes. My accounts were signed off in August '84.

10 137 Q. And was that, then, on the basis that the title deeds  
11 had been handed over, and that the solicitor had given  
12 an assurance that the security or undertaking, whatever  
13 it was, was gone?

14 A. Well, you couldn't really give a better assurance than  
15 handing over the deeds and the solicitor saying, "There  
16 are no charges on this land."

17 138 Q. Yes. Yes. So you had been aware of it in 1983, but  
18 you had been assured of it in 1984 --

19 A. I assume, whatever liability there was, had been  
20 cleared.

21 139 Q. Yes. What was the connection with Lombard & Ulster in  
22 1983? We know there was a loan in 1984. Were there  
23 discussions in 1983 about a borrowing from Lombard &  
24 Ulster?

25 A. Not by me.

26 140 Q. Well, when you were --

27 A. Joe McGowan requested me to - it was a very complex  
28 piece of stuff, that they had assets and liabilities  
29 all over the place. They had four or five different  
30 banks, if I remember rightly, each with their own

1 little bits of security and each with their own little  
2 assets. And it was quite a complex letter. It's on  
3 file there somewhere.

4 141 Q. Yes. We know that at some stage there was a plan under  
5 which various Brennan and McGowan companies would enter  
6 into contracts to buy various bits of this property.  
7 In fact, in some cases Kilnarnagh Estates would buy it  
8 off other Brennan and McGowan companies, perhaps  
9 Grange. I am thinking of one particular document. But  
10 what was the purpose of that, so far as you understood  
11 it?

12 A. Was this at the beginning?

13 142 Q. Yes.

14 A. I think the first one - Kilnarnagh Estates was to buy  
15 part of it for, I think, 1.3 million.

16 143 Q. Sorry?

17 A. Kilnarnagh was to buy part of it for 1.3 million.  
18 There was registered land and unregistered land, I  
19 think 74 acres was registered and 12 acres was  
20 unregistered.

21 144 Q. Yes.

22 A. And it was one of those few transactions where there  
23 was no freehold problems.

24 145 Q. Yes. If we look at page 406. In fact, this is the  
25 document I was thinking of. Am I right in thinking  
26 this is your document?

27 A. Yes.

28 146 Q. And it sets out the lands at the start. It says:

29 .

30 "Canio was incorporated on the 1st December, 1980. The

1 contract for the purchase of the land was signed on the  
2 12th April with Mr. Gleeson. ú630,000 taken into Canio  
3 on the 2nd December, 1980.

4 .

5 For tax purposes Kilnamanagh Estates Limited wanted to  
6 acquire 74.183 acres in September 1979 for 1.3 million.  
7 Closing date, 31st March, 1982. As Canio Limited was  
8 not incorporated at the time, and as James Gleeson was  
9 acting as a pure nominee, it was desired that  
10 Mr. Wheeler execute the contract in trust.

11 .

12 5. Grange Developments Limited contracted on the 16th  
13 of December, 1980, to purchase from Canio Limited the  
14 balance of the land, 12.275 acres, for ú260,000.

15 Closing on 31st March, 1982.

16 .

17 6. On the 17th November, 1981, Grange Developments  
18 Limited subcontracted with Kilnamanagh Estates Limited  
19 to purchase 53.893 acres for ú840,000. Completion on  
20 the 31st March, 1982.

21 .

22 7. In 1982 Grange will acquire from Kilnamanagh 20.29  
23 acres for ú400,000. Completion, 31st March, 1982.

24 .

25 8. The effect of "6" and "7", is that "4" will not be  
26 completed, and that Grange will take a conveyance of  
27 the entire on the 31st March, 1982."

28 .

29 Could you just explain to me what the underlying  
30 rationale was there, so far as Brennan and McGowan were

1 concerned?

2 A. The first thing, the purchase of the 74 acres for 1.3  
3 million was a contract to boost up Kilnamanagh's stock  
4 and trade.

5 147 Q. That would show in their books as stock and trade,  
6 presumably?

7 A. It would, yes.

8 148 Q. And then the other subsidiary contracts --

9 A. It would show stock and trade with the corresponding  
10 liability, because it hadn't been paid for.

11 149 Q. Does that mean that it wasn't a real transaction, or it  
12 was a real transaction?

13 A. It was a real transaction. It could have closed, but  
14 then we kept the options open.

15 150 Q. As to whether it would or not?

16 A. Yes.

17 151 Q. Was it your understanding, or did you have any  
18 understanding as to whether or not Mr. Finnegan was  
19 aware of these arrangements?

20 A. I didn't know.

21 152 Q. Would you have assumed that he did?

22 A. Not necessarily. I thought he was coming along on a  
23 very cheap ride, and I didn't think he had to be kept  
24 informed.

25 153 Q. Why did you think that, if, as we now know, he put in  
26 50, when the other two put in 50, and he put in 70,  
27 when the other two put in 70? And they appear to have  
28 agreed, or they certainly now are in agreement that he  
29 was - that the ú300,000 that came out of Green Trees  
30 was attributable as much to him as to the other two?



1 A. Because as far as I was concerned, he was a sleeping  
2 partner. The other two were active.

3 154 Q. Yes. And would you have proceeded along the basis that  
4 he was going along with whatever arrangements they  
5 made?

6 A. Yes.

7 155 Q. Because one of the concerns that he has now was that he  
8 believed that there was a contract to sell the lands  
9 that he didn't know about at the time, but that he had  
10 heard was in existence, and that he was concerned that  
11 there was contracts going around that he didn't know  
12 about, perhaps legally binding contracts, that might  
13 oblige the company, of which he indirectly held a  
14 one-third, to sell the land for a particular price.

15 .

16 Anyway, you weren't aware of that at the time?

17 A. No.

18 156 Q. Well, in essence, were all of these contracts, as far  
19 as you understood it, contracts entered into for tax  
20 reasons, but which were not necessarily intended to be  
21 proceeded with by Kilnamanagh Estates or Grange  
22 Developments Limited?

23 A. Not necessarily. Grange Developments always had more  
24 money available than Kilnamanagh, so it would have been  
25 in a position to finalise those contracts.

26 157 Q. Yes.

27 A. Or execute them.

28 158 Q. Yes. Well, now, we know that in 1984, just to try and  
29 move it along, there were arrangements made to obtain a  
30 loan from Lombard & Ulster, and, in fact, at some point

1 in June of 1984, I think around the 20th, 21st of June,  
2 1984, Lombard & Ulster gave sanction for a loan -  
3 borrowing of ú525,000?

4 A. I know that now.

5 159 Q. Were you aware of that at the time?

6 A. No.

7 160 Q. You weren't aware at the time of the intention to make  
8 a borrowing at this point in time?

9 A. No.

10 161 Q. And, obviously, you wouldn't, therefore, have been  
11 aware of what the reason for it was?

12 A. No. I didn't - never saw the paperwork until --

13 162 Q. Yes. You were involved, to the extent that there was  
14 correspondence from Mr. Wheeler about certain with -  
15 withholding a certain amount. Messrs. Brennan and  
16 McGowan were seeking to withhold ú20,000 from each of  
17 their respective shares of the loan, and to the extent  
18 that there was disagreement as to the amount that  
19 should be withheld, you were consulted by somebody in  
20 some capacity. Can you just tell us about that?

21 A. Is that the 60,000?

22 163 Q. That's correct. If we can just get the documents and  
23 I'll show --

24 A. I think it's the 12th of November --

25 164 Q. The loan was drawn down on the 19th of November, and  
26 this was in the few days leading up to the drawing down  
27 of the loan.

28 .

29 There is a letter from Mr. Wheeler. It's page 692.

30 .

1 This is a letter from you to Mr. Wheeler, in fact.  
2 It's dated the 14th of June of 1984. It says:  
3 .  
4 "Borrowing on security of lands owned by Canio is being  
5 negotiated with Lombard & Ulster Bank (Dublin) (a  
6 subsidiary of Natwest) who require the following  
7 information:  
8 .  
9 Number of shares issued, and names of nominee  
10 shareholders.  
11 .  
12 Names of directors.  
13 .  
14 Names of the beneficial shareholders (Tom Brennan, Joe  
15 McGowan and Roger Wreford.) Wreford's name has been  
16 substituted for that of Finnegan, because Finnegan  
17 wants to remain silent.  
18 .  
19 Confirmation that company has power to borrow and grant  
20 a legal mortgage in Ireland.  
21 .  
22 Official in Lombard & Ulster dealing with application  
23 is going on holidays tomorrow, and requires this  
24 information before going. Sorry for rush.  
25 .  
26 Regards, HV Owens."  
27 .  
28 Somebody has written in, then, in handwriting, the  
29 initials of the names of the nominee shareholders, and  
30 the names of the - or the initials of the directors.

- 1 .
- 2 So, obviously you were consulted in some capacity in
- 3 June of 1984. This was on the 14th of June, which was
- 4 approximately a week before the loan sanction actually
- 5 came through?
- 6 A. I've seen a copy of the loan application where they
- 7 name - the name "Roger Wreford" was inserted as being a
- 8 beneficial shareholder.
- 9 165 Q. Yes. That's right.
- 10 A. And I think I sent a copy of that to Mr. Wheeler. But
- 11 he would have known that the beneficial shareholder was
- 12 not Roger Wreford. I was explaining to him, as far as
- 13 I was aware, that John Finnegan didn't want his name
- 14 inserted in the loan application to Lombard & Ulster.
- 15 166 Q. Yes. Well, obviously, you correctly say, Mr. Wheeler
- 16 of all people knew that Mr. Finnegan was a one-third
- 17 beneficial shareholder of Ardearn and Canio?
- 18 A. Yes.
- 19 167 Q. So that's not what you were telling him in this telex.
- 20 What you were telling him in this telex is the reason
- 21 that somebody else's name has been substituted in the
- 22 loan application, is that what you are --
- 23 A. Yes.
- 24 168 Q. Because otherwise he would have been puzzled or he
- 25 would have wondered, is this a mistake or something,
- 26 it's Mr. Finnegan, it's not Mr. Wreford?
- 27 A. Yes.
- 28 169 Q. Therefore, you appear to be communicating to him that
- 29 some decision has been made by somebody deliberately
- 30 that a different name would be substituted. Is that

1 right?

2 A. Well, it must have been whoever made the loan

3 application. I didn't make it. It was either Tom

4 Brennan or Joe McGowan --

5 170 Q. It was Messrs. Brennan and McGowan that made the

6 application, and -- well, what was your understanding,

7 which presumably you would have obtained from Mr.

8 Brennan at the time?

9 A. No, I just drew an inference that if Roger Wreford's

10 name had been substituted for that of John Finnegan,

11 that John Finnegan would have indicated to them that he

12 didn't want Lombard & Ulster to know he had any

13 connection with Canio.

14 171 Q. Well, did they not tell you that?

15 A. No, they didn't tell me. I assumed it.

16 172 Q. But why would you make that assumption?

17 A. Because it was obvious to me that the three

18 shareholders were Finnegan, Brennan and McGowan, not

19 Wreford, Brennan and McGowan.

20 173 Q. Did you know Mr. Wreford?

21 A. Never met him in my life.

22 174 Q. Or did you know of him?

23 A. Yes. He was a friend of Joe McGowan's, apparently, in

24 England.

25 175 Q. Yes. And he is a person that did exist, apparently was

26 brought into Lombard & Ulster Bank, we've been told?

27 A. Was he?

28 176 Q. So we believe, and was introduced to the people in the

29 bank. And my recollection is that Mr. McGowan's

30 evidence was that that is the reason that Mr. Wreford

1 was put in, that Mr. Finnegan did not wish to be - he  
2 did not wish to be known to be the other one-third  
3 owner of the property.

4 .

5 But would they not have told you that at the time,  
6 because that's what they say was the position?

7 A. No.

8 177 Q. Well --

9 A. I was just pointing out to Mr. Wheeler that there  
10 hasn't been a sudden change in the beneficial  
11 shareholdings in Canio.

12 178 Q. Yes. So when you say that Wreford's name has been  
13 substituted for that of Finnegan, because Finnegan  
14 wants to remain silent, what you are saying is that's  
15 not because they told you that, because you drew that  
16 inference?

17 A. I inferred that. I inferred it, because it was quite  
18 obvious that Finnegan was still a shareholder. And  
19 also, the fact that his name wasn't mentioned, was that  
20 he - he must have not wanted his name to be mentioned  
21 to Lombard & Ulster.

22 179 Q. But why would you assume that Mr. Finnegan didn't want  
23 - in other words, why would you not assume or wonder  
24 yourself that maybe there is a mistake here?

25 A. Pardon?

26 180 Q. Would you not have thought that there is a mistake,  
27 rather than concluding that somebody has decided to put  
28 Wreford's name in, as it were, deliberately, would you  
29 not have thought in the first instance there is an  
30 error here, it's not Finnegan, it should be Wreford?

1 A. No. I would have thought it was a deliberate thing on  
2 the part of whoever made the application.

3 181 Q. You, I take it, wouldn't have had any particular reason  
4 to think one way or the other, whether Mr. Finnegan  
5 wanted to remain silent or not?

6 A. No. I was explaining in that letter or fax or whatever  
7 it was to Mr. Wheeler that Finnegan was still very much  
8 the third shareholder, not Wreford.

9 182 Q. Yes. But you are saying, fairly categorically to him,  
10 that Mr. Wreford's name has been substituted for Mr.  
11 Finnegan's because Mr. Finnegan wanted to remain  
12 silent?

13 A. Yes.

14 183 Q. And as I understand your evidence, is you were - you  
15 felt capable of making that fairly dogmatic assertion  
16 on the basis of an inference which you drew from seeing  
17 Mr. Wreford's name on the loan application?

18 A. Yes.

19 184 Q. How would you have seen the loan application?

20 A. Obviously --

21 185 Q. If we put a copy of it up on the screen, just so you  
22 can see it. It's 694.

23 A. I must have been furnished with a copy of it.

24 .

25 CHAIRMAN: Mr. Hanratty, might I just interrupt for one  
26 moment, just to understand how much longer this witness  
27 is likely to take, because between the break and - I  
28 would like to facilitate anybody else after two  
29 o'clock, if necessary. That's all I want.

30 .

1 MR. HANRATTY: It's quite possible I'll finish before 1  
2 and possibly comfortably before 1.

3 .

4 CHAIRMAN: What about anybody else?

5 .

6 MR. HANRATTY: I have only approximately two more  
7 topics to cover, really.

8 .

9 CHAIRMAN: Anybody else involved?

10 .

11 MR. HUSSEY: I think I'll be some considerable time  
12 with this witness. Certainly, it won't be a half hour.

13 Certainly closer to an hour. I won't finish under an

14 hour, I imagine. There is a fair amount of topics I

15 need to cover.

16 .

17 CHAIRMAN: We are going to have approximately an hour

18 before now and one o'clock. If we take a very short

19 break now, an hour - I just want to try and facilitate

20 everybody, if possible. If it's not possible, it's not

21 possible.

22 .

23 We'll bring back, then, the other witness at half past

24 two o'clock?

25 .

26 MR. HANRATTY: I think so.

27 .

28 CHAIRMAN: Well, at quarter past 2 -

29 .

30 MR. HANRATTY: On the basis that I am going to take,



1 after the break, certainly half an hour, and Mr. Hussey  
2 is going to take at least, as I understand, I think an  
3 hour --

4 .

5 MR. HUSSEY: I would say half an hour would be very  
6 optimistic.

7 .

8 CHAIRMAN: All right. We'll arrange --

9 .

10 MR. HAYDEN: I am trying to keep my status as a  
11 jackrabbit to a minimum. I will still be half an hour.

12 .

13 MR. HANRATTY: There is an hour, an hour and a half of  
14 evidence --

15 .

16 CHAIRMAN: We'll bring the other witness back in half  
17 an hour and he can sit down and have a rest. I think  
18 we'll rise now for a quarter of an hour.

19 .

20 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND  
21 RESUMED AGAIN AS FOLLOWS:

22 .

23 MR. HANRATTY: Mr. Owens, please.

24 .

25 Though you had indicated, Sir - it's been indicated  
26 before the break that this witness is going to be a  
27 little further time, and in the circumstances I think  
28 that the remaining witness for today should be stood  
29 down until after lunch.

30 .

1 CHAIRMAN: Should we stand him down until twenty past

2 2?

3 .

4 186 Q. MR. HANRATTY: Thank you, Sir.

5 .

6 Just in relation to what we were discussing before

7 lunch, Mr. Owens. Are you certain it was the loan

8 application that you saw, or is it possible that it

9 might have been the loan approval? The loan

10 application if we just have a look at it on page 694.

11 This is an internal bank document. And as you can see

12 from the information on the top of it there, first of

13 all it's dated the 15th of June. It was prepared after

14 a meeting, we understand, of the 7th of June. And it

15 does, undoubtedly, contain a reference to Mr. Wreford.

16 .

17 We know that the loan approval came out, I think it was

18 on the 20th or 21st of June. But your telex to

19 Mr. Wheeler was the day before this document is dated,

20 if you see what I mean, but it was after the meeting of

21 the 7th of June where the bank would have been told or

22 given the name of Roger Wreford, and perhaps even

23 introduced to Mr. Wreford.

24 A. Sorry, this document - I can't --

25 187 Q. The top right-hand side has the date on it?

26 A. I don't see Mr. Wreford's name on it.

27 188 Q. If you look at the second page under the heading

28 "General remarks and comments on financial position",

29 and the fourth-last line - sorry - "These

30 directors/shareholders are trustees for the parties,

1       namely Messrs. Wreford, Brennan and McGowan. The  
2       latter two now wish to acquire the interest of the  
3       former for the sum of ú180,000, and the balance of the  
4       monies is now required." And so on.

5       .

6       So there is reference to Mr. Wreford in that document.

7       A. Yes.

8 189 Q. But it is a document that is dated the 15th of June.

9       So it couldn't have been that document, I suggest, from  
10      which you would have gleaned Mr. Wreford's involvement.

11      And I just wonder, in those circumstances is it  
12      possible that you are mistaken, perhaps, in your  
13      recollection, and that it might have been the case that  
14      Mr. McGowan and/or Mr. Brennan told you of  
15      Mr. Wreford's involvement?

16      .

17      I should tell you, incidentally, that Mr. McGowan said  
18      that he did tell you. That was his testimony.

19      A. Well, I certainly must have been told by somebody, or  
20      read somewhere that Wreford was one of the names given  
21      to Lombard & Ulster --

22 190 Q. Yes.

23      A. -- for the purposes of the loan application.

24 191 Q. I think one way or another, it would have come from  
25      either Mr. Brennan and/or Mr. McGowan, either in the  
26      form of them telling you or giving you a document?

27      A. Yes.

28 192 Q. -- which bore reference to his name?

29      A. Yes.

30 193 Q. But certainly you had the information, clearly, when

1 you wrote to Mr. Wheeler, because you were the man  
2 explaining to him that there had been a substitution of  
3 his name?

4 A. Yes.

5 194 Q. He responded to your telex, on page 693. "For the  
6 attention of Mr. Owens." If I can find a date on it.

7 The 15th of June, 1984, the following day. He says:

8 .

9 "The total number of shares issued is 12, three each to  
10 the following: Laurence Anthony Wheeler, Howard Oke  
11 Dart, Edward Richard and Mary Rochele Mourant.

12 .

13 2. The directors are Mrs. Helen Lucy Griggs Gibson,  
14 Mr. Gerard King and Anthony Wheeler.

15 .

16 3. The beneficial owners are not directly as you  
17 state, although ultimately your information is correct.

18 The immediate beneficial owner is Ardcarne Limited which  
19 is owned as to three equal parts by Gasche Investments  
20 Limited, Kalabracki Investments Limited, Foxtown  
21 Investments Limited.

22 .

23 4. The company has power to borrow and grant a  
24 mortgage over land in Ireland.

25 .

26 Regards, Wheeler."

27 .

28 So, obviously you were consulted in some capacity or  
29 for some purpose by Messrs. Brennan and McGowan in or  
30 around June of 1984 in connection with their intention

1 to obtain a loan?

2 A. Yes.

3 195 Q. And presumably they would have told you that the amount

4 that they had sought was ú525,000?

5 A. Probably, yes.

6 196 Q. Can you recall what reason did they give you for - as

7 to why they were borrowing this money at this point in

8 time?

9 A. No.

10 197 Q. You would have been aware at the time that there was

11 nothing actually happening in relation to the land

12 itself?

13 A. Yes.

14 198 Q. And presumably whatever the money was for, it was not

15 for the purpose of expenditure on the land at this

16 point?

17 A. Well, they were always borrowing money from virtually

18 every bank in Dublin, so I wasn't particularly

19 interested in what specifically they wanted this money

20 for.

21 199 Q. Well, of course, from your point of view, presumably,

22 they could have been borrowing it not necessarily to

23 develop this land, but for some other purpose entirely?

24 A. Correct.

25 200 Q. Yes. May I take it from that, that you don't have any

26 recollection of being told by them why they were

27 borrowing it at this time?

28 A. No, I don't.

29 201 Q. We do know that the loan was drawn down in - on the

30 19th of September, and that you were contacted again by

1 Mr. Wheeler in connection with the matter. If we could  
2 have page 755.

3 .

4 MR. HUSSEY: I think it's the 19th of November.

5 .

6 202 Q. MR. HANRATTY: Yes. Sorry.

7 .

8 And this is a letter from Mr. Wheeler, or a telex from  
9 Mr. Wheeler to yourself, dated the 14th of November,  
10 1994. It says:

11 .

12 "I briefly saw Mr. McGowan yesterday, and he raised  
13 with me his wish, and that of Mr. Brennan, that each of  
14 the parties should reserve ú20,000 for possible future  
15 expenses, (such as architects' fees) should the present  
16 negotiations not succeed. I put this to Barry of  
17 College Trustees Limited, who said that this was not  
18 agreed. By the time I learned this, I was not able to  
19 recontact Mr. McGowan, but perhaps you would inform  
20 him, and hopefully the three parties can agree in  
21 Ireland.

22 .

23 In the meantime, I am writing to Mr. Barry along the  
24 lines discussed with Mr. McGowan, with the one proviso  
25 relating to the three ú20,000 retentions.

26 .

27 Regards, Wheeler."

28 .

29 Now, obviously, he was approaching you in connection  
30 with the problem that he had, presumably with a view to

1 having a solution reached?

2 A. Yes. Well, in the first place, my office was the only  
3 telex contact he had in Dublin.

4 203 Q. Yes.

5 A. And he knew that I would be - act promptly on the  
6 matter.

7 204 Q. Yes. Well, what he is saying to you is that he met Mr.  
8 McGowan and he raised with him his wish, and that of  
9 Mr. Brennan, that each of the parties, the three  
10 parties, should "reserve ú20,000 for possible future  
11 expenses (such as architects' fees) should the present  
12 negotiations not succeed."

13 .

14 What did you understand him to mean by all of that?

15 A. I thought it was a very prudent business decision to  
16 reserve the monies, because there was going to be  
17 expenditure before they got planning.

18 205 Q. Yes. "Should the present negotiations not succeed",  
19 what did you take that to mean?

20 A. I didn't know what negotiations he was talking about.

21 206 Q. Yes. But then he says, "I put it to Barry of College  
22 Trustees, who said that this was not agreed, and that  
23 by the time he learned it he wasn't able to recontact  
24 Mr. McGowan."

25 .

26 So he is now saying to you, perhaps you would inform  
27 him and hopefully the three of the parties can agree.

28 So did you inform Mr. McGowan?

29 A. I think I informed Mr. Brennan, actually, because I  
30 didn't have a telephone number for Joe McGowan, a

1 telephone number for Tom Brennan. Obviously, there  
2 must have been a meeting between the three of them the  
3 next day.

4 207 Q. What did you tell Mr. Brennan?

5 A. I showed him the telex.

6 208 Q. Yes.

7 A. And that it was up to him to sort it out with John

8 Finnegan, for whom Barry was acting.

9 209 Q. Yes. And what did he say?

10 A. Well, he said he would go off and discuss it with

11 Finnegan.

12 210 Q. Yes. And did he?

13 A. I presume he did, because he came back and said they

14 had agreed to ú10,000 each.

15 211 Q. Mr. Brennan did?

16 A. Yes. Or Mr. McGowan. I am not certain which.

17 212 Q. The one that you went to was Mr. Brennan, because you

18 had his phone number?

19 A. Yes. But possibly the two of them came in. I don't

20 remember.

21 213 Q. You don't remember which of them came back to you?

22 A. I don't remember whether one or two of them came in to

23 me when I read out this telex to them, to Tom Brennan.

24 214 Q. Well, do you remember that somebody came into you?

25 A. Yes, because I regarded it as quite urgent.

26 215 Q. When you say "come into you", I take it you are

27 referring to your office?

28 A. Yes.

29 216 Q. Well, did you phone Mr. Brennan up and ask him to come

30 in?



1 A. No, I read him out the telex that I had received, and

2 told him, can he sort it out with John Finnegan.

3 217 Q. Yes.

4 A. So obviously there was a meeting between the three of

5 them subsequently.

6 218 Q. Yes. And somebody came back to you?

7 A. Somebody came back to me and said they had agreed to

8 three payments of 10,000 each for the purpose of which,

9 the architects' fees, et cetera --

10 219 Q. Yes. Well, now, Mr. Brennan has told the Tribunal that

11 the reference to architects' fees was, in effect, a

12 euphemism, or alternative description of what everybody

13 understood to be a payment to Mr. Burke. In other

14 words, that what himself and Mr. McGowan wanted the

15 deduction for was the payment to Mr. Burke?

16 A. Well, I didn't understand that.

17 220 Q. You didn't understand that?

18 A. No.

19 221 Q. And did he tell you that?

20 A. No.

21 222 Q. Or did Mr. McGowan tell you that?

22 A. No. I always - my dealings with Mr. Wheeler, they were

23 very formal, and I don't think he would be - I didn't

24 think at the time that he would say what he said about

25 architects' fees, et cetera, if that was not what was

26 being discussed.

27 223 Q. Yes. Just on that point. How did you find Mr. Wheeler

28 in relation to your professional dealings with him?

29 A. I found him straight down the middle.

30 224 Q. Did you find him professional?

1 A. Yes.

2 225 Q. Was he the kind of person that if he received  
3 instructions, that he would comply with them?

4 A. Yes.

5 226 Q. Was he meticulous in dealing with the corporate aspects  
6 of the transactions with which he was dealing?

7 A. Well, I've seen some of the documents that were made  
8 available to me, and apparently he wasn't very good at  
9 some of the corporate work.

10 227 Q. Which ones are you referring to?

11 A. Some correspondence between himself and Mr. Barry,  
12 where he admitted that he hadn't minuted some  
13 notification he got about a charge on the Canio land a  
14 way back when George Russell first gave it to AIF, gave  
15 the undertaking to AIF.

16 228 Q. Yes.

17 A. That that hadn't been minuted.

18 229 Q. In fact, there was a minute, I think.

19 A. Well, the letter I am thinking of, he referred to the  
20 fact that his paperwork was quite lax.

21 .

22 MR. HANRATTY: Just bear with me for a moment.

23 .

24 MR. HAYDEN: It might be of assistance --

25 .

26 230 Q. MR. HANRATTY: I think the factual position is that  
27 there was a resolution in existence, but there was no  
28 minute in a minute book?

29 A. Something like that, yeah. He was admitting to  
30 Mr. Barry that everything was as - wasn't as properly

1 done as it should have been done.

2 231 Q. Yes. Yes. That's in reference to the resolution  
3 authorising Mr. Russell to give an undertaking?

4 A. I think so, yeah.

5 232 Q. And what Mr. Brennan has told the Tribunal is that he  
6 knew, and Mr. McGowan knew, and he believed Mr. Wheeler  
7 knew that what they were actually talking about was a  
8 deduction, not for architects' fees, but, in fact, for  
9 Mr. Burke?

10 A. Well, I didn't know.

11 233 Q. Yes. We do know that it does appear to have been  
12 Mr. Brennan's and Mr. McGowan's intention that it was  
13 to be a deduction for Mr. Burke?

14 A. Well, I didn't know that.

15 234 Q. I appreciate that.

16 .  
17 Mr. McGowan, I think, said that he told you that that  
18 was the purpose of the deduction.

19 .  
20 If I can just refer you to his testimony on it.

21 Day 295, question 399. The question was:

22 .  
23 "Question: And did you tell Mr. Owens that the ú10,000  
24 was a political donation?

25 Answer: I did."

26 .  
27 At question 403 the question is:

28 .  
29 "Question: And you told Mr. Owens that the sum of  
30 ú10,000 which had been paid by you was a political

1 donation to Mr. Burke?

2 Answer: I presume I did. I must have. I must have  
3 told him, yes.

4 Question: Does that mean you did tell him?

5 Answer: Well, it does."

6 .

7 Question 516, then:

8 .

9 "Question: When you spoke to Mr. Owens, did you  
10 describe the \$10,000 as a political donation?

11 Answer: To the best of my recollection, I did."

12 .

13 And there are a number of other references in a similar  
14 vein, but that is, in essence, the testimony which he  
15 has given to the Tribunal, that he did tell you that it  
16 was a political donation?

17 A. Do you believe everything Mr. McGowan says?

18 235 Q. Well, the difficulty, Mr. Owens, is that there are  
19 conflicts of a variety of different kinds in the  
20 testimony, and ultimately the Sole Member is going to  
21 have to sort it out --

22 A. He did not tell me. That's the answer.

23 236 Q. Well, he says that he can recall it, and that to the  
24 best of his recollection he did. Are you saying that  
25 you specifically recall that he didn't?

26 A. I specifically recall he didn't.

27 .

28 MR. HAYDEN: Sir, I think to be fair to Mr. McGowan, I  
29 thought the transcript said - he presumed that he had  
30 told him --

1  
2  
3  
4  
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27 237  
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30

.  
CHAIRMAN: Please. Please. The witness has answered  
the question. That's the end of the matter.  
.  
MR. HAYDEN: Well --  
.  
CHAIRMAN: If you want to explore it later in  
cross-examination, you are welcome, but not as an  
interruption.  
.  
MR. HAYDEN: It was just to correct Mr. Hanratty's --  
.  
CHAIRMAN: I appreciate your desire, but I must insist  
upon the procedures being followed.  
.  
MR. HAYDEN: I accept that, Sir. And I would presume  
the procedures would be accurately put to the witness  
as to what the transcript said. What the transcript  
said, as I understand the first transcript, was "I  
presume I did", not an emphatic "I did". It was a  
presumption on the part of Mr. McGowan. That's all I  
was asking for Mr. Hanratty to put to the witness.  
.  
CHAIRMAN: Is there any point in making a ruling in  
this Tribunal at all?  
.  
Q. MR. HANRATTY: I think I have read out to you,  
Mr. Owens, subject to any amount of references  
Mr. Hayden will in due course make out to you, a  
representative sample of the answers which Mr. McGowan

1 gave on this particular topic. And if I can give you  
2 another one at page 403 - sorry, question 403. I think  
3 this is one of the ones I read.

4 .

5 "Question: And you told Mr. Owens that the sum of  
6 ú10,000 had been paid by you as a political donation to  
7 Mr. Burke?

8 Answer: I presume I did. I must have, I must have  
9 told him, yes.

10 Question: Does that mean you did tell him?

11 Answer: Well, it does."

12 .

13 You've heard the other references which I put to you as  
14 well, which are essentially to the effect that he  
15 believes that he told you his recollection - to the  
16 best of his recollection was that he told you that this  
17 was - deduction was being made for a political  
18 donation.

19 .

20 Now --

21 A. He did not.

22 238 Q. I appreciate that's your answer. The dilemma,  
23 obviously from the Tribunal's point of view,  
24 ultimately, is that when the Sole Member sits down to  
25 consider all of the testimony on this point, he has to  
26 decide which version he accepts.

27 .

28 I just want to explore with you in a little bit more  
29 detail the basis on which you dispute that assertion by  
30 him.

1 .

2 He has given sworn testimony that he does recall it,

3 and he says that to the best of his recollection --

4 A. Well, if he had told me, it would have stuck out like a

5 sore thumb that there is money going to a politician.

6 239 Q. Yes. Well, a political donation.

7 .

8 Is it possible that he might have told you that they

9 were going to make a political donation, perhaps even

10 to a political party?

11 A. A political donation of that size, yes, I would

12 remember.

13 240 Q. And is it on that basis that you are quite clear in

14 your assertion that you were not so told?

15 A. Yes. I took that telex from Mr. Wheeler at face value.

16 241 Q. Yes.

17 A. Which I thought was a good idea, to reserve money for

18 future expenses. And I assumed it would be put on a

19 separate deposit.

20 242 Q. Yes. There is no doubt that whenever you approached,

21 you say, Mr. Brennan, somebody was - must have

22 approached Mr. Finnegan, because an agreement was

23 reached as to a deduction, leaving aside the question

24 of what it was for, in the sum of \$10,000?

25 A. I presume the three of them met. I don't know.

26 243 Q. Yes. And as a result of what you were told by

27 whichever of them came back to you, you wrote, then -

28 you replied to Mr. Wheeler.

29 .

30 If we can just have page 757. This is dated the 16th

1 of November, 1984. It says:  
2 .  
3 "Confirm ú10,000 by three agreed as reserve, and Barry  
4 has been advised.  
5 .  
6 Mortgage being closed at 2 p.m., Monday 19th at your  
7 office.  
8 .  
9 Regards, HV Owens."

10 .  
11 So it would appear that as well as sending this  
12 particular telex to Mr. Wheeler, you had also  
13 separately advised Mr. Barry?

14 A. No, I hadn't.

15 244 Q. You hadn't?

16 A. No.

17 245 Q. Who advised Mr. Barry?

18 A. Mr. Finnegan, I presume. He would be the only person  
19 in a position to advise Mr. Barry. And to have said  
20 that, I must have been told that by Mr. Finnegan.

21 246 Q. By Mr. Finnegan?

22 A. By Mr. Finnegan. I wouldn't accept it coming from  
23 either of the other two.

24 247 Q. Would you not?

25 A. No.

26 248 Q. Well, if Mr. Brennan simply came in and said, "We have  
27 agreed to ú10,000 with Mr. Finnegan, and Mr. Finnegan  
28 has told Mr. Barry", would that not be a basis for you  
29 saying - making that statement in the telex?

30 A. No. That would be secondhand information.



1 249 Q. Mr. McGowan actually said something similar. He said  
2 that you would have checked with all three of them  
3 before you would have sent that telex?

4 A. Well, I can't remember being at a meeting with them,  
5 but perhaps I was.

6 250 Q. Well - I don't think he put it - I'll just tell you  
7 what he said. It was at question 406, still on the  
8 same date.

9 .  
10 "Question: Do you suggest that Mr. Owens would have  
11 had to contact Mr. Finnegan and Mr. Brennan,  
12 independently of his contact with you, to confirm that  
13 the other two sums of ú10,000 were, in fact, agreed?

14 Answer: Without a doubt."

15 A. I would agree with Joe McGowan on that. But I would  
16 have presumed, in fact, that there was a meeting of the  
17 three, not that I went to each person separately and  
18 sounded them out. There would have been agreement  
19 between the three about the contribution of the 10,000  
20 each.

21 251 Q. Yes. Well, do you have any recollection of discussing  
22 the matter with Mr. Finnegan?

23 A. Not now, no.

24 252 Q. Yes. Undoubtedly, if you did discuss it with Mr.  
25 Finnegan, he could well have told you that he had  
26 advised Mr. Barry that it had been agreed?

27 A. Well, I wouldn't have said that "Barry has been  
28 advised" unless I heard that from Mr. Finnegan.

29 253 Q. Can you just assist me on that. I am not quite clear  
30 why you mightn't have said that on the basis that Mr.

1 Brennan would have told you so?

2 A. Because, number one, I didn't know Barry. And number  
3 two, I would not accept third party - a third party  
4 telling me what Finnegan had advised.

5 254 Q. Not even your own client?

6 A. No.

7 255 Q. Well, would you not have trusted your own client to be  
8 telling you the truth in relation to the matter?

9 A. Not when I am dealing with a third party who is John  
10 Finnegan.

11 256 Q. Why not?

12 A. Because - why not? Because I just wouldn't.

13 257 Q. So you are absolutely clear that, by reason of the fact  
14 that you did make this statement in this telex, you  
15 would have got that information directly from Mr.  
16 Finnegan?

17 A. Yes.

18 258 Q. What about if Mr. Brennan himself told you that he,  
19 himself, had advised Mr. Barry, for example?

20 A. I don't think it would have arisen, because I don't  
21 think that Barry would accept instruction from Tom  
22 Brennan.

23 259 Q. No, undoubtedly so, and there is no evidence of any  
24 level of contact between Mr. Brennan and Mr. Barry, and  
25 one wouldn't have expected it. But nonetheless, it's  
26 at least theoretically possible that Mr. Brennan might  
27 have picked up the phone to inform him that it had been  
28 advised, since Mr. Barry was the one that contacted  
29 Mr. Wheeler?

30 .

1 MR. HAYDEN: Sir --

2 A. These things are all possible --

3 .

4 MR. HAYDEN: -- I wonder if I might object.

5 .

6 I know Mr. Hanratty has dubbed me earlier on for  
7 objecting too much. I thought, Sir, you had enough  
8 trouble dealing with things that did happen, and trying  
9 to figure out what did happen, rather than theories now  
10 being putting up by Mr. Hanratty. There is no evidence  
11 that Mr. Brennan spoke to Mr. --

12 .

13 MR. HANRATTY: I never suggested there was any such  
14 evidence. In fact, I suggested that there wasn't any  
15 such evidence. I was just exploring a possibility.

16 .

17 The witness has given an important piece of testimony  
18 which we have not heard before, namely, testimony to  
19 the effect that there was contact directly between  
20 himself and Mr. Finnegan in connection with this  
21 matter.

22 .

23 CHAIRMAN: I agree.

24 .

25 MR. HAYDEN: Mr. Hanratty's response to that is to come  
26 up with a theory that nobody has ever proffered before  
27 --

28 .

29 CHAIRMAN: Could we just do without these  
30 interruptions. They may be very interesting. You can

1 canvass them by way of cross-examination. You are very  
2 welcome to test this witness's validity, this witness's  
3 veracity, but he just - it just doesn't help in any  
4 way, to get the Tribunal work done, to have constant  
5 commentary.

6 .

7 Now, I really am getting just a little annoyed --

8 .

9 MR. HAYDEN: I accept the Tribunal's desire to finish  
10 the matter quickly --

11 .

12 CHAIRMAN: All right. This conversation is now at an  
13 end.

14 .

15 MR. HAYDEN: Can I, Sir, can I just put this point?

16 .

17 A number of weeks ago an issue arose whereby an  
18 objection was not made at the time of a particular  
19 question. The next day when the objection was made  
20 properly, you ruled, Sir, that the objection, not  
21 having been made at the time, it was now too late the  
22 day after. So I am caught in a cleft state to decide  
23 at which stage I should object de bene esse. You don't  
24 have to accept the objection, but at least my client's  
25 position can be vindicated.

26 .

27 If it is not accepted by you, Sir, that's your  
28 entitlement, but I don't think it's the case that a  
29 party can be excluded from objection, if he - if it  
30 feels that there is a ground for it.

1 .  
2 CHAIRMAN: It's not a question of objection, it's a  
3 question of a running commentary on the manner in which  
4 another counsel has conducted the proceedings.

5 .  
6 Now, you are welcome to bring to the attention of the  
7 Tribunal your view, and the manner in which that should  
8 be done is in cross-examination, to say, "It was put to  
9 you, is it not a fact," et cetera, and that goes on the  
10 record, it's noted, it's there for me to see when I  
11 come to read the record in refreshing my memory, and  
12 all of that. But really, this constant - this is  
13 becoming a feature of this Tribunal, that people are  
14 popping up and down to comment on their colleague's  
15 manner of conducting their examination. And I am going  
16 to become much more - much less tolerant.

17 .  
18 Now, please, I wish to be courteous to everybody, and I  
19 do my best, but I do want the proceedings to go  
20 smoothly. By all means, canvass these matters, as you  
21 are entitled to. There is no question of you not being  
22 entitled to.

23 .  
24 MR. HAYDEN: Thank you, Sir.

25 .  
26 260 Q. MR. HANRATTY: I'll deal with this document finally,  
27 Mr. Owens.

28 .  
29 As I understand your testimony, you are ruling out the  
30 possibility that Mr. Brennan was the source of the

1 information that Mr. Barry had been informed. Is that  
2 right?

3 A. I am, yes.

4 261 Q. And Mr. McGowan, presumably, as well?

5 A. Yes.

6 262 Q. And as I understand it, you are ruling it out on the  
7 basis that that is not the kind of a statement you  
8 would have made on secondhand information?

9 A. Yes.

10 263 Q. But not that you specifically recall what the source of  
11 the information was, but simply that you wouldn't have  
12 done it?

13 A. Yes.

14 264 Q. Yes. Now, you also say in the same telex - it says:  
15 "Mortgage being closed at 2 p.m., Monday, 19th, at your  
16 office."

17 .

18 So that, presumably, is something that somebody would  
19 have told you?

20 A. Yes. That was - this telex was the 16th of November?

21 265 Q. Yes.

22 A. So I would have been told by either Tom or Joe.

23 266 Q. Yes. I take it that if you had a conversation, which  
24 you believe you must have done with Mr. Finnegan, since  
25 he would have been the only source of you making this  
26 statement; do you have any recollection at all of  
27 discussing with Mr. Finnegan the reason for the  
28 deduction?

29 A. No.

30 267 Q. We know that --

1 A. I presume he saw the telex that came from Mr. Wheeler.

2 268 Q. Well, if he did, the only way he could have done was

3 because you showed it to him, presumably?

4 A. Yes. Yes.

5 269 Q. Yes. Well, that would imply that you would have had a

6 face-to-face meeting with Mr. Finnegan --

7 A. Sorry. It was shown to him, not that I showed it to

8 him.

9 270 Q. Would you have given a copy of it to somebody?

10 A. I would have given it to Tom Brennan or Joe McGowan, or

11 whoever came into the office.

12 271 Q. Well, again --

13 A. They would have had to show it to John Finnegan, for

14 him to sort out his end of it.

15 272 Q. Yes. If you had spoken to Mr. Finnegan, such as, for

16 example, for him to inform you that Mr. Barry had been

17 advised, and if, as Mr. McGowan asserts, Mr. McGowan

18 had told you it was for a political donation, would you

19 have mentioned that to Mr. Finnegan?

20 A. I would have, but I hadn't been told it was a political

21 donation.

22 273 Q. Do you recall having any conversation with Mr. Finnegan

23 about a political donation?

24 A. No.

25 274 Q. Well, if such a conversation had occurred, do you think

26 you would remember it?

27 A. I can't say I would.

28 275 Q. Well, given the size of the - to have been a payment to

29 Mr. Burke, whatever it was for, it was for a very large

30 sum of money?

1 A. But Mr. Finnegan was not my client --

2 276 Q. I understand that --

3 A. So he wouldn't be - I wouldn't be talking to him or him

4 to me about if it was a political donation.

5 277 Q. Well, I could understand that, but on the other hand,

6 if you were having a conversation with him on the

7 matter of this deduction, it would be reasonable to

8 surmise that it would come up, if it was for a

9 political donation?

10 A. It would have, yes.

11 278 Q. And what I am asking you is: If such a conversation

12 ever occurred, is it not the kind of a conversation

13 that you would have remembered?

14 A. It is.

15 279 Q. But you have no recollection of any such conversation?

16 A. No such conversation ever took place.

17 280 Q. And do you say that on the basis that you don't

18 remember it, and if it did, you believe you would

19 remember it, is that --

20 A. Exactly.

21 281 Q. Mr. Finnegan, as you know, has told the Tribunal that

22 he was unaware that this was being deducted for the

23 purpose of a political donation, and that it was his

24 belief that it was for architects' fees?

25 A. Yeah, so I read.

26 282 Q. Do you have any recollection of any conversation with

27 Mr. Finnegan about the deduction being for architects'

28 fees?

29 A. No. I don't think I was at the meeting between the

30 three of them when they discussed that telex.



1 283 Q. Yes. Do you have any idea, or can you give us any  
2 assistance on the nature of the - or the circumstances,  
3 or context of the conversation you would have had with  
4 Mr. Finnegan, or which you assume you had with Mr.  
5 Finnegan, given that you were in a position to make  
6 this statement?

7 A. He would have phoned me to say that he had instructed  
8 Barry, so I was able to confirm to Wheeler that Barry  
9 had been instructed.

10 284 Q. Yes. You mentioned earlier that you had only met Mr.  
11 Finnegan on, what, a limited number of occasions?

12 A. Yes, very limited.

13 285 Q. Do you think this was one of them?

14 A. It may very well have been one - one of them.

15 286 Q. Or it may have been a telephone conversation?

16 A. Yes.

17 287 Q. And have you any - can you assist us in any way in  
18 determining which it might have been?

19 A. No.

20 288 Q. I take it, you have no recollection of any telephone  
21 conversation?

22 A. I have neither any recollection of a telephone  
23 conversation or of a meeting.

24 289 Q. Yes. But you are absolutely clear in your view, that  
25 given that you made this statement in this telex, you  
26 would only have done so on the basis that you had  
27 obtained that information from Mr. Finnegan?

28 A. Yes.

29 290 Q. Now, we know that there was a meeting in Jersey on the  
30 19th, when the monies arrived and the deal was closed,

1 as it were. And we know that on the occasion of that  
2 meeting, Mr. Wheeler wrote out on a piece of paper his  
3 division of the proceeds of the loan. 1863.

4 .

5 There has also been evidence that both Mr. McGowan and  
6 Mr. Burke themselves had been over with Mr. Wheeler in  
7 Jersey a number of days prior to this, the 19th of  
8 November. And as you can see from the document on  
9 screen, you probably have seen it in the documents that  
10 were circulated, Mr. Wheeler sets out in some detail  
11 his calculations leading to the distribution of this  
12 sum.

13 .

14 First of all, we know that the sum which was actually  
15 available for distribution was ú412,000, and not as  
16 originally believed by the parties, 420, because they  
17 hadn't taken into account that Binchys' fees or  
18 Fitzpatricks' fees were going to be deducted. In any  
19 event, the figure that - the net figure that was  
20 actually available was 412,166.42.

21 .

22 Have you seen this document?

23 A. Yes.

24 291 Q. And I take it you understand that the - the logic of  
25 what he has done here?

26 A. Yes. He deducted whatever fees were due to Bedell &  
27 Cristin.

28 292 Q. ú2,858?

29 A. Then divided by three, which would have been each  
30 party's share of the net.

1 293 Q. Yes.

2 A. Then he deducted 10, and then 136,000-odd to Foxtown.

3 294 Q. That's correct.

4 A. Then on the other - below that --

5 295 Q. These are deductions from what is left --

6 A. -- below that the 272,000-odd is twice the 136,400.

7 296 Q. Yes.

8 A. Which would be the share of Brennan and McGowan.

9 297 Q. That's correct.

10 A. And underneath that, there is 50,000 to Caviar

11 deducted. And then a further deduction of 58,000, a

12 call deposit. Leaving a balance of 164,000 odd, on a

13 seven day call.

14 298 Q. And then, if we scroll to the top of the page, which is

15 actually clearer on the screen, you see there the

16 50,000 to Caviar referred to at the bottom of the page

17 is shown to be "2 by ú25,000 to Caviar Limited" with a

18 bank account number in Hill Samuel plus the 10,000,

19 which was the 10 that was deducted from Mr. Finnegan's

20 136?

21 A. Yes.

22 299 Q. So it's absolutely clear from that, that Mr. Wheeler

23 was making these deductions for the purpose of sending

24 the ú60,000 to Mr. Burke's company, Caviar Limited,

25 which also, as it turns out, was a Bedell & Cristin

26 company which had been formed in March of the same

27 year, 1984.

28 .

29 Now, it seems fairly clear from that, that at the very

30 latest, on that date, Mr. Wheeler knew exactly what he

1 was deducting the money for, and where it was going to.

2 And we also know that he did, in fact, send ú60,000,  
3 which he so deducted, to Caviar Limited, Mr. Burke's  
4 company.

5 .  
6 Now, Mr. Finnegan, as I've indicated to you, has  
7 already told the Tribunal that he did not know that  
8 this money was being deducted not for architects' fees,  
9 but for Mr. Burke. But if he is correct in that, it  
10 would appear to follow that he and Mr. Barry were  
11 deceived by Mr. Wheeler.

12 A. And so was I.

13 300 Q. Well --

14 A. It didn't cost me anything, but so was I deceived in  
15 the - on that telex, that he said the money was to be  
16 reserved for architects' fees.

17 301 Q. Yes.

18 A. "Expenses, such as architects' fees", I think was the  
19 wording.

20 302 Q. Yes. But the Tribunal has had evidence that prior to  
21 this, earlier the same year, in fact in June of 1984  
22 when the loan was first mentioned, and ultimately was  
23 sanctioned, and for some little time prior to that,  
24 there had been communication and correspondence between  
25 Mr. Barry and Mr. Wheeler, and that two things  
26 happened: First of all, that there was a meeting  
27 between Mr. Barry and Mr. Wheeler, at which Mr. Barry  
28 communicated to Mr. Wheeler his concerns about whether  
29 or not Mr. Finnegan's interests were being properly  
30 protected, after which meeting he wrote a letter

1 setting out his understanding of the assurances he had  
2 been given by Mr. Wheeler. And subsequent to that,  
3 there was a further meeting in Jersey, attended by Mr.  
4 Brennan, Mr. McGowan, and Mr. Barry, and Mr. Finnegan,  
5 and Mr. Wheeler, at which these matters were discussed  
6 in detail, and after which again Mr. Barry committed  
7 himself to paper, setting out his understanding of  
8 various assurances that had been given. Mr. Russell,  
9 incidentally, was at that meeting, and that's the  
10 meeting at which he handed over the title deeds.

11 .

12 So that fairly detailed discussions had occurred  
13 between the parties in relation to the very subject of  
14 the protection of Mr. Finnegan's interests?

15 A. Yes.

16 303 Q. And in viewing what happened on the 19th of November,  
17 it has to be against that background, obviously, that  
18 they be viewed.

19 .

20 You also recall that the correspondence that we've just  
21 had referred explicitly to architects' fees, and, in  
22 fact, there was correspondence between Mr. Wheeler and  
23 Mr. Barry, I think. I think we'll just get the  
24 reference for that. 756, I think might be the page.

25 Yes.

26 .

27 No - while we are waiting on that reference, we'll just  
28 look at this document, 756. It's from Mr. Wheeler to  
29 Mr. Barry, and it's "re Canio Limited".

30 .

1 "Thank you for your letter of the 8th November, and for  
2 sending me a copy of the Lombard & Ulster (Banking)  
3 (Ireland) Limited facility letter. I confirm the  
4 following:

5 .  
6 1. I executed a contract for the sale of 43 acres of  
7 the land belonging to the company to Kilnamanagh  
8 Estates Limited for ú1,500,000, which you confirmed to  
9 me on the telephone was approved by Foxtown.

10 .  
11 2. Receipt of a letter from Kilnamanagh Estates  
12 Limited, whereby that company agrees to release Canio  
13 Limited from the contract on demand. (Copy enclosed.)

14 .  
15 3. Receipt of a letter from Reid & McNabb asking for  
16 the title documents to be returned. I released these  
17 to Mr. McGowan against his receipt. (Copy of Reid &  
18 McNabb's letter enclosed.)

19 .  
20 4. So far as the undertaking which you require from  
21 me, this has been complicated by the apparent lack of  
22 agreement concerning a total retention amount of  
23 ú60,000 against future expenses should Dublin County  
24 Council not proceed with the purchase of the land.

25 I have passed this problem on to my client's  
26 representatives in Dublin, and hope that this aspect  
27 can be cleared up at that end, and full instructions  
28 relayed to us.

29 .  
30 Although the Lombard & Ulster facility was not dealt

1 with yesterday, since I understood that the  
2 arrangements between Canio and Kilnamanagh are a  
3 precondition, Mr. McGowan did indicate that the  
4 ú420,000 advanced by Lombard & Ulster could be paid to  
5 this firm.

6 .

7 When the question of the retention has been resolved I  
8 hope to be able to give you the undertaking you  
9 require."

10 .

11 And that's signed by Mr. Wheeler.

12 .

13 And then the next document is - it's dated the 21st of  
14 November, 1984. It's page 776. And it's from  
15 Mr. Wheeler. It's a telex from Mr. Wheeler to  
16 Mr. Barry. He says:

17 .

18 "We have received ú412,166.42 by telegraphic transfer  
19 into our client's account. I was authorised to deduct  
20 our fees, which includes fees and disbursements to the  
21 30th June, 1984, for Canio Limited and Ardcarne Limited  
22 in a total of ú2,858.05. This leaves a figure of  
23 ú409,308.37. ú10,000 has been deducted, as agreed,  
24 from Foxtown's one-third share, and placed on a call  
25 deposit account, and the net figure, which is being  
26 TT'd to Guinness & Mahon this morning, is ú126,436.16."

27 .

28 Now, it seems fairly clear from that correspondence,  
29 that if Mr. Finnegan, and presumably Mr. Barry, did not  
30 know of the true reason for the deduction of ú10,000,

1 Mr. Wheeler was, without doubt, deceiving them in a  
2 most deliberate and systematic way. Isn't that right?

3 A. I first saw this letter last Friday when I was waiting  
4 to be called.

5 304 Q. Yes.

6 A. And I thought that the whole thing was a total lie.  
7 And once more, Finnegan was being totally deceived,  
8 because you will not find ú10,000 on a call deposit  
9 account in the ledger of that time.

10 305 Q. That is correct.

11 A. That is correct, that you won't find --

12 306 Q. You won't?

13 A. No.

14 307 Q. There doesn't appear to be one, or at least we've seen  
15 no evidence of it. But one has to consider all the  
16 possibilities, obviously. One possibility is that it  
17 is, in fact, a deliberate and systematic deceit.

18 A. What is that to mean?

19 308 Q. You had fairly extensive dealings with Mr. Wheeler?

20 A. Yes.

21 309 Q. And essentially, as far as can be seen from the  
22 documents, and without - unfortunately, without hearing  
23 from Mr. Wheeler himself, the first conclusion one can  
24 draw is that these services were being provided by  
25 Bedell & Cristin on kind of a professional basis. They  
26 were a firm of solicitors providing trust and  
27 administration services for fees?

28 A. Yes.

29 310 Q. They appear, by and large, to have done them in a  
30 professional way. It seems to have been a substantial



1 portion of the business, and we've been told that by  
2 Mr. Simon Howard, although we understand the firm did  
3 other business as well.

4 .

5 If a fund was being retained for discharge of future  
6 architects' fees, would you have, for example,  
7 expected, as an adviser to any of the parties to -  
8 somebody having sought an account of the disposition of  
9 that fund in due course?

10 A. Yes.

11 311 Q. From a professional point of view, is it conceivable,  
12 if it was a deceit, that he could have thought for a  
13 minute he would have got away with it?

14 A. Well, the last - the £10,000 has been "deducted as  
15 agreed from Foxtown's one-third share and placed on a  
16 call deposit account", and that statement is not true.  
17 You'll see it from the ledger account of that  
18 particular time.

19 312 Q. Yes.

20 A. So obviously he, at least to my mind, he was  
21 deliberately hoodwinking Barry and Finnegan.

22 313 Q. Well, one other possible explanation - the reason I am  
23 putting these to you, Mr. Owens, is because you, above  
24 all other people involved in this particular matter,  
25 appear to have had more extensive direct dealings with  
26 Mr. Wheeler than anybody else.

27 A. That's true.

28 314 Q. By and large Messrs. Brennan and McGowan weren't  
29 dealing directly with Mr. Wheeler --

30 A. Well, they were in the later years.

1 315 Q. Yes, I appreciate that. And there were a number of  
2 visits, but by and large the day-to-day correspondence  
3 was mainly communications between yourself and  
4 Mr. Wheeler, mainly telexes?

5 A. That's true.

6 316 Q. And would you have had experience of requesting or  
7 instructing Mr. Wheeler to do things and dealing with  
8 him afterwards?

9 A. Yes.

10 317 Q. And whatever. You see - and it's in that context that  
11 I am seeing if you can assist the Tribunal in any way  
12 in terms of it trying to decide what was actually going  
13 on here.

14 .

15 One possible explanation is, for example, that if Mr.  
16 Finnegan did know that the deduction was for a  
17 political donation, that would arguably explain  
18 everything?

19 A. Yeah, but, Mr. Hanratty, these are all private letters  
20 which have come into the public domain. If they were  
21 intended to be in the public domain from day one, I  
22 could agree with that letter, but these are private  
23 letters which you have acquired. So why would he be  
24 saying that the money has been put on joint deposit,  
25 when it hasn't?

26 318 Q. Yes. Well, could I put it another way: We know that  
27 there was no fund, in fact, set up, and no £10,000  
28 lodged in this deposit, call deposit account. But we  
29 also know that there isn't any evidence at all  
30 indicating that the trustees subsequently endeavoured

1 to get an account of what, if anything, was done with  
2 this fund?

3 A. Which trustees?

4 319 Q. The - Mr. Barry.

5 A. Oh, the Foxtown trustees?

6 320 Q. Yes. If, as indicated by this correspondence, the  
7 intention of the three parties was that there would be  
8 a fund set aside for the contingency of architects'  
9 expenses, one would expect that in the normal way it  
10 would presumably be spent on architects' expenses, and  
11 somebody would look for receipts and vouchers, because  
12 it was, by the standards of the time, a very  
13 substantial sum of money, was it not?

14 A. Well, it was meant to be three by ten, it was meant to  
15 be 30,000 on deposit, on call deposit.

16 321 Q. Yes. But even 30,000 was then --

17 A. Yeah.

18 322 Q. -- a very substantial sum of money, and not something  
19 that anybody in a trustee capacity would ignore?

20 A. Yes. True.

21 323 Q. And if, for no other reason, they want to make sure if  
22 there was expenditure out of the fund, it wasn't all  
23 out of their ten, if you know what I mean?

24 A. Well, I don't know.

25 324 Q. Did you ever act in a trustee capacity?

26 A. I have, yes.

27 325 Q. And would you expect that if there was a fund of  
28 \$10,000 at that point in time, that you would have kept  
29 track of it?

30 A. Yes.

1 326 Q. And if the trustees of a fund didn't keep track of it,  
2 what conclusion would you come to?

3 A. Sorry, you asked me, was I ever a trustee?

4 327 Q. Yes.

5 A. Now you are asking me if the trustees didn't keep track  
6 of it?

7 328 Q. Well, I just asked you if you were, would you have kept  
8 track of the fund? And you said that you would have  
9 done, because you would have been accountable to the  
10 beneficiaries?

11 A. Yes, true.

12 329 Q. Well, we know that it is stated in this document that a  
13 fund was set aside and retained in the call deposit  
14 account?

15 A. Yeah.

16 330 Q. And the tenor of the correspondence is that the other  
17 two partners in the venture were going to contribute  
18 equally to the same fund, and that the fund was for  
19 architects' fees?

20 A. Yes.

21 331 Q. But absolutely nothing, according to the evidence and  
22 documentation that the Tribunal has, was ever done by  
23 anybody ever since the date of this telex, in effect,  
24 in relation to this fund?

25 A. Well, that money was diverted into Caviar.

26 332 Q. Yes, it was paid - it was paid directly over to Caviar  
27 on the 21st. There is no doubt about that. We know  
28 that, and that has been established. But we also know  
29 that the trustees never came back and asked, "What  
30 happened to the fund?" Or whether it was spent, or

1           whether there were invoices for the architects' fees,  
2           or if they weren't, or if it wasn't spent, "Could we  
3           have the money back"?

4       A.   Well, I can't speak for the trustees of Foxtown.

5 333   Q.   All right.

6           .

7           Did anybody ever subsequently contact you in relation  
8           to the matter, or, as far as you were concerned, was  
9           that the end of it in November of 1994?

10      A.   That was the end of it.

11 334   Q.   Yes. And I take it that you never received any  
12           inquiries from either Mr. Barry, or indeed anybody else  
13           in relation to the matter?

14      A.   No.

15 335   Q.   You, I take it, would not have been in direct  
16           communication with Mr. Barry in any context anyway?

17      A.   I don't think I ever was in direct contact.

18 336   Q.   Yes. All of your contact would have been with  
19           Mr. Wheeler?

20      A.   Through Wheeler, yeah.

21 337   Q.   And may I take it also that Mr. Wheeler never himself  
22           subsequently contacted you in connection with any  
23           matter to do with this fund?

24      A.   No.

25 338   Q.   And I take it, you never received any request from Mr.  
26           Finnegan, for example, in relation to the disposition  
27           of this fund?

28      A.   No.

29 339   Q.   Or, for that matter, Mr. Brennan or Mr. McGowan?

30      A.   No.

1 340 Q. And for all purposes, you had no further involvement,  
2 good, bad or indifferent, with it?

3 A. That's true.

4 341 Q. Did you ever prepare any accounts for Canio after this  
5 point in time, that's November 1984?

6 A. No. I prepared the one set of accounts up to the 31st  
7 of December, 1983.

8 342 Q. Yes. So you would never have had occasion to prepare  
9 accounts which might assist any of the parties,  
10 including Mr. Barry in relation to the existence of the  
11 fund?

12 A. No, I never prepared further accounts after December  
13 '83.

14 343 Q. Were any accounts prepared by anybody else for Canio  
15 after 1983, as far as you were aware?

16 A. As far as I am aware, no.

17 344 Q. And as far as you were aware, were any other auditors  
18 involved with Canio?

19 A. Not that I am aware.

20 345 Q. Canio, as far as we know, still exists. Does that mean  
21 that no accounts - at least that you are not aware of  
22 any accounts having been prepared for that company  
23 since then?

24 A. I am not aware.

25 346 Q. Yes. Were you consulted in any capacity in connection  
26 with the disposition of Mr. Finnegan's share or -  
27 sorry, Foxtown's share to Messrs. Brennan and McGowan?

28 A. No, not at all. In fact, after 1984 I was hardly ever  
29 consulted in relation to Jersey.

30 347 Q. Yes.

1 A. There were better consultants hired. At least they  
2 thought they were better.

3 348 Q. Yes. And you didn't have any involvement, really,  
4 then, in the sale of the Foxtown shares to Rush Cliff  
5 Investments, which was the Brennan and McGowan company  
6 that bought them?

7 A. No.

8 349 Q. You weren't involved - were you involved with Rush  
9 Cliff Investments?

10 A. No. Did that take place in the '80s or '90s?

11 350 Q. It took place in 1990.

12 A. No.

13 351 Q. Canio, actually, was dissolved in October of 1999. It  
14 was dissolved in 1999. But I understand from your  
15 evidence, you had no further involvement with Canio  
16 since that time?

17 A. No.

18 352 Q. There were two other land transactions in which Mr.  
19 Finnegan was involved with Messrs. Brennan and McGowan,  
20 one, as you know, was in Northumberland Road, and the  
21 other one was in Herbert Street.

22 A. Capent and Criteria.

23 353 Q. Capent Limited was the one that was used for  
24 Northumberland, and Criteria Investments Limited was  
25 the one used for Herbert Street?

26 A. Yes.

27 354 Q. Did you have any involvement in relation to either of  
28 those developments?

29 A. We prepared audited accounts for both of them. That's  
30 all.

1 355 Q. For Capent and Criteria?

2 A. Yeah. Which would have gone into the Revenue in the  
3 normal course of events.

4 356 Q. Yes. And in relation to Criteria, what was your  
5 understanding of the business of that company?

6 A. I got accounts from Grant Thornton, copies of which you  
7 have received, in relation to Criteria, and for four  
8 years nothing happened. I think up to December 1984  
9 absolutely nothing had happened apart from the purchase  
10 of the land.

11 357 Q. What do you know about the purchase - they purchased  
12 the land for, was it ú50,000, approximately?

13 A. 40 or 50, I am not sure.

14 358 Q. It might have been 40. There have been two figures  
15 mentioned. Perhaps it was 40. In any event, it was  
16 purchased, and then nothing, as you say --

17 A. The company didn't trade, at least up to December '84.

18 359 Q. Yes. You know, or do you know that there was - appears  
19 to have been an indebtedness of this company in the sum  
20 of ú50,000 for Mr. Finnegan?

21 A. No, I wasn't aware of that.

22 360 Q. I see. We've had evidence that there was a promissory  
23 note signed by Mr. McGowan in relation to an  
24 indebtedness of the ú50,000, plus there was an  
25 indebtedness of ú12,000 for auctioneer's fees. Did you  
26 know anything about that?

27 A. No.

28 361 Q. Well, does that mean that nobody told you about those  
29 indebtedness's to the extent that they may have been  
30 attributable to Criteria when you were preparing the



1 accounts of that company?

2 A. I wasn't aware of them.

3 362 Q. Yes. Well, when the time came for you, after this  
4 dormant period of four years, to prepare the accounts  
5 of the company, was that when the property was being  
6 sold?

7 A. I don't know, because I haven't - I only got accounts  
8 up to December, 1984 from Grant Thornton. I didn't get  
9 more recent accounts.

10 363 Q. Yes. Well, what is your recollection of what the  
11 business of the company was -- it appears that the  
12 company didn't, as far as we are aware, have any other  
13 involvement in any other property, and that it was in  
14 relation to this Herbert Street Plantation property  
15 that it was used.

16 A. I have no particular recollection about it.

17 364 Q. What was the financial state of the company, for  
18 example?

19 A. Well, I don't have the balance sheet with me to tell  
20 you what the state of the company was. In fact,  
21 actually, it must have been paid for by inter-company  
22 loans because there was no bank interest - there was no  
23 profit and loss accounts prepared. They were only  
24 balance sheets each year, no change whatever for the  
25 balance sheets.

26 365 Q. Which would indicate that it was interest-free  
27 inter-company loans that was used for the funding of  
28 the purchase of the property?

29 A. Yes. Yes.

30 366 Q. Otherwise banks, obviously, would have been charging

1 interest and there would had to have been a profit and  
2 loss account?

3 A. There would have been, yes. There were no profit and  
4 loss accounts; there was just the same balance sheet  
5 each year.

6 367 Q. As far as you can recall, was there a bank account or a  
7 bank?

8 A. I don't think so.

9 368 Q. Yes. And when the time came when you prepared the  
10 accounts of the company, can you recall, was it at a  
11 point in time after the company had sold its asset, or  
12 --

13 A. No, it hadn't sold it by December '84.

14 369 Q. Right. So it would have been seized of that asset at  
15 the time that you would have prepared the account. It  
16 would have appeared as an asset in its books?

17 A. That's true.

18 370 Q. Can you recall what the value of the asset was in  
19 approximate terms?

20 A. I thought it was something around 40,000.

21 371 Q. Which was the price that it had paid for it?

22 A. Yes.

23 372 Q. Yes. And did you continue to produce accounts, then,  
24 for that company up until the time that it sold the  
25 asset?

26 A. I presume it did, but I wasn't furnished with copies  
27 from Grant Thornton. I presume the company is still  
28 alive. I don't know whether it's been liquidated or  
29 not.

30 373 Q. Can you recall when you would have ceased to act on

1           behalf of that company?

2     A.   1987, when I ceased to be partner.

3 374   Q.   When you retired, effectively?

4     A.   Yes. I semi-retired first of all and then fully  
5         retired.

6 375   Q.   I think you became a consultant?

7     A.   Exactly. More profitable.

8         .

9     MR. HANRATTY: Would that be an appropriate time, sir,

10        to --

11        .

12     CHAIRMAN: I didn't mean to intervene, because I knew

13        you were coming to an end.

14        .

15     Again, just by way of inquiry, would you have more

16        questions after lunch?

17        .

18     MR. HANRATTY: Yes. I won't be - I will be a matter of

19        15 minutes or thereabouts, I would think.

20        .

21     CHAIRMAN: Very good. Thank you very much.

22        .

23     THE TRIBUNAL THEN ADJOURNED FOR LUNCH AND RESUMED AS

24        FOLLOWS:

25        .

26        .

27        .

28        .

29        .

30        .

1 THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

2 .

3 MR. HANRATTY: Mr. Owens, please.

4 .

5 MR. HUGH OWENS RETURNED TO THE WITNESS-BOX AND

6 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

7 .

8 376 Q. MR. HANRATTY: Mr. Owens, among the documentation which

9 was circulated to you, were certain accounts which you

10 had prepared for a company called Dublin Airport

11 Industrial Estates Limited. Are you familiar with that

12 documentation?

13 A. An account -

14 377 Q. Well, it was an analysis of the - the disposition or

15 the proposed disposition of the proceeds of a

16 particular sale that was in contemplation.

17 A. Well, I am not very familiar with it, because it was

18 basically illegible.

19 378 Q. Illegible?

20 A. Illegible, yeah.

21 379 Q. Well, we will --

22 A. The copy I have received, it was illegible.

23 380 Q. Well, we will show you a legible copy, then?

24 A. Thanks.

25 381 Q. It is 4016. (Document handed to witness) You have a

26 hard copy there as well.

27 A. This is legible.

28 382 Q. I see.

29 A. That is legible. The other thing I saw was --

30 383 Q. Are you referring to the one that was published in the

1 article in the newspaper?

2 A. It probably was, yeah.

3 384 Q. Yes. Well, that is somewhat illegible, undoubtedly,

4 but the one you are looking at is the document itself.

5 Can I in the first instance ask you to explain to us

6 the context and circumstances in which it became

7 necessary for you to prepare this document?

8 A. Sorry, it will take me a few minutes to read it.

9 385 Q. By all means.

10 A. Yes. It appears to be a - if you go to the very bottom

11 line and then proceed, what would have been available

12 to the shareholders - in this particular company the

13 shares were being sold to Pagebar, a company called

14 Pagebar Properties.

15 386 Q. Which owned property?

16 A. No, Dublin Airport Industrial Estates owned the

17 property.

18 387 Q. Yes. And they were selling shares?

19 A. They were selling the company, which would have

20 included the property, to Pagebar.

21 388 Q. Yes.

22 A. And the net proceeds available to the shareholders to

23 distribute was 237,945.

24 389 Q. Yes. First of all, did you yourself prepare this

25 document?

26 A. Yes.

27 390 Q. And on whose instructions did you prepare it?

28 A. I presume it was Tom Brennan's.

29 391 Q. Yes. The document contains various pieces of

30 information about various debts that are due and

1 various bank loans, and interest on various bank loans,

2 isn't that right?

3 A. Yes.

4 392 Q. Under Schedule 1 you have listed a number of

5 professional fees: Ray Burke - planning; Des McCarthy

6 - engineer; Patrick Langan - balance due; accountants

7 and tax advisors - ú1,825.

8 A. Yes.

9 393 Q. Presumably, you would have had to have been given the

10 information necessary for you to list those items?

11 A. Yes.

12 394 Q. And from whom would you have obtained that information?

13 A. Either Brennan or McGowan.

14 395 Q. Yes. It does appear that there was a sum due to

15 McCarthy, Des McCarthy Engineers, in the sum of ú4,000?

16 A. Yes.

17 396 Q. And there was a balance due to Mr. Langan in the sum of

18 ú10,000?

19 A. Yes.

20 397 Q. And accountants and tax advisors, was that your own

21 fees?

22 A. Yes.

23 398 Q. In the second schedule, there is some specific

24 information about indebtedness to banks, I think in

25 connection with the acquisition of the property, is

26 that right?

27 A. Yes.

28 399 Q. There is ú90,000 to NBFC.

29 Interest accrued - ú730,340.

30 Northern Bank - ú19,420.55.

1 Interest - ú1,320.15.

2 Income tax deducted on the completion of the purchase -  
3 ú835.

4 Directors' loans by way of initial capital - ú15,350.

5 And a sum of ú800 due to Grange.

6 .

7 You then refer to the contract price, the indebtedness  
8 of ú20,000 to Northern Bank, the fees, the taxation,  
9 and the Grange Developments, 800, and the directors'  
10 loans again. And you do a calculation, the result of  
11 which informs you how much would be left out of the  
12 proceeds of the proposed sale for distribution to those  
13 entitled, isn't that right?

14 A. Yes.

15 400 Q. Would I be right in thinking that it was necessary for  
16 you to assemble information from a number of sources to  
17 complete this document, or would you have got it all  
18 from Mr. Brennan?

19 A. I presume I would have had to get it from banks - some  
20 of the information from bank statements. In relation  
21 to the banks - "interest accrued", I would have to get  
22 that from the banks. And the information on  
23 professional fees, from Brennan and McGowan.

24 401 Q. Yes. Probably, you think, Mr. Brennan?

25 A. Probably, because I dealt with him much more than Tom  
26 - than Joe McGowan.

27 402 Q. In relation to Dublin Airport Industrial Estates?

28 A. In relation to everything.

29 403 Q. You are aware that this particular document came to be  
30 filed in the Companies Office, and was the subject of

1 an article by the journalist Joe McAnthony of the

2 Sunday Independent in 1974?

3 A. Yes.

4 404 Q. And as a result of that, did you contact anybody?

5 A. As a result of that, the phones were hopping.

6 405 Q. Your phones were hopping?

7 A. Yeah.

8 406 Q. From whom?

9 A. Well, they were hopping from Tom Brennan, Joe McGowan,

10 somebody from a firm of solicitors. So, the next day I

11 went up to the Companies Office and saw this document.

12 407 Q. Yes.

13 A. And it was stuck in the middle of a Form 52, which is a

14 form in relation to the allotment of shares for a

15 consideration other than cash.

16 408 Q. Yes. And as a result of seeing this document in the

17 Companies Office file, did you do something?

18 A. Sorry, how do you mean did I do something?

19 409 Q. Did you contact --

20 A. I contacted whoever the solicitors were, who had lodged

21 the --

22 410 Q. -- Fitzpatricks or Miley & Miley?

23 A. I think it was Fitzpatricks.

24 411 Q. Yes. Fitzpatricks were acting for whom?

25 A. Dublin Airport.

26 412 Q. Yes. Well, the matter, I think, was the subject of a

27 Garda investigation, I think, subsequently. Isn't that

28 right?

29 A. Yes.

30 413 Q. And in the course of that, you wrote a letter, I think,



1 on the 24th of July, 1974, to the Detective Branch.

2 Isn't that so?

3 A. Yes, I got a copy of that.

4 414 Q. Yes. We will scan a copy in, but we will give you a  
5 hard copy of your letter. I will read it out.

6 .

7 It is: "Re Dublin Airport Industrial Estates Limited."

8 It is on your headed, Owens Murray headed notepaper, "2  
9 Clare Street Dublin 2." It says:

10 .

11 "Sirs, we are" - unfortunately the left-hand side is  
12 cut off, but we will just do our best to fill in the  
13 gaps:

14 .

15 "We are the auditors and accountants of the above  
16 company, and I personally was in charge of the accounts  
17 and audit of the company. The Managing Director of the  
18 company is Mr. Tom Brennan, from whom I received  
19 instruction from time to time.

20 .

21 In June 1973 I received instructions from Mr. Brennan  
22 that negotiations were proceeding with a company called  
23 Hastings Limited for the acquisition by Hastings of the  
24 share capital of Dublin Airport. By acquiring all the  
25 share capital, Hastings Limited acquired the land  
26 belonging to the company and hopefully, the profit on  
27 the sale of the shares would be a capital gain in the  
28 hands of the shareholders and would be tax-free",  
29 presumably.

30 .

1 "At that time I was informed by Mr. Brennan that  
2 professional fees were due to McCarthy" - presumably,  
3 Des McCarthy - "in respect of planning permission and  
4 to Ray Burke in respect of agents' fees", I presume.

5 "It was agreed that these two parties should be allotted  
6 sufficient shares to enable their fees to be paid out  
7 as a capital profit. This sale proved abortive. Early  
8 in October I received further instructions that the  
9 company was to be sold to Pagebar (Ireland) Limited.

10 .

11 In addition to the land owned by Dublin Airport  
12 Industrial Estates, Pagebar is buying a small portion  
13 of land from Grange Developments Limited and was also  
14 going to sell back to that company a small portion of  
15 the Dublin Airport land. In order to ensure all  
16 parties concerned that they would get what they were  
17 entitled to, I prepared a draft document setting out  
18 how the gross proceeds were to be distributed. As a  
19 result of a typing error, this document set out under  
20 the heading of 'Professional fees: Ray Burke -  
21 Planning. Des McCarthy - Engineer.' This should have  
22 read 'Ray Burke - Estate Agent. Des McCarthy -  
23 Engineer and Planning.'

24 .

25 The only record I have of sending this document out was  
26 to Miley & Miley, who were solicitors for Grange  
27 Developments Limited and who also was holding a  
28 watching brief on behalf of Brennan and McGowan. The  
29 solicitors to Dublin Airport Industrial Estates Limited  
30 were Fitzpatricks. It is possible that Mr. Tom Brennan

1 called into the office and collected copies of this  
2 document, but I have no record that he did so.

3 .

4 The document was sent by Miley & Miley on the 23rd of  
5 November, 1973, and on the" - I can't read the date of  
6 November, "I sent Fitzpatrick's Form No. 52 which had  
7 been adjudicated in the Adjudication Stamps Office and  
8 requested them to file it in the Companies Office. On  
9 27th November I received an acknowledgment from  
10 Fitzpatrick's that they had filed Form No. 52 on that  
11 day.

12 .

13 On the 23rd of June, 1974, I read an article in the  
14 Sunday Independent, included in which was a photocopy  
15 of an alleged document in the Companies Registration  
16 Office. The document appeared to be very similar to  
17 the document prepared by us in November, and on the  
18 24th of June, I went to the Companies Office and I  
19 discovered that a carbon copy of the document was in on  
20 the file of Dublin Airport Industrial Estates inserted  
21 between two pages of Form No. 52. I recognised the  
22 document in particular because there had been a  
23 misspelling on it and this had been corrected in my  
24 handwriting. The Form No. 52 had an Owens Murray stamp  
25 on it. In the 'presented for filing section' I  
26 returned to the office and discovered a letter from  
27 Fitzpatrick's acknowledging that they had in fact filed  
28 the Form No. 52. And I telephoned Mr. O'Hanrahan of  
29 Fitzpatrick's informing him of the existence of this  
30 document on the Companies file. I understand he

1 interviewed the Companies Registrar about it. There  
2 was no Companies Office stamp on the document to the  
3 best of my recollection."

4 .

5 Now, there is an addition to that letter in longhand.

6 Is that your handwriting?

7 A. It is, yes.

8 415 Q. Are you in a position to read it?

9 A. Yes.

10 416 Q. "The draft document was typed from a manuscript, and

11 when typed the manuscript was destroyed, which was our

12 normal procedure. The document which I saw in the

13 Companies Office file was similar in content to the

14 file document prepared in December 1973 in connection

15 with the proposed closing of the transaction with

16 Pagebar on the 31st of December, 1973. A copy of

17 which" - a copy of which - "a copy of which I have

18 signed and initialled" maybe.

19 A. "And dated by me" - "And dated by me for identification

20 purposes."

21 417 Q. So you informed the investigating Gardai that the word

22 "planning" appeared beside the name "Mr. Ray Burke" on

23 the basis that it was a typographical error?

24 A. Yes.

25 418 Q. At this stage, of course, there had been public

26 controversy about the matter, it having appeared in the

27 newspaper, and the Garda investigation having been

28 initiated in consequence. And the bit that was causing

29 the controversy, obviously, was the fact that it

30 indicated possible payment to Mr. Burke in connection

1 with planning.

2 .

3 Did you discuss the matter with Mr. Brennan before you

4 wrote to the detective?

5 A. No, I don't remember.

6 419 Q. On what basis did you reach the view that it was a

7 typographical error?

8 A. Because there was only one person doing the planning

9 and that was Des McCarthy.

10 420 Q. Yes?

11 A. So it was obviously a typographical error.

12 421 Q. Well, it was written out, you say, in manuscript, in

13 the first instance, and then the manuscript was

14 destroyed?

15 A. Yeah.

16 422 Q. And assuming it is a true copy of what was on the

17 manuscript, "Ray Burke - Planning," presumably would

18 have appeared as the first item under "professional

19 fees"?

20 A. Perhaps, but if I was checking this document, I would

21 have only checked the figures. I wouldn't have checked

22 the left-hand side of it.

23 423 Q. Undoubtedly. But my point, Mr. Owens, is that if it

24 was on the manuscript, then it certainly wasn't a

25 typographical error?

26 A. It was a typographical error if it wasn't on the

27 manuscript.

28 424 Q. If it wasn't on the manuscript?

29 A. If it wasn't on the manuscript.

30 425 Q. Well, are you saying that it wasn't on the manuscript?

1 A. I am saying that - I can only recall what I wrote to  
2 the Detective Branch back in 1974, which is what, 27  
3 years ago. I can only recall what I told them. I am  
4 afraid I am not able to give you any more assistance on  
5 it.

6 426 Q. You see, if the manuscript was as you say it should  
7 have been, in your letter to the Detective Branch, it  
8 would have said "Ray Burke - Estate Agent. Des  
9 McCarthy - Engineer and Planning." And it would mean  
10 that the person who typed this letter from a manuscript  
11 completely missed the reference to estate agent?

12 A. I have at least three typing errors to this day every  
13 week.

14 427 Q. We all see typing errors. I am looking at this  
15 particular typing error, and I am drawing to your  
16 attention that if you wrote on the manuscript what you  
17 say in your letter to the Detective Branch, it ought to  
18 have been in the typed document?

19 A. Yes.

20 428 Q. Which is "Ray Burke - Estate Agent. Des McCarthy -  
21 Engineer and Planning." A number of errors would have  
22 to have been made by the person typing this document  
23 from a manuscript. The first one would be that the  
24 first thing he or she would have done would to be to  
25 omit entirely the words, "Estate Agent" after the words  
26 "Ray Burke", isn't that right?

27 A. Mr. Hanratty, I have no idea what happened 27 years  
28 ago. I have no idea, apart from what I've told the  
29 Detective Unit. I can't comment on whether my typist  
30 put in, should have put in, or did not put in "Estate

1 Agent" after "Ray Burke" and "Des McCarthy - Engineer  
2 and Planning".

3 429 Q. Well, I am not expecting you to remember it, but I am  
4 testing with you, if I may, the validity of the theory  
5 that this was a typing error. I am suggesting to you  
6 that it seems unlikely that it was a typing error, and  
7 that you were incorrect in what you told the Detective  
8 Branch in your letter.

9 A. Mr. Hanratty, it doesn't suit you, obviously, to accept  
10 what is in my letter.

11 430 Q. Mr. Owens, nothing suits me. I have to consider the  
12 various possible explanations for various matters that  
13 are under consideration. And I am now, if you wouldn't  
14 mind, exploring with you the probabilities of whether  
15 or not this particular entry was a typing error or not.  
16 .

17 Now, I am drawing to your attention the fact, first of  
18 all, that you did inform the Detective Branch in 1974,  
19 that it was a typing error?

20 A. Yes.

21 431 Q. But I am also drawing your attention to the fact that  
22 it is a typing error of an extremely unusual nature, if  
23 it was a typing error, because we know from the  
24 addition at the end of your document, that it, this  
25 document was prepared from a manuscript document?

26 A. Yes.

27 432 Q. We know from the content of your letter to the  
28 Detective Branch, that you said to them at the time  
29 what should have been typed was "Ray Burke - Estate  
30 Agent" and beneath that "Des McCarthy - Engineering and

1 Planning." And I am drawing your attention to the fact  
2 that, for that to have happened, would mean that the  
3 typist who made this typing error would first of all  
4 have omitted entirely the two words "Estate Agent",  
5 which you say should have been placed after the words  
6 "Ray Burke", isn't that right?

7 A. Yes.

8 433 Q. The second thing she did was not only to omit those  
9 words, but to substitute a word "Planning", which was  
10 not beside Ray Burke at all on the typewritten - sorry,  
11 on the handwritten document she or he had before them,  
12 isn't that right?

13 A. Correct.

14 434 Q. And thirdly, when they came to type the bit about Des  
15 McCarthy, that they put in "Des McCarthy - Engineer" in  
16 circumstances where it was written, beside the words  
17 "Des McCarthy", was "Engineer and Planning"?

18 A. Yes.

19 435 Q. So there are at least three different stages in the  
20 error, I suggest to you. For that reason, it seems  
21 unlikely that it was a typing error. I suggest to you  
22 that it seems more likely that what is typed in the  
23 typed written document accurately reflects what was  
24 written in the manuscript document.

25 A. I don't accept that.

26 436 Q. Why not?

27 A. Because what I wrote to the Detective Branch was the  
28 true position. That's why.

29 437 Q. Well, why do you say that?

30 A. Because that happened 27 years ago, when - after some



1 document which I had prepared six months previously. I  
2 was in a position to say positively what was the  
3 position.

4 438 Q. We know that after these events occurred, or perhaps  
5 contemporaneously a number of further versions of this  
6 document were prepared. Isn't that so?

7 A. I can't remember.

8 439 Q. Well, if I can refer you to page 4017.

9 .

10 We will give you a hard copy of that as well.

11 (Document handed to witness.) You can see it on screen  
12 as you wait.

13 .

14 This appears to be in the same typed script, as the  
15 typed script on the previous document, and it appears  
16 to be in the same general formatting and style, and  
17 would appear in effect to have been also prepared in  
18 your office. Would you agree with that?

19 A. Yes.

20 440 Q. And it is headed: "Dublin Airport Industrial Estates  
21 Limited. Payments to be made on share sell basis."

22 .

23 Then it is:

24 "Group: R Burke - ú15,000.

25 D McCarthy - ú4,000.

26 Grange shareholders."

27 This is a different form of an analysis, isn't that  
28 right?

29 A. Yes.

30 441 Q. Can you just explain to us the difference between this

1 document and the previous document?

2 A. Well, starting off with the "Group".

3 .

4 "Group: R Burke", as opposed to "Ray Burke -

5 Planning".

6 "D McCarthy", as opposed to "Des McCarthy - Engineer".

7 There is no "Patrick Langan, balance due" on the second

8 document you have just given me. And there is no

9 "Accountants and tax advisors" on the second document.

10 442 Q. And it does, essentially, a different form of analysis

11 than the first document?

12 A. Yes.

13 443 Q. We don't have a pagination page. I just want to show

14 you another one.

15 .

16 We will give you a hard copy. It bears the reference

17 GI 19741-30.

18 .

19 I think we will just scan it in and you will see it

20 clearly.

21 .

22 This is another version of the first document. All of

23 the entries on it, I believe, are identical to the

24 entries on the very first document that we considered,

25 as you can see. But in this case under "Professional

26 Fees" is typed "PJ Burke (Sales) Limited - Estate

27 Agents."

28 A. Yes.

29 444 Q. And beneath that is typed "Des McCarthy - Engineer and

30 Planning."

- 1 .
- 2 Was this document prepared in your office?
- 3 A. I don't know.
- 4 445 Q. It appears to have the same style, again as the first
- 5 document?
- 6 A. Well, if I could see a copy of it, I could form an
- 7 opinion on it, if it was from the same typewriter.
- 8 446 Q. We will give you a hard copy of it. Do you see the
- 9 writing on the top of the document?
- 10 A. "HO", yes. (Document handed to witness.)
- 11 447 Q. What is that writing on the top of it?
- 12 A. "HO" is me.
- 13 448 Q. Is that your initial?
- 14 A. Yes.
- 15 449 Q. And is the date written in your handwriting, 25th of
- 16 July, 1974?
- 17 A. Yes, I think so.
- 18 450 Q. So that would appear to suggest that it was your
- 19 document or at least it was produced by you?
- 20 A. Yes.
- 21 451 Q. So, why would you have produced a document showing "PJ
- 22 Burke (Sales) Limited - Estate Agent," given that what
- 23 you said to the Detective Branch was that what was in
- 24 the - by implication at least, what was in the
- 25 manuscript document was "Ray Burke - Estate Agent"?
- 26 A. Because Ray Burke was either the owner or shareholder
- 27 in PJ Burke (Sales) Limited, who had an office in
- 28 Swords. I think his father, Paddy Burke, was also in
- 29 that company.
- 30 452 Q. Yes. But it is - in effect, what is now being done in

1 this document is that it is in its terms identical to  
2 the first document, which contains the words "Ray Burke  
3 - Planning."

4 .  
5 What is being entered under that particular entry is  
6 not "Ray Burke - Planning" or "Ray Burke - Estate  
7 Agent" but "PJ Burke (Sales) Limited - Estates Agents".

8 In other words, the name of a company is being  
9 substituted for the name of Ray Burke?

10 A. That's correct.

11 453 Q. Why is that?

12 A. Because the payment would have been made to PJ Burke  
13 (Sales) Limited.

14 454 Q. Well, if that is the case, why did Ray Burke appear in  
15 the first document?

16 A. Because Ray Burke was the person from PJ Burke (Sales)  
17 Limited who was acting for Dublin Airport Industrial  
18 Estates.

19 455 Q. You see, on one interpretation one might conclude that  
20 effectively this was a retrospective attempt to cover  
21 up an awkward entry or an embarrassing entry by  
22 substituting a different entry?

23 A. Sorry, could I ask you, did PJ Burke or Ray Burke ever  
24 get the 15,000?

25 456 Q. No, we have already been told by Mr. Brennan that the  
26 sale didn't go through and nobody got paid.

27 A. Well, then --

28 457 Q. What significance do you attach to that, Mr. Owens?

29 A. If you are alleging that Ray Burke got 15,000 for  
30 planning and he got nothing, that is the significance I

1 attach to it.

2 458 Q. Well, we are not alleging that Mr. Burke got ú15,000  
3 for planning, what we are trying to do is to understand  
4 this entry, and to understand the explanation that you  
5 subsequently gave to the Detective Branch in connection  
6 with this entry, and also to understand the subsequent  
7 versions of this document which you prepared, and which  
8 contain references to PJ Burke (Sales) Limited in one  
9 case, and indeed, in another case, PJ Burke Limited.

10 .

11 If I could just refer you to that one. It is the one  
12 bearing page 31 on it. It is not the conventional  
13 pagination. We will just scan it in. Again, it bears  
14 your initial and a date on the top of it. In fact, the  
15 same date as the one we have just been looking at.

16 .

17 This is a third version. Again, the document is, so  
18 far as - this is the version of the document with  
19 "Group" at the top of it. As you can see in that case,  
20 it is simply "PJ Burke Limited and D McCarthy."

21 .

22 MR. HAYDEN: Sorry, Sir, I wonder, might I get a copy?  
23 I have just got a copy of the previous version.

24 .

25 MR. HANRATTY: Yes, it is being photocopied.

26 .

27 CHAIRMAN: It is being photocopied.

28 .

29 MR. HAYDEN: Thank you, Sir.

30 .

1 459 Q. MR. HANRATTY: So, what the sequence appears to be, Mr.

2 Owens, that the original document which was filed in  
3 the Companies Office with Form 52, and which was the  
4 subject of an article in the Sunday Independent, after  
5 the article appeared, was apparently removed from the  
6 Companies Office by Mr. O'Hanrahan of Fitzpatricks, and  
7 I think he subsequently told the Garda Siochana and  
8 gave evidence about this in this Tribunal, destroyed by  
9 him, although he said he kept a copy.

10 .

11 You either, on your own initiative, or perhaps at  
12 somebody's request, prepared another version of this  
13 document, the one that was the subject of the article  
14 in which you substituted "PJ Burke (Sales) Limited" for  
15 Ray Burke's name, in which you removed the word  
16 "Planning" from, after Ray Burke's name, and put in  
17 after "PJ Burke (Sales) Limited" "Estate Agents"?

18 A. Yes, that was a correction of the original document.

19 460 Q. A correction?

20 A. A correction.

21 461 Q. But it isn't the same correction as you indicated to  
22 the Garda Siochana ought to have been made, or did not  
23 accurately reflect a correction, shall we say, of the  
24 original typographical error which you said was made?

25 A. I don't think the police, the Guards would go into the  
26 same detail as you are going into, as to whether it is  
27 Ray Burke or PJ Burke Sales. Their worry was that  
28 there was a planning fee paid to Ray Burke. That is  
29 what they were investigating.

30 462 Q. Yes. Well, whatever they were investigating, all you

1 were doing was presumably endeavoring as best you could  
2 to provide factual information to them to assist them  
3 in their inquiries?

4 A. Yes.

5 463 Q. And the information which you gave them contained a  
6 statement to the effect that this document was copied  
7 from a manuscript document which was subsequently  
8 destroyed, as was your practice?

9 A. Yes.

10 464 Q. But that in copying this document from a manuscript, a  
11 typographical error was made, the effect of which was  
12 to substitute the word "Planning" after Ray Burke's  
13 name for - sorry, to substitute the word "Planning"  
14 after what should have been "Estate Agent" and to  
15 remove it after Des McCarthy's name?

16 A. Yes.

17 465 Q. After the word "Engineer"?

18 A. No, "Engineer and Planning" was the correct description

19 --

20 466 Q. In your letter you said it should have been "Des  
21 McCarthy - Engineer and Planning"?

22 A. Yes.

23 467 Q. And the second effect of the typographical error, you  
24 say, was that the word "And Planning" which ought to  
25 have appeared after "engineer", did not appear?

26 A. It should have read "Des McCarthy - Engineer and  
27 Planning".

28 468 Q. Well, according to your letter it is "Des McCarthy -  
29 Engineer and Planning"?

30 A. That is what I said, it should have read "Des McCarthy

1 - Engineer and Planning."

2 469 Q. Yes?

3 A. Because it was Des McCarthy's that did the planning on

4 that particular site.

5 470 Q. Yes, because they were the engineers?

6 A. Yes.

7 471 Q. But what I am drawing to your attention is the fact

8 that what the typist did was more, I suggest to you,

9 than a simple typographical error, if it was an error,

10 in that she failed to include words that you say were

11 included, or ought to have been included, and she also

12 failed to include the words "And Planning" after "Mr.

13 McCarthy - Engineer"?

14 A. Yes. Well, these things happen, Mr. Hanratty --

15 472 Q. Yes.

16 A. -- when a typist is typing from manuscript, in

17 particular, rather than from a dictaphone.

18 473 Q. Yes. Well, can you remember, or assist the Tribunal in

19 what were the circumstances in which you prepared the

20 second version of this document, which refers to "PJ

21 Burke (Sales) Limited"?

22 A. To show the proper position.

23 474 Q. Well, did somebody come and tell you in the meantime

24 that it also shouldn't have been Ray Burke in the

25 original document, that it should have been the

26 company?

27 A. Yes.

28 475 Q. Who did that?

29 A. Tom Brennan.

30 476 Q. Do you remember that?



1 A. Not specifically, no, but - no, I don't specifically  
2 remember it.

3 477 Q. You see, I presume that the information which you  
4 received, which you believe you received from Mr.  
5 Brennan, to complete the original document, was that  
6 the fee of €15,000 was payable to Ray Burke?

7 A. Yes.

8 478 Q. Not PJ Burke (Sales) Limited?

9 A. But they are more or less one and the same person. He  
10 was Managing Director of PJ Burke (Sales) Limited.

11 479 Q. Mr. Conlon, Mr. Oliver Conlon - you know Mr. Conlon,  
12 the solicitor?

13 A. Yes.

14 480 Q. He has given evidence to the Tribunal in connection  
15 with a matter, he was asked about the article. And on  
16 Day 287, at question 635, he was asked, was he aware of  
17 the article. This is, I think, in reference to  
18 yourself, and the answer is: "Yes" - I can add to  
19 this, because I think it might be of some significance.  
20 He said that, in fact, it was a mistake, it was an  
21 error, that it related to auctioneers' fees. He  
22 suggested, "if I had any further information" - we are  
23 just trying to establish to whom he was referring,  
24 because he then goes on to refer to you.  
25 .

26 I will finish the section. Maybe you might be able to  
27 assist us on that. He says: "I needed to contact Mr.  
28 Hugh Owens, accountant. I subsequently spoke to Mr.  
29 Owens, and Mr. Owens said that he was under the  
30 mistaken impression that Mr. Burke was an architect.

1 It was in that context the entry had been made in the  
2 account where it should have been auctioneers fees."

3 A. That is nonsense.

4 .

5 MR. HAYDEN: I think, is it 26 --

6 481 Q. .

7 .

8 MR. HANRATTY: It is Day 267, question 635.

9 .

10 So, you think that Mr. Conlon is mistaken in saying  
11 that?

12 A. I don't remember any involvement of Mr. Conlon in this  
13 particular company.

14 482 Q. Any --

15 A. Any involvement.

16 483 Q. Any involvement at all?

17 A. I don't remember Oliver Conlon having any involvement  
18 whatever. It was Fitzpatrick's and Miley & Miley, were  
19 the two solicitors involved.

20 484 Q. Well --

21 A. Fitzpatrick's, on behalf of Dublin Airport Industrial  
22 Estates, because one of the partners in Fitzpatrick's  
23 was a shareholder are --

24 485 Q. We know that Oliver Conlon was a solicitor that was  
25 used by Mr. Burke. In fact, he was the person who  
26 opened the - that entered into correspondence with  
27 Bedell & Cristin in March of 1984, with a view to  
28 setting up a company for the purpose of having a bank  
29 account?

30 A. Yes.

1 486 Q. And he gave evidence in this context on this particular  
2 matter, that he had a conversation with you about it,  
3 after the article, and he said that in the course of  
4 that conversation that you said that you were under the  
5 mistaken impression that Mr. Burke was an architect,  
6 and that it was in that context that the entry had been  
7 made in the document?

8 A. I never remotely thought that Ray Burke was an  
9 architect.

10 487 Q. Well, do you have any recollection of ever having had a  
11 conversation with Mr. Conlon in connection with this  
12 matter?

13 A. No, no.

14 488 Q. Well, he has told the Tribunal that such a conversation  
15 did take place, and that this is what was said?

16 A. Well, I have no recollection of it. I can't add  
17 further to that. I don't remember ever having any  
18 dealings with Oliver Conlon on anything, actually. I  
19 knew him to see. He was friendly with other solicitors  
20 that I was friendly with, but I don't remember ever  
21 having had any contact whatever with Oliver Conlon.

22 489 Q. Were you aware, for example, that he acted for Ray  
23 Burke?

24 A. No, not until I saw the Caviar thing.

25 490 Q. Yes. But in either event, you certainly have no  
26 recollection, as I understand your testimony, of ever  
27 having had a conversation with him?

28 A. None whatever.

29 491 Q. And just to be clear about this, you are saying that  
30 you don't recall it, or are you saying that it didn't

1           happen?

2       A.   I say it didn't happen.

3 492   Q.   Well, why do you say it didn't happen?

4       A.   Why do I say it didn't happen?

5 493   Q.   Yes.

6       A.   Because I knew Ray Burke was not an architect. I mean,  
7           that is total nonsense.

8 494   Q.   Well, what the Tribunal is faced with, is the testimony  
9           of a witness who is a solicitor, who says there was  
10          such a conversation and that was what was said?

11      A.   I think the Tribunal is faced with conflicting evidence  
12          between two solicitors, one of whom was Oliver Conlon.

13 495   Q.   Well, who is the other solicitor?

14      A.   Es --

15 496   Q.   Esmonde Reilly?

16      A.   Esmonde Reilly, yes.

17 497   Q.   Can you think of any possible reason why Mr. Conlon  
18          would say this to the Tribunal in this instance, if it  
19          wasn't true --

20      A.   I can't.

21 498   Q.   -- about a conversation which he said included you?

22      A.   I can't. I suppose everybody else has referred to me  
23          during the course of this Tribunal, so he thought - he  
24          may have thought it would be a good thing to drag my  
25          name into it, I don't know. I don't know why he said  
26          it.

27 499   Q.   Thank you, Mr. Owens. If would you answer any  
28          questions that anybody else may have.

29          .

30      MR. FINLAY: Chairman, I just wonder, might I be so

1 bold to make a discrete inquiry before any examination  
2 takes place? I understand, and I think Mr. Hanratty is  
3 aware, I understand that Mr. Hussey anticipates taking  
4 approximately an hour with Mr. Owens. I also  
5 understand that Mr. Hayden wishes to ask some questions  
6 of Mr. Owens as well.

7 .

8 Now, in relation to my client, Sir, Mr. Caldwell, I  
9 have had some discussions over lunchtime with Counsel  
10 for the Tribunal. And Mr. Caldwell, though he came  
11 today on a specially fixed basis for tomorrow from  
12 abroad, he has agreed to stay over, Chairman, and to  
13 make himself available to the Tribunal tomorrow. I  
14 just thought that in those circumstances, I might  
15 inquire whether there was any real prospect of him  
16 being taken this afternoon, or alternatively whether he  
17 might return in the morning. I hope my inquiry isn't  
18 inappropriate.

19 .

20 MR. HANRATTY: Well, it seems unlikely, given what Mr.  
21 Hussey has told us this morning. I don't know if his  
22 estimate of his time has changed. It was half an hour  
23 to an hour.

24 .

25 CHAIRMAN: Mr. Hussey?

26 .

27 MR. HANRATTY: Mr. Hayden with some additional time --

28 .

29 MR. HUSSEY: I think between over half an hour, but  
30 less than an hour, I would imagine.

1 .

2 CHAIRMAN: Mr. Hayden?

3 .

4 MR. HAYDEN: If My Friend is over a half an hour, I  
5 will finish it out until four, anyway. I would imagine  
6 15, twenty minutes. I mean, I might be shorter, I  
7 don't know.

8 .

9 CHAIRMAN: It doesn't look like what you would call  
10 hopeful.

11 .

12 MR. HAYDEN: Mr. Gleeson might like to say some words.

13 .

14 CHAIRMAN: Mr. Gleeson?

15 .

16 MR. GLEESON: I would be very brief. No more than ten  
17 minutes.

18 .

19 CHAIRMAN: They all tot up.

20 .

21 CHAIRMAN: Mr. Hanratty, in the circumstances, tomorrow  
22 morning?

23 .

24 MR. HANRATTY: Well, I have certainly no problem with  
25 that, Sir. He is specially fixed, undoubtedly, and it  
26 was going to run over into tomorrow in any event.  
27 Since Mr. Finlay has indicated that his client is  
28 making himself available tomorrow morning, I think the  
29 reality is that he is clearly going to be here until  
30 four o'clock, anyway.

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.  
CHAIRMAN: Very good, Mr. Finlay, tomorrow morning,  
half past ten.

.  
MR. FINLAY: I am obliged to you, Sir.

.  
MR. HANRATTY: I wonder, would it be possible in the  
circumstances, Sir, to start at 10 in the morning, just  
to give that us, say, a little bit extra time? We  
have, as you are aware, a considerable number of  
witnesses, most of whom are very short, that we were  
hoping to have dealt with tomorrow, some of whom might  
be in difficulty beyond tomorrow.

.  
CHAIRMAN: As far as I am personally concerned, no  
problem whatsoever.

.  
MR. HANRATTY: If that suited, perhaps Mr. Finlay, and  
his client, then, we could do that.

.  
MR. FINLAY: I see no difficulty with that, Chairman.

.  
CHAIRMAN: 10 o'clock tomorrow morning. I think we  
might break just for five minutes at this point in  
time.

.  
THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND  
RESUMED AGAIN AS FOLLOWS:

.  
.

1 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HUSSEY AS

2 FOLLOWS:

3 .

4 MR. HUSSEY: Sorry, Sir, I beg your pardon.

5 .

6 CHAIRMAN: Not at all.

7 .

8 MR. HUSSEY: Sir, I think I have agreed with Mr.

9 Hayden, and Mr. Gleeson, I think I will go first with

10 Mr. Owens. I think that is the way. So if I can

11 proceed.

12 .

13 CHAIRMAN: If that is your agreement. I would like to

14 finish this witness this afternoon, if it is possible.

15 .

16 MR. HUSSEY: I will aim for that.

17 .

18 CHAIRMAN: Certainly within any reasonable period I

19 will sit on after four o'clock, but I do expect now

20 cooperation.

21 .

22 500 Q. MR. HUSSEY: I will try and finish.

23 .

24 Mr. Owens, as you know, I am asking you questions on

25 behalf of Mr. Finnegan. As you know, my name is Mr.

26 Dominique Hussey, so you know who you are dealing with.

27 .

28 Can I just put up Document 757, again, please.

29 .

30 Mr. Owens, this is a fax from yourself to Mr. Wheeler



1 in respect of the agreement that you had been advised

2 of in respect of the ú10,000 by three --

3 A. Yes.

4 501 Q. -- as a reserve. And that is a fax of the 16th of

5 November, 1984?

6 A. Yes.

7 502 Q. Now, at any time between that and the 21st of November,

8 had you been told that, in fact, the agreement was 25,

9 25, and 10?

10 A. No.

11 503 Q. Did you ever know that the sum, if I use the word

12 "reserve" for the moment, because we know what actually

13 happened this money. Did you ever know that the

14 reserve was, in fact, always ú60,000?

15 A. No.

16 504 Q. So, insofar as we know, what has happened, that ú60,000

17 was paid on the nail, on the 20th or 21st of November,

18 to Caviar Limited, which is Mr. Burke's company. We

19 know that ú60,000 was put aside and paid to Caviar

20 Limited?

21 A. Yes.

22 505 Q. Did you at any time, between the 16th and the 21st of

23 November, know that the sum being put aside was

24 ú60,000?

25 A. No.

26 506 Q. So as far as you were concerned, the amount that was

27 being retained for as reserve was ú30,000?

28 A. Yes.

29 507 Q. So therefore, I take it, then, that you will agree with

30 me when I say that you did not tell Mr. Wheeler that

1 the sum to be put aside was ú60,000?

2 A. Correct.

3 508 Q. Was this the only communication you had with Mr.

4 Wheeler, as far as the reserve fund was concerned?

5 A. Yes.

6 509 Q. So, it wasn't therefore on your instructions that the

7 ú60,000 was reserved?

8 A. It was not.

9 510 Q. Right. So, Mr. Wheeler's instructions came from

10 somebody else?

11 A. Obviously.

12 511 Q. Yes. We know that Mr. McGowan had spoken with

13 Mr. Wheeler on the 13th of November, and had expressed,

14 and Mr. Wheeler I think wrote, telexed to you and

15 talked about Mr. McGowan's and Mr. Brennan's wish, that

16 ú20,000 a piece would be reserved?

17 A. Yes.

18 512 Q. We know that much. So wherever Mr. Wheeler's

19 instructions came from, therefore, about the ú60,000,

20 it didn't come from you?

21 A. Correct.

22 513 Q. Can you express any view as to who gave him the

23 instructions in respect of the ú60,000?

24 A. Well, my view would be that it was either Tom Brennan

25 or Joe McGowan.

26 514 Q. Yes. Can I have Document 1863, please. This is the

27 handwritten memo of Mr. Wheeler's. This is the

28 distribution of the money, when it eventually went

29 over, I think the day or two after the closing of the

30 sale or the closing of the mortgage on the 19th of

1 November, Mr. Wheeler had money to distribute. The  
2 best guess is that this document is either dated the  
3 20th or the 21st of November. And the first item there  
4 is "two by 25 to Caviar Limited plus 10". That you  
5 didn't inform or instruct Mr. Wheeler in respect of  
6 that?

7 A. Certainly not.

8 515 Q. Yes. You see, we have heard here from Mr. Howard, who  
9 was Mr. Wheeler's partner, and he said that the  
10 instructions would ordinarily come from you, as far as  
11 distribution of monies or where monies would be sent?

12 A. Yes, they would come in writing from me.

13 516 Q. Yes. That's exactly what he said. But there is no,  
14 there is nothing in writing from you in respect of this  
15 distribution, this particular item, "two by 25"?

16 A. No.

17 517 Q. But I think we could take it that the "10" certainly  
18 would be part of what you had thought, what you had  
19 been advised the "three by 10, as agreed." The  
20 \$10,000, we could take that as being part of your  
21 instruction, if you like, on the 16th of November, that  
22 \$10,000 would be taken aside in respect of the --

23 A. From each party.

24 518 Q. From each party, exactly?

25 A. Yes.

26 519 Q. You see, can I just have that document on screen. A  
27 little bit smaller, please, just to show the  
28 paragraphs, the numbered paragraphs.

29 .

30 Do you see that under paragraph 1. Now, I know we have

1 heard evidence to suggest that - you see, the third  
2 line there, "pay on the authority of J Caldwell", we  
3 have heard evidence in two respects there. The  
4 preponderance of the evidence suggests that that  
5 relates to the second entry, not the first entry?

6 A. I don't know.

7 520 Q. Yes. But I think, in any event, it wasn't on your  
8 authority, it wasn't on your instruction that the  
9 25,000, two by 25 was held back?

10 A. That is totally correct.

11 521 Q. All right. We heard what you said about the following  
12 on letter between Mr. Wheeler and Mr. Barry in respect  
13 of the 10,000 being put on a call deposit as agreed.

14 We have heard what you said about that.

15 .

16 But in any event - sorry, can we come back to the 757,  
17 please.

18 .

19 That fax is from yourself. It is the 16th of November,  
20 1984. Now, two days before that, we have two faxes  
21 from Mr. Wheeler, one to yourself, that is - can we  
22 have 755, please.

23 .

24 This is a fax from Mr. Wheeler to yourself. We have  
25 had it already. You have seen it already this morning?

26 A. Yes.

27 522 Q. "I briefly saw Mr. McGowan yesterday. He raised with  
28 me his wish and that of Mr. Brennan, that each of the  
29 parties should reserve ú20,000 for possible future  
30 expenses (such as architects' fees) should the present

1 negotiation not succeed."

2 .

3 Did you have any idea what the "present negotiations"

4 were?

5 A. No, I didn't.

6 523 Q. Can I just have the Document 756, then, please. This

7 is a communication of exactly the same day between Mr.

8 Wheeler to Mr. Barry.

9 .

10 If you can just scroll down the page, please. Can I

11 just look at paragraph 4 there, Mr. Owens.

12 .

13 "So far as the undertaking from which you require from

14 me, this has been complicated by the apparent lack of

15 agreement concerning a total retention amount of

16 ú60,000 against future expenses should Dublin Council

17 not proceed with the purchase of the land."

18 .

19 Did you know anything about any negotiations that were

20 in place? It wasn't with Dublin County Council. I

21 think it was with Dun Laoghaire/Rathdown Corporation.

22 A. No, I didn't.

23 524 Q. You didn't know anything about that?

24 A. No.

25 525 Q. That being written on the same day as the fax, as the

26 telex to you?

27 A. Yes.

28 526 Q. That suggests that when he talks about "present

29 negotiations" in the telex to you, should they - that

30 seems to be a reference to the negotiations with Dublin

1 Council, as he put it there?

2 A. Yes.

3 527 Q. It is against this, "should Dublin Council not proceed  
4 with the purchase of the land." That seems to be the  
5 same thing he is talking about?

6 A. Where he refers to putting aside --

7 528 Q. "Putting aside, should the present negotiations not  
8 succeed," then he gives a larger explanation, if you  
9 like, or a more detailed explanation to Mr. Barry. He  
10 says, "should the County Council not proceed with the  
11 purchase of the land." In fact, it was Dun Laoghaire  
12 Corporation, I think there was negotiations going on at  
13 the time. That seems to be the same thing, isn't it?

14 A. Yes.

15 529 Q. Now, you said this morning that it would be very  
16 prudent business practice to reserve funds in respect  
17 of architects' fees, planners and the like?

18 A. Yes, I would agree.

19 530 Q. And as far as you were aware, ú30,000 was being  
20 reserved for that purpose?

21 A. Yes.

22 531 Q. Now --

23 A. Sorry, when I say "reserved", I presume put on deposit.

24 532 Q. Yes. And exactly as we have been misinformed by Mr.  
25 Wheeler, on the 21st of November, that it actually had  
26 been put on a call deposit account?

27 A. Yes.

28 533 Q. And that is what you would expect to happen, a reserve  
29 fund of this nature?

30 A. Yes.

1 534 Q. Now, this was a large plot in Sandyford, Sandymount,  
2 Sandyford, 86 acres. I think you have already said  
3 that you knew that it had drainage and water supply  
4 problems?

5 A. It did at that time, yes.

6 535 Q. And would you expect - well, I don't know to what  
7 extent you could answer this. To what sort of extent  
8 would you imagine that a reserve fund would be  
9 necessary? How much of a reserve fund would be  
10 necessary for such a contingency?

11 A. Well, it was a very big site. 86 acres would build  
12 about, say, 900 houses, which is a very big site.

13 536 Q. Yes?

14 A. So you would need to put a fairly substantial amount in  
15 a reserve --

16 537 Q. We have seen evidence in 1989 for a planning  
17 application that it was necessary, I think, to put  
18 ú40,000 aside at that stage?

19 A. Yes.

20 538 Q. Would that give you an indication of the type, the  
21 level of reserve that would be necessary for that  
22 contingency?

23 A. I thought ú60,000 was prudent anyway. That was my  
24 immediate feeling when I got that telex.

25 539 Q. I see. And usually when you would have a reserve fund,  
26 a retained amount in respect of that sort of expense,  
27 you would expect that to be a sinking fund, to be used  
28 up in fees and the likes over the years?

29 A. Exactly. In other words, they would not be calling on  
30 the three parties for monies.

1 540 Q. Yes. And the parties might expect that those monies  
2 might be used up over the years?

3 A. Yes.

4 541 Q. And they wouldn't expect, in the ordinary course of  
5 business in respect of a site like that, they wouldn't  
6 expect to see that money again; they would expect it to  
7 be used up?

8 A. They probably would have said that that money is gone,  
9 or will be gone.

10 542 Q. Yes. Thank you, Mr. Owens.

11 .

12 Now, can I bring you back to the loan application.

13 There was a loan application to Lombard and Ulster,  
14 which I think initially you said you weren't aware of  
15 them, of the intention to make a borrowing, but I think  
16 you became aware of it in June of 1984, of the  
17 intention to make a borrowing?

18 A. Yes.

19 543 Q. And can I have Document 692, please. This is again a  
20 document we have seen already, Mr. Owens. This is a  
21 letter from yourself to Mr. Wheeler, a telex from  
22 yourself to Mr. Wheeler of the 14th of June. And in  
23 that it says, "borrowing on security of lands owned by  
24 Canio is being negotiated with Lombard and Ulster." So  
25 you knew at that stage that there was to be --

26 A. Yes.

27 544 Q. -- a borrowing. And you were getting information from  
28 Mr. Wheeler in respect of that. And I think you have  
29 already explained to us the reference in that document,  
30 because Mr. Finnegan wants to remain silent. I don't



1 think - Mr. Finnegan didn't instruct you in that  
2 regard. Mr. Finnegan didn't tell you, "I don't want my  
3 name associated with this"?

4 A. No, he didn't.

5 545 Q. Thank you. But you had known, in June of 1984, of the  
6 intention to apply for a loan, at least?

7 A. Yes.

8 546 Q. Yes. And you had known that for some reason Mr.  
9 Wreford's name was going to be used for that process,  
10 for that purpose?

11 A. Instead of Mr. Finnegan's?

12 547 Q. Yes.

13 A. Yes.

14 548 Q. Now, you make a particular statement there, "because  
15 Mr. Finnegan wants to remain silent." That was done  
16 without any instructions from Mr. Finnegan, or indeed I  
17 believe from Mr. Brennan or Mr. McGowan. You inferred  
18 that from --

19 A. I inferred it because Laurence Wheeler would have known  
20 who the beneficial shareholders were. They were Tom  
21 Brennan and Joe McGowan and John Finnegan. He would  
22 have been confused if Finnegan had suddenly disappeared  
23 and Wreford had come in.

24 549 Q. So you were keeping Mr. Wheeler informed of the --

25 A. Yes.

26 550 Q. That is fair enough. What I am saying is you make a  
27 very definite statement there, "Mr. Finnegan wants to  
28 remain silent", without instructions. It is just  
29 simply your own assumption and your own inference, and  
30 clearly informing Mr. Wheeler of how you understood the

1 position?

2 A. Yes.

3 551 Q. Now, when we get back to Document 757 - this is the

4 "three by 10" and "Barry has been advised" - you seem

5 to be fairly adamant that you would have discussed that

6 with Mr. Finnegan. It wouldn't have been something

7 that you would have, say, assumed at that stage, is it?

8 Is it in the same way assumed that Mr. Finnegan wanted

9 to remain silent?

10 A. No, as Barry was the person who raised the query --

11 552 Q. Yes?

12 A. -- Finnegan had to clear it with him.

13 553 Q. Yes. And Mr. Barry would have been advised, on the

14 strength of that, that \$10,000 was being retained on,

15 in the way that Mr. Wheeler had already explained to

16 Mr. Barry for architects' and administration fees and

17 the likes?

18 A. Yes, Wheeler's telex to me did not give any figure that

19 Barry was willing to pay.

20 554 Q. I appreciate that. Here you are telling him that the

21 figure is 10?

22 A. Yes.

23 555 Q. Sorry, you are not telling him. You are telling Mr.

24 Wheeler?

25 A. Yes.

26 556 Q. And that Barry has also been told of the same thing,

27 that, in other words, Barry, Barry will clear that in

28 --

29 A. In Jersey.

30 557 Q. In Jersey, yes. Okay. Now, you did say in your

1 evidence this morning, that in respect of the Sandyford  
2 lands, I am not sure if this is true for the other  
3 deals as well, that Mr. Finnegan, as far as you were  
4 concerned, did not need to be kept informed, to the  
5 same extent as Mr. Brennan and Mr. McGowan. He was a  
6 sleeping partner, and you didn't feel the need to keep  
7 him informed of things that were going on?

8 A. That is true.

9 558 Q. That is a fair comment, isn't it? He wasn't kept  
10 informed of everything that had gone on?

11 A. He certainly wasn't kept informed by me.

12 559 Q. Yes. And you didn't see the need to keep him  
13 informed, from your perspective?

14 A. No.

15 560 Q. Yes. Now, can I just ask you to look - this is a  
16 document we have seen fairly regularly here, but you  
17 may not be as familiar with it as the rest of us.

18 .

19 There was a special resolution in May of 1981, which  
20 Mr. Wheeler had signed off as being part of the  
21 minutes. This is a special resolution giving the  
22 authority to give a guarantee, and then subsequently to  
23 secure that guarantee by way of an undertaking by Mr.  
24 Russell. I think you are familiar with that document,  
25 are you?

26 A. Yes.

27 561 Q. And we know that Mr. Wheeler didn't keep the minutes of  
28 that - sorry, I will put up the document.

29 .

30 It is 423.

1 .

2 That is a special resolution, purported to be a copy of

3 the minutes that were taken of a meeting in Jersey.

4 We know that there is no minutes of that meeting in the

5 minute book of the company in Jersey.

6 .

7 Mr. Wheeler, it seems, has confirmed that a number of

8 times, either in correspondence - and it certainly

9 didn't come over with any - with the Bedell & Cristin

10 files that have been furnished to the Tribunal, and

11 then through to us.

12 .

13 You are familiar with this document, aren't you, Mr.

14 Owens?

15 A. Well, I have seen it a few times.

16 562 Q. I think this was a document that was actually drafted

17 by yourself?

18 A. I don't think so. I don't think so.

19 563 Q. Sorry, can I have just - just if I can refresh your

20 memory, Mr. Owens. I know it is an awful long time

21 ago, and it is difficult to keep all of these things in

22 your mind. 5093.

23 .

24 No, there must be - I am sorry, these were documents

25 that were furnished to me while I was re-examining Mr.

26 Finnegan. I may have just got the wrong reference.

27 There is a letter from you, Mr. Owens. I will try and

28 get the exact number.

29 .

30 It is dated the 12th of May, 1981, from yourself to

1 Bedell & Cristin, enclosing a special resolution to be  
2 - it may be 5092. Could I just see 5092, please. Oh,  
3 no.  
4 .  
5 Can you just hold on a second, Mr. Owens. I don't want  
6 to be unfair to you.  
7 .  
8 I am sorry, I beg your pardon now, Mr. Owens. I  
9 thought I had the right reference there.  
10 .  
11 I am sorry, I just can't find that reference, Sir, at  
12 the moment. As I remember, there was a letter from  
13 yourself to Bedell & Cristin of the 12th of May, 1981,  
14 enclosing a special resolution, enclosing this  
15 particular document for Mr. Wheeler to sign. And it  
16 was signed by - the special resolution was actually  
17 signed by Mr. Wheeler and Mr. MacDonald, I think his  
18 assistant. I wonder, can I come back to that in a  
19 moment?  
20 .  
21 I am sorry, Mr. Owens, I will revisit that in just a  
22 moment.  
23 .  
24 Can we come to the special resolution again, please,  
25 423.  
26 .  
27 It is quite clear from this resolution, Mr. Owens, that  
28 on the 15th of May, 1981, the company authorised the  
29 giving of an undertaking by Mr. Russell, and also the  
30 giving of a guarantee by Canio in respect of borrowings

1 of Kilnarnagh Estates Limited. Are you familiar with  
2 that?

3 A. Well, I see it now, but that document would not have  
4 been prepared by me. That is a legal document. I  
5 would imagine probably George Russell --  
6 .

7 CHAIRMAN: Could I interrupt. The document you are  
8 looking for is page 443.

9 .

10 MR. HUSSEY: It may have been enclosed --

11 .

12 CHAIRMAN: It is a letter of the 12th of May,  
13 Mr. Wheeler to Mr. Owens. Sorry, I beg your pardon,  
14 Owens to Wheeler.

15 .

16 "I enclose a resolution for signature by the Chairman  
17 and secretary of the company. Title deeds of Canio are  
18 being deposited on a short-term basis in support of the  
19 borrowings of Kilnarnagh Estates Limited, a company  
20 owned by Brennan and McGowan. Could you please return  
21 this to me at the very earliest opportunity.

22 .

23 Yours sincerely HV."

24 .

25 564 Q. MR. HUSSEY: Sorry, Mr. Owens. Do you see that letter  
26 now?

27 A. Yes.

28 .

29 565 Q. MR. HUSSEY: Thank you very much, Sir. I am grateful  
30 for that.

1 .

2 Do you see that letter?

3 A. I do.

4 566 Q. Here you are enclosing a resolution for signature by

5 the Chairman and Secretary. That would be Mr. Wheeler

6 and Mr. MacDonald, I think?

7 A. Yes, the wording of that resolution would come from a

8 solicitor, not me.

9 567 Q. I can appreciate that. The point is that the

10 resolution to be signed, if you had got it prepared by

11 a solicitor, was passed by you to Mr. Wheeler, on the

12 12th of May?

13 A. Yes.

14 568 Q. And your explanation there is that the title to deeds

15 of Canio are being deposited on a short-term basis in

16 support of borrowings of Kilnarnagh Estates Limited, a

17 company owned by Brennan and McGowan?

18 A. Yes.

19 569 Q. And that is largely true - that is largely what

20 happened, except instead of the title deeds being

21 deposited and undertaking was given, a solicitor's

22 undertaking to hold the documents in trust, the same

23 effect?

24 A. It should have, yes.

25 570 Q. It should have the same effect, exactly. Now, you knew

26 in May of 1981 that Canio Limited was, that the title

27 deeds of Canio Limited were being pledged either by way

28 of an undertaking or by way of lodgement of the title

29 deeds to support borrowings of Kilnarnagh?

30 A. Yes.

1 571 Q. Which is largely the same as what has been in the  
2 special resolution that we have seen, which is an  
3 authorisation of Canio to give a guarantee in the first  
4 instance to Kilnamanagh and then to secure that  
5 guarantee by an undertaking given by Mr. Russell of  
6 Reid and McNabb?

7 A. Yes.

8 572 Q. That has largely the same effect as that?

9 A. It is.

10 573 Q. Yes. So can I say, then, that in May of 1981 you were  
11 familiar with the intention to use the Canio lands as  
12 security for the Kilnamanagh Estates?

13 A. Yes.

14 574 Q. And I think, in 1983, when you are giving particulars  
15 to Mr. Wall, in Lombard and Ulster, you refer to that?

16 A. Yes.

17 575 Q. Not in great many terms now, but --

18 A. I don't think I referred to the name "Canio". I  
19 referred to the land.

20 576 Q. Yes.

21 A. 86 acres in Sandyford.

22 577 Q. Yes. And can I suggest to you that anybody reading the  
23 letter that you wrote in October of 1983, this is 3318,  
24 would think that it was a Kilnamanagh Estates' land?  
25 There is nothing to indicate that it was somebody other  
26 than Kilnamanagh Estates land that was being secured.  
27 Isn't that right?

28 A. You could put that interpretation on it.

29 578 Q. Yes. I mean, the name "Canio" isn't on it. I am not  
30 suggesting any ulterior motive here, I am just saying



1           that the letter doesn't give that gloss on it?

2    A.   Sorry, if you go to the second page.

3 579   Q.   The second page of the letter, it is under "AIF". It  
4           just goes down to, "Aikens land. Sandyford approval.  
5           300 houses. Spring 1983, plus 600 more. Eventually  
6           this security is released when overdraft", I suppose  
7           that is, "reduces below ú800,000"?

8    A.   Yes, that was what was in the resolution that Wheeler  
9           signed.

10 580   Q.   That's correct. But as I say, there is nothing in this  
11           letter that would indicate to Lombard and Ulster that  
12           the lands, you were talking about here, are not  
13           Kilnamanagh Estates' lands, it is Canio lands?

14   A.   I agree.

15 581   Q.   Yes. But in any event, it is those lands that had been  
16           pledged as security up to ú800,000?

17   A.   Yes.

18 582   Q.   And you were familiar with that in 1983?

19   A.   Yes.

20 583   Q.   You see, Mr. Finnegan will say he didn't know about  
21           this, he didn't know about it when the resolution was  
22           passed, he didn't know it in 1981, and he didn't come  
23           to know about it, indeed, until 1985?

24   A.   Until the court case, yes.

25 584   Q.   Yes.

26   A.   Well, he probably didn't. I don't know.

27 585   Q.   Yes. While he may have gotten wind of something like  
28           this, and he installed Mr. Barry, I think on your  
29           say-so, in March of 1984 he installed Mr. Barry to  
30           protect his interests, this had already taken place?

1 A. Sorry, not on my say - I didn't recommend Mr. Barry to  
2 be his watchdog.

3 586 Q. Can I just - sorry, I may be misreading a letter. 656,  
4 please. This is a letter from yourself to Mr. Wheeler  
5 in March of 1984.

6 .  
7 You are explaining to Mr. Wheeler:  
8 "Canio is a wholly-owned subsidiary of Ardearn Limited,  
9 Reference A334, and one-third of the shares in Ardearn  
10 are beneficially owned by Foxtown Investments Limited."  
11 That would be Mr. Finnegan?

12 A. Yes.

13 587 Q. "And he is concerned if anything happened to him, the  
14 lands owned by Canio might be sold, and the one-third  
15 share would not go to Foxtown. Accordingly, I have  
16 arranged that Dave Barry of Guinness & Mahon  
17 (Guernsey), who are the trustees of Foxtown, will  
18 contact you with a view to setting up machinery,  
19 whereby in the event of a sale by Canio, the proper  
20 proportion of the proceeds will find their way to  
21 Foxtown."

22 .  
23 Now, you may not have been - Mr. Barry may have been  
24 introduced by Mr. Finnegan, and you in turn are  
25 introducing Mr. Barry to Mr. Wheeler. Do you remember  
26 that?

27 A. No, I don't.

28 588 Q. I see.

29 A. I don't remember having any correspondence or telephone  
30 calls or anything else with Dave Barry.

1 589 Q. I see. I see. This is not necessarily a communication  
2 with Mr. Barry. This is you writing to Mr. Wheeler to  
3 arrange that Mr. Barry would contact him. Basically  
4 you introduced Mr. Barry to Mr. Wheeler. By this way,  
5 I don't mean introduce him personally or in any - in  
6 your presence or anything like that. You state here,  
7 "I have arranged that Dave Barry will contact you"?

8 A. I can't remember personally arranging that Dave Barry  
9 would contact him. I would have thought it would be  
10 John Finnegan.

11 590 Q. Yes. Well, this may have been the way it was done,  
12 that Mr. Finnegan wasn't, didn't want to just go cold.  
13 He may have asked you to do that, just to introduce Mr.  
14 Barry to Mr. Wheeler. But it was in March of 1984 that  
15 that was done, isn't it? That seems to be clear from  
16 that letter.

17 A. I would have thought that that should have been  
18 "accordingly he has arranged" rather than "I have  
19 arranged".

20 591 Q. Yes, I appreciate what you are saying.

21 .  
22 I think there was a response then. We don't need to go  
23 into the response from Mr. Barry. We have already seen  
24 that.

25 .  
26 Now, Mr. Owens, I have to bring you back to the  
27 documents at 2258.

28 .  
29 These are the Trust documents that are dated the 25th  
30 of June, of 1980, but in fact these documents seem to

1 have been backdated. These are documents that you have  
2 seen with Mr. Hanratty yesterday. These are the Trust  
3 documents in respect of Victa and Worland. This is a  
4 new topic now.

5 .  
6 Do you remember these - you went through them with Mr.  
7 Hanratty yesterday?

8 A. Yes.

9 592 Q. And they followed on the handwritten signatures that we  
10 have seen of Mr. Brennan and Mr. McGowan and Mr.  
11 Finnegan, indicating that the beneficial ownership of  
12 Victa is now held by Worland?

13 A. Yes.

14 593 Q. And I suppose - and again, these seem to follow from  
15 telexes which were dated the following year, between  
16 yourself and Mr. MacDonald, that is Mr. Wheeler's  
17 assistant. Do you remember that, you went through it  
18 yesterday?

19 A. I remember it yesterday, yeah.

20 594 Q. But these Trust documents seem to have come about, even  
21 though they are dated the 25th of June, of 1980, they  
22 seem to have come about after 1981, or during 1981.  
23 Isn't that right?

24 A. Yes.

25 595 Q. So therefore what I am suggesting to you is that  
26 Messrs. Bedell & Cristin had no difficulty producing  
27 these documents and backdating them to suit the  
28 particular circumstances; Victa had gone, had been  
29 dissolved or had ceased to exist, and Worland was  
30 taking over the Victa assets?

1 A. Yes.

2 596 Q. Isn't that so?

3 A. Yes.

4 597 Q. And when that had - when it subsequently transpired, it  
5 was realised that Victa still had assets, but Victa  
6 itself had dissolved, it became necessary to revisit  
7 the ownership of Victa, isn't that right?

8 A. Correct.

9 598 Q. While ordinarily - I can honestly say I don't know what  
10 the situation is in Jersey, but in this country, if a  
11 company was dissolved and still had assets, it would be  
12 necessary to make a court application to reinstate the  
13 company?

14 A. Well, I asked Bedell & Cristin what could be done, and  
15 they came up with this solution.

16 599 Q. So they had no difficulty, then, basically putting in a  
17 false record; Bedell & Cristin had no difficulty  
18 putting up a false record in order to keep the, keep  
19 the --

20 A. They don't appear to have had.

21 600 Q. Yes. Thank you, Mr. Owens.

22 .

23 Now, in order to do that, quite apart from the  
24 signatures which Mr. Hanratty has gone through with you  
25 yesterday, quite apart from that, the date is also a  
26 date that is a year earlier than the actual date, isn't  
27 that right, because the problem was --

28 A. I think it is the same date as that, 25th of June.

29 601 Q. Yes, but the date, when it was found out that it was  
30 necessary to backdate these matters, wasn't until 1981,

1           isn't that so?

2       A.    Correct.

3 602   Q.    So the actual date of these documents can't possibly be

4           the date that is on them, because they were only

5           generated a year later?

6       A.    Yeah.

7 603   Q.    Yes.  And there was no difficulty them doing that, in

8           Jersey?

9       A.    Well, Bedell & Cristin had no difficulty.

10 604   Q.    Yes.  And can I have Document 377, again, please.  This

11          is again the document dated of the same date, the 25th

12          of June.  Now, Mr. Owens, I want you to be quite clear,

13          I am not - there was no - I won't say "no harm done to

14          Mr. Finnegan on account of these matters," but Victa

15          Investments, he had gotten whatever he was getting out

16          of Victa Investments before this time, isn't that

17          right?  He got whatever money he was getting from

18          Jersey?

19       A.    I think so, yes.

20 605   Q.    And you didn't consult Mr. Finnegan to get his

21          signature on this document, sure you didn't?

22       A.    I couldn't contact Mr. Finnegan.

23 606   Q.    Yes.  And nonetheless because - I think Mr. MacDonald,

24          or certainly Bedell & Cristin, had asked you, or had

25          suggested this mechanism:  This was a clearance.  This

26          is a signed clearance to clear the taking of the Trust

27          documents or the Declarations of Trust, that we have

28          just seen.  There were three such Trust documents,

29          Victa to Worland, in respect of the shareholding of

30          Victa?

1 A. Yes.

2 607 Q. And was it that this was necessary to clear them  
3 signing the Declarations of Trust?

4 A. Apparently.

5 608 Q. Yes. But, in any event, this seemed to have been  
6 necessary, but they have no difficulty, then,  
7 backdating it to the 25th, as indeed you had no  
8 difficulty yourself backdating it until the 25th of  
9 June, 1980 in respect of this document?

10 A. Well, Bedell & Cristin would have requested me to  
11 furnish that document, to back up the other document.

12 609 Q. Yes. Did they ever tell you what would be the  
13 alternative, if this record wasn't kept, or if this  
14 record wasn't then imposed? Would there have to have  
15 been an application in court in Jersey similar to what  
16 we would have here?

17 A. I don't know.

18 610 Q. You don't know.

19 .  
20 I am now moving, Mr. Owens, to the particular land  
21 transactions and the particular schemes that were put  
22 in place in respect of the lands at Monkstown,  
23 Bellevue, and Newtownpark Avenue. Can I just take the  
24 Newtownpark situation first. 3984, please.

25 .  
26 This is the one where we know that, I think, ú672,000  
27 went to Jersey?

28 A. Yes.

29 611 Q. And 400,000 immediately came back from Jersey?

30 A. Yes.

1 612 Q. And I think the Chase Bank, who had lent money, was  
2 immediately paid back that money. That seems to be the  
3 case?

4 A. Yes.

5 613 Q. Insofar as the Tribunal has been able to find out what  
6 has happened here. However, the 672 is - I think you  
7 said that this was calculated by reference to site  
8 fines?

9 A. Yes, it was 14,000 multiplied by 48.

10 614 Q. So, 48 sites multiplied by 14, that gives 672?

11 A. Yes.

12 615 Q. And, I think, wasn't that calculated on the basis of  
13 what - I think Mr. Brennan came to you with that  
14 calculation?

15 A. Yes, as being the value of that particular site.

16 616 Q. I see. And it was suggested that he would be able to  
17 obtain that sort of site fine, on the sale on?

18 A. Yes.

19 617 Q. Right. Isn't that the basis of the calculation of the  
20 site, the site value, what he was able to sell on for?

21 A. Yes, the market value of that particular land having  
22 regard to where it was.

23 618 Q. Yes?

24 A. The type of house you would build on it, the type of  
25 people who would be prepared to buy those houses, they  
26 would be mostly second time buyers.

27 619 Q. Yes. It wasn't that at the particular time when that  
28 value was when the money was sent out to Jersey, the  
29 sites hadn't been sold at that stage, this was just a  
30 prospective value, what Mr. Brennan thought "this is



1           what I will get for these"?

2    A.   Yes.

3 620 Q.   Isn't that so?

4    A.   I presume so, yeah.

5 621 Q.   And isn't that more or less the same in the other

6           transactions, that it was based on a site fine that he

7           hoped to sell on for?

8    A.   Based on what he thought the market value was.

9 622 Q.   What he could be able to get out of it?

10   A.   Yes.

11 623 Q.   In a future sale?

12   A.   Yes.

13 624 Q.   Yes. And what we see in the management agreement and

14           the license agreements and these, these were simply

15           just mechanisms to create that debt, isn't that so?

16   A.   That particular document is a --

17 625 Q.   Is a license agreement for 48?

18   A.   Is a license agreement for ú48,000.

19 626 Q.   And then there is the interest-free loan, isn't that

20           right.

21   .

22   MR. HUSSEY: Thank you, Mr. Owens.

23   .

24   CHAIRMAN: Mr. Hayden, brevity is the soul of wit on

25           this occasion.

26   .

27   MR. HAYDEN: For sure. But then again, I suppose I

28           better do my bit.

29   .

30   .

1 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HAYDEN AS  
2 FOLLOWS:

3

4 627 Q. MR. HAYDEN: Perhaps, with that admonition, if I could  
5 go first to the page 4016. This is Dublin Airport  
6 Industrial Estates. That and the next page, 4017,  
7 Mr. Hanratty has gone through with you, the document  
8 in detail, and you might be able to help me.

9 .

10 On page 4016 there is a format setting out in Schedule  
11 1, Schedule 2, and showing a certain level of breakdown  
12 in relation to the various distributions to be made,  
13 professional fees. And Schedule 2 then, which would be  
14 the finance and income tax and sums due to directors.

15 That is correct?

16 A. Correct.

17 628 Q. And when that refers to Schedule 1 and Schedule 2, is  
18 that by way of a term of art in reference to an  
19 accountancy structure, or is it just your mechanism for  
20 the purposes of the particular A4 page, where its  
21 Schedule 1 items come from, where the Schedule 2 items  
22 come from?

23 A. Well, Schedule 1 is professional fees, then down at the  
24 bottom there is "less professional fees excluding  
25 accountants to be paid from proceeds."

26 629 Q. Yes, you do that reconciliation at the bottom of the  
27 page. If it is Schedule 1, is it Schedule 1 by  
28 reference to a bigger document or - does this page  
29 stand on its own or is it part of a number of  
30 documents?

1 A. I think it stands on its own, Mr. Hayden.

2 630 Q. The reference to schedule 1 is just a shorthand

3 mechanism by you?

4 A. Yes.

5 631 Q. The document on page 4017 is a different format. Would

6 both have come into existence at the same time in the

7 context; is one a breakdown different to the other, or

8 is there is greater detail given in relation to the

9 "Group" and "Individual"?

10 A. Well, the "Group" started off with "Ray Burke". He is

11 both there as "Group" and "Individual." "McCarthy" is

12 there as "Group" and "Individual." The 56,000 to

13 Grange Developments is 56,245, made up of five

14 different people of 11,249.

15 632 Q. That is what I was going to say to you. Correct me if

16 I am wrong, page 4017 is not a recasting of 4016?

17 A. No.

18 633 Q. It is an entirely separate document prepared for a

19 different purpose showing the mechanism of breakdown?

20 A. Yes.

21 634 Q. Isn't that correct?

22 A. Yes.

23 635 Q. So, it is not a question of there being a version on

24 page 4106, the first version, then you recasting the

25 document at 4017. This time "R Burke" with none of the

26 details beside it, the content and make-up of the

27 second page, the 4017, is based upon a different

28 accountancy procedure?

29 A. Well --

30 636 Q. A different purpose, in that it gives more detail?

1 A. A different purpose, in which each shareholder is going  
2 to get.

3 637 Q. Yes. So I understand that, then, when one looks at it,  
4 in reality - on page 4016 you have professional fees so  
5 identified, scheduled items, Schedule 2 items, which is  
6 the breakdown between Northern Bank Finance and the  
7 interest, Northern Bank, etc. But when one goes to the  
8 next page, that then breaks down, for example, the  
9 Grange number, which is down as a global figure; sums  
10 due to Grange Developments. It is broken down into  
11 individual entitlement, and the Grange shareholder  
12 entitlements, T Brennan, M Brennan, and so forth. Am I  
13 correct in that?

14 A. Yes.

15 638 Q. And when one looks under the "DA: NBFC", you see that  
16 there - that is, this time "NBFC" is in as "9,085",  
17 which is obviously a different reference to the  
18 involvement of Northern Bank Finance from page 4016,  
19 where the Northern Bank Finance involvement is  
20 97,303.40, and the extra sum 2,958.67?

21 A. I don't know what that "9,085" is.

22 639 Q. Does "DA" give you any hint at all?

23 A. Well, "DA", the breakdown of the five pieces under "DA"  
24 would imply that they are the five shareholders in  
25 Dublin Airport.

26 640 Q. Yes. But it is unlikely that Northern Bank Finance was  
27 a shareholder? Maybe it was, I don't know.

28 A. I don't know.

29 641 Q. But it is a different mechanism. It is not a  
30 recasting; it is an entirely different process. And is

1           it likely that 4016 and 4017 would have come into  
2           existence from the same original handwritten  
3           manuscript?

4       A.   Yes.

5 642 Q.   So therefore, when you see on page 4017 "R Burke", and  
6           any reference made to anything other than R Burke, that  
7           would have come in at the time as page 4016?

8       A.   Yes.

9 643 Q.   We then go to the extra two documents that I received  
10          this morning, which I think you were given copies of.

11         I don't have a Tribunal reference number. Where we  
12         have this, on this occasion we have the same two pages  
13         in format, Schedule 1 and Schedule 2, and payments to  
14         Pagebar Properties (Ireland) and the breakdown, less  
15         the professional fees and so forth. This identifies,  
16         "PJ Burke (Sales) Limited - Estate Agents - 15,000."  
17         It goes through the numbers. And likewise, we have  
18         "PJ Burke Limited" on page - on the next page of that.  
19         Again, I don't have - yes, that is the correct one.

20         .

21         So, in fact, we have - am I correct in saying that in  
22         reality we have two documents, not four versions of the  
23         same document? We have page 1 and 2, which is the  
24         Schedule 1, Schedule 2, and then the --

25       A.   There are two pages of page 1 and two pages of page 2.

26 644 Q.   So, there is only two versions, for want of a better  
27          phrase, that in reality you are speaking of, as  
28          distinct from Mr. Hanratty, who was indicating that we  
29          have a number of versions?

30       A.   Well, I think I was confused at that particular stage.

1 645 Q. Yes. Well, as I say, from the point of view of them  
2 coming into existence at a particular time, as I  
3 understood it from an accountancy procedure, that is  
4 how it comes into existence, why you have two pages,  
5 one is a different breakdown?

6 A. Yes.

7 646 Q. The Tribunal has heard at length, I don't think I need  
8 to delay the Chairman any further on the issue. But  
9 the two documents that were on the Companies Office  
10 file didn't have the Companies Office stamp, therefore,  
11 the Companies Registrar was happy to accept that this  
12 was not put in via the Companies Office, it didn't  
13 receive the stamping, and hence it wasn't a document  
14 that had been filed with the Companies Office, the two  
15 unstamped pages?

16 A. Yes.

17 647 Q. And the Tribunal has heard at some length about that.

18 .

19 But it did give rise - as you say, you had a plethora  
20 of phone calls, and the phone lit up, and the world and  
21 its mother, trying to find out the story from you. The  
22 net result of it all, anyway, was that you were  
23 interviewed by the Gardai?

24 A. No.

25 648 Q. Some six months - sorry, you sent a letter, a letter  
26 was sent to the Gardai by your good self?

27 A. Yes.

28 649 Q. Sorry. That was done within, am I correct in saying,  
29 approximately six month'ish of the events? I think  
30 your letter was the 24th of July.

1 A. 24th of July.

2 650 Q. 1984?

3 A. Yes. 23rd of June, '74, was the article in the Sunday

4 Independent?

5 651 Q. Yes.

6 A. So it was a month.

7 652 Q. A month - sorry, a month after the article in question.

8 And the Form 52 would have been sent off, I don't have

9 the exact date, a number of months earlier would have

10 been forwarded to Fitzpatricks, was it?

11 A. November 19, 1973, I sent Fitzpatricks Form 52.

12 653 Q. Yes. And the Form 52 that they got, would that have

13 included the two pages, to your recollection, the first

14 version?

15 A. It should not have.

16 654 Q. It should not have, yes. I think in your letter to

17 the Gardai, on the 24th of July, '74, which would have

18 been pretty relative to the 27 years we are talking

19 about now, pretty close to the time of the events in

20 question, your explanation was as identified in that

21 letter, that the, on paragraph 4, a draft document

22 setting out how the gross proceeds were to be

23 distributed. As a result of a typing error this

24 document set out under the heading "Professional Fees:

25 Ray Burke - Planning. Des McCarthy - Engineer". This

26 should have read, "Ray Burke - Estate Agent. Des

27 McCarthy - engineer and planning".

28 .

29 That was your frame of mind, your recollection of

30 events back within six months of the actual documents,

1 as distinct from being asked by Mr. Hanratty, now 27  
2 years later, and as I understand your position to be,  
3 correct me if I am wrong, you can shed no more light  
4 than what you actually told the position as you  
5 understood it to be then. I take it that letter to the  
6 Guards reflected the position as actually was back then  
7 in 1974?

8 A. As I knew it.

9 655 Q. As you knew it?

10 A. Yes.

11 656 Q. Since the document came out of your office, I presume,  
12 as you knew it, it was how it happened. As you say in  
13 that letter, on the 24th of July, '74 it was an error.  
14 And to be fair to you, as well, it has been put to you  
15 at some length by Mr. Hanratty, about that handwritten  
16 manuscript, it didn't last beyond the day of the  
17 typing, or --

18 A. No, it never did.

19 657 Q. It went to the filing cabinet in the corner. But what  
20 it ever contained at this remove, you obviously can't  
21 say?

22 A. No idea.

23 658 Q. And other than check the figures, you were given the  
24 figures for the auctioneering fees of Mr. Burke, as the  
25 15,000?

26 A. Yes.

27 659 Q. There is one item that I would like to put to you. In  
28 your letter of the 24th of July, '74, you say at the  
29 end of paragraph 4, "It is possible that Mr. Tom  
30 Brennan called into the office and collected these



1 documents, but I have no record he did so." This is  
2 the erroneous version?

3 A. Yes.

4 660 Q. In his statement to the Guards he indicated, on the  
5 23rd of the 7th, 1974, "I have never seen the original  
6 of this document and did not know of its existence  
7 until I saw the copy in the Sunday Independent."

8 .

9 So, that is his statement back in 1974 to the Guards.

10 So I take it your comment at the bottom of that  
11 paragraph is a suggestion, but not an actual  
12 recollection of events?

13 A. Correct.

14 661 Q. So, if Mr. Brennan has given a statement to the effect  
15 he didn't see it up until the Sunday Independent, I am  
16 not placing much emphasis on it one way or the other,  
17 just for the purposes of the record. And as you  
18 rightly indicated, the transaction never went ahead,  
19 anyway, the sale didn't take place.

20 .

21 If I can then ask you just in relation to - as I  
22 understand it, were you aware of the loan application  
23 being made in June? I have moved on now. We are  
24 moving around. I have moved on now to the loan  
25 application to Lombard and Ulster. Were you aware of  
26 the loan application being made in June of 1984 to  
27 Lombard and Ulster?

28 A. Not initially, no.

29 662 Q. I know, everybody's recollection seems to be in doubt,  
30 but - would you have remembered - do you remember when

1           you first came to hear of it? It must have been before  
2           the 14th of June, because that is the telex?

3        A. I can't remember specifically when.

4 663 Q. Yes.

5        A. But I personally did not make loan applications.

6           Brennan and McGowan made them themselves --

7 664 Q. That is not what I am asking you. I am not suggesting  
8           you made the loan application. Just, from the point of  
9           view of being able to set a time frame on the sequence  
10          of events, you, in a telex which has been up to the --

11       A. I understood there was a - it was either yesterday or  
12        perhaps Friday when I was here, as an interested person  
13        waiting to be called, that the loan application started  
14        about March --

15 665 Q. Well, there had been a loan application by Kilnamanagh  
16        in April.

17       A. Was there?

18 666 Q. For a different - well, the suggestion of a loan  
19        application by Kilnamanagh, but nothing to do with  
20        Canio. But what - there was some talk about  
21        Kilnamanagh making a loan application, but the - you,  
22        at page 692 say in the telex, which has been opened  
23        endlessly, in which it is to Mr. Wheeler - and up she  
24        comes. That identifies various items. It seems clear  
25        that at that stage you are well acquainted with the  
26        fact that there is a loan application in the offing,  
27        and the loan application itself seems to have been made  
28        on the 7th of June, Mr. McGowan attended Lombard and  
29        Ulster on the 7th of June. We have the documents to  
30        that effect.

1 .  
2 So, some date prior to the 14th, or at least by the  
3 14th, you had been informed that there was a loan  
4 application. And in that, were you aware, one way or  
5 the other, if Mr. Finnegan was aware that there was a  
6 loan application being made?

7 A. No, I am not - personally, I am not aware.

8 667 Q. Yes. Is it likely you indicated to Mr. Hanratty,  
9 earlier on before lunch, that as you understood Mr.  
10 Finnegan's position, it was that of a sleeping partner?  
11 Am I correct in that?

12 A. Yes.

13 668 Q. And that had been part and parcel, had it, of the  
14 sequence of transactions that we have heard about,  
15 Monkstown, Donnybrook, Bellevue, Newtownpark Avenue,  
16 Smiths of the Green, had that been your experience in  
17 relation to Mr. Finnegan's involvement in relation to  
18 the transactions?

19 A. Yes.

20 669 Q. In that regard, had it at any stage been your  
21 understanding that he wished to keep his involvement  
22 confidential in the context of the comings and goings  
23 of these transactions?

24 A. I can't remember specifically, actually, Mr. Hayden.

25 670 Q. Well, obviously, when it comes to the fax telex of the  
26 14th of June, you clearly have a view as to why Mr.  
27 Finnegan's name isn't involved, because Finnegan wants  
28 to remain silent is what you say. I am just wondering,  
29 in the sequence of events, when would you have, in your  
30 own mind, come to that view, or why would you have come

1 to that view?

2 A. Because Wreford's name was substituted for Finnegan,  
3 and --

4 671 Q. But you --

5 A. I was pointing out to Mr. Wheeler that Finnegan still  
6 existed.

7 672 Q. Oh, yes, I accept that. As you have told us, neither  
8 Mr. Brennan nor Mr. McGowan told you to indicate this  
9 particular point. This was an assumption made on your  
10 part, that Mr. Finnegan wished to remain silent.

11 .

12 We do have the letter of the 6th of March, 1984, which  
13 is at page 656, which is your letter to  
14 Mr. Wheeler, re Canio, in which you indicate:

15 .

16 "I have had a meeting with the beneficial owner of  
17 Foxtown, and he is concerned if anything happened to  
18 him the lands owned by Canio might be sold, and the  
19 one-third share would not go to Foxtown. Accordingly,  
20 I have arranged" - you have indicated to Mr. Hussey  
21 that that may be a typo - "that Mr. Finnegan arranged  
22 with Dave Barry of Guinness & Mahon (Guernsey) who are  
23 the trustees of Foxtown will contact you with a view to  
24 setting up machinery whereby in the event of a sale by  
25 Canio the proper proportion of the proceeds will find  
26 their way to Foxtown."

27 .

28 So you had a meeting with Mr. Finnegan in March of '84  
29 in which Mr. Finnegan expressed a view that he wanted  
30 to make sure that Foxtown's interest was properly

1           protected?

2       A.   Yes.

3 673   Q.   At that stage Mr. Finnegan, as I understand it from  
4           your evidence to Mr. Hanratty, did not express any  
5           concerns about previous undertakings or previous - or  
6           any contracts for sale to Kilnamanagh, that this seems  
7           to have been the extent of his concerns, that he wanted  
8           to make sure that Foxtown, if anything ever happened to  
9           him, if he was shuffled off the mortal coil, that the  
10          papers would be in place to make sure that Foxtown's  
11          interests would be in place. That was the extent of  
12          his concerns. He does express the view that he does  
13          wish Foxtown's position to be protected?

14      A.   Yes.

15 674   Q.   Following on that, Mr. Barry requested accounts of  
16          Canio. I think those accounts were put to you, say, in  
17          August?

18      A.   They were signed off in August, yes.

19 675   Q.   And did you, when you spoke to Mr. Finnegan in March of  
20          '84, indicate to him that there was the existing  
21          undertaking from 1981?

22      A.   No.

23 676   Q.   And why is that, if Mr. Finnegan was there telling you  
24          he wanted to make sure that Foxtown's position was  
25          protected, why did you not tell him? Did you think he  
26          already knew about it?

27      A.   I can't remember, actually.

28 677   Q.   If that be the case - I mean, yu are just doing your  
29          job, so I presume you would have no axe to grind one  
30          way or the other as to the state of play in relation to

1 --

2 A. Sorry, what date is on that letter? Can you tell me?

3 678 Q. The 6th of March, 1984.

4 A. The 6th of March. We didn't discuss it. Presumably,  
5 No. 1, because it would appear that Mr. Finnegan didn't  
6 know about the 1971 --

7 679 Q. '81. Well, how do you know that if you didn't discuss  
8 it, if he already knew about it? Mr. Finnegan comes in  
9 to you and says, "Look, if anything ever happens to me,  
10 we better make sure the paperwork is in order"?

11 A. Mmm.

12 680 Q. You have indicated to the Tribunal already that  
13 Mr. Finnegan wasn't your client?

14 A. Yes.

15 681 Q. But you had set up the mechanism, you had been the  
16 connection with Mr. Wheeler and Bedell & Cristin. So  
17 Mr. Finnegan came in to you, obviously that had to be  
18 on the basis of some discussion relating to Foxtown and  
19 Canio, and we have the letter in which you write to Mr.  
20 Wheeler, and in fact, to be fair, Mr. Barry writes  
21 separately to Mr. Wheeler, which is at page 659, where  
22 your letter, you will see there, under "statement No.  
23 4", you will note from Mr. Owens' letter, which is your  
24 letter of the 6th of March, that "Our client would like  
25 to be confident that Foxtown's investment is entirely  
26 secure. This is not unnatural in view of the value of  
27 that investment."

28 .

29 So, the state of mind, it seems, in March of '84, was  
30 Mr. Finnegan just wanted to put the house in order?

1 A. Yes.

2 682 Q. You didn't talk to him; you can't remember if you did  
3 or did not tell him about the 1981 undertaking?

4 A. No, I don't think I did.

5 683 Q. Yes. Why was that?

6 A. Well, I presumably would have known.

7 684 Q. In any event, things moved on to the 14th of June,  
8 where you send the telex to Mr. Wheeler, and that telex  
9 on the 14th of June indicates that, "Mr. Finnegan's  
10 name is not negotiated with the loan application  
11 because Mr. Finnegan" which is page 692 "because  
12 Finnegan wants to remain silent."

13 .

14 You already had the conversation in March where  
15 Mr. Finnegan wants to make sure that Foxtown's position  
16 is in order, and you send this telex saying to  
17 Mr. Wheeler - saying that "Mr. Finnegan wants to remain  
18 silent". I am just --

19 A. Because Roger Wreford was named by either Tom Brennan  
20 or Joe McGowan to Lombard and Ulster as being a  
21 beneficial shareholder, and that one of those loan  
22 applications stated that they wanted to buy out Mr.  
23 Wreford.

24 685 Q. Yes. Yes. Well, that had the benefit, if one is  
25 buying out the third shareholder, that I suppose it  
26 gets rid of the application for three guarantees.  
27 There was only two guarantees given by Messrs. Brennan  
28 and McGowan in relation to the loan, not a third, but  
29 you are not, you are not, you can't recollect whether  
30 or not you did discuss with Mr. Finnegan, or do you

1 remember discussing with Mr. Finnegan prior to this

2 telex the question of a loan application being made?

3 A. No, that was March. I wouldn't have been aware of it

4 then.

5 686 Q. Yes. The result of it all, anyway, is that a fax comes

6 back to you on - and we see the reason why. There is a

7 bit of a rush on, in that you need this information,

8 you say, from the telex because the individual dealing

9 with it in Lombard is away on holidays the following

10 evening or the following day. A telex comes back to

11 you on the 15th of June, '84 from Mr. Wheeler, 693.

12 That sets out the position, who owns what.

13 .

14 And it seems you - did you pass that on to Lombard and

15 Ulster, that telex, three equal parts there? You see

16 it there at the - by Gasche Investments Limited,

17 Kalabraki Investments Limited and Foxtown Investments

18 Limited?

19 A. I don't know. I don't remember.

20 687 Q. Well, if you look at page 696, you will see there is an

21 internal Lombard and Ulster (Banking)(Ireland) Limited

22 memo re Canio Investments Limited. Down the bottom

23 right-hand corner, "Details of shareholding contained

24 in attached copy telex"?

25 A. Well, then, I must have.

26 688 Q. That is what I was going to say, it is probably likely,

27 since this is the telex that comes back giving you,

28 "The beneficial owners are not directly as you state,

29 although ultimately your information is correct, its

30 immediate beneficial owner is Ardcarne Limited, which is



1 owned as to three equal parts by Gasche Investments  
2 Limited, Kalabradi Investments Limited and Foxtown  
3 Investments Limited."

4 .

5 So you passed that information on to Lombard and  
6 Ulster?

7 A. Presumably, yes. Well, they would in particular have  
8 wanted to know whether Canio as a Jersey company had  
9 power --

10 689 Q. Yes?

11 A. -- to borrow.

12 690 Q. It says that at the bottom of the telex in relation to  
13 it:

14 .

15 "The company has power to borrow and grant a mortgage  
16 in Ireland."

17 .

18 That is page 693. It is up on the screen, anyway. Are  
19 you okay with that?

20 A. I have just said it.

21 691 Q. Oh, yes. I wasn't being smart. I thought you were  
22 looking at it. Forgive me if I allowed you not time to  
23 read it?

24 A. I looked at it about 30 seconds ago.

25 692 Q. Fair enough. That being said, it is clear that the  
26 paperwork for Canio wasn't in order, Canio and Ardcarne.  
27 And we have that from the 22nd of March, 1984 letter?

28 A. So I understand.

29 693 Q. Yes. Page 663. And were you aware that there was to  
30 be a meeting on the 26th of June?

1 A. No.

2 694 Q. Because Mr. Wheeler to Mr. Barry, on the 22nd of June,

3 1984, goes through the various issues in response to

4 Mr. Barry's earlier letter. He concludes at page 664:

5 .

6 "It may be that we will have to meet up to sort out

7 what could prove to be a disastrous ordeal."

8 .

9 I think it was the case that there was some confusion

10 as to who owned what, isn't that correct, whether

11 Ardcarn was owned by Canio or Canio owned Ardcarn, and

12 who the actual shareholders were actually meant to be?

13 A. No, I don't think so.

14 695 Q. Well, if you look at that letter at 663. You see, at

15 the bottom of page 663. I probably won't delay you

16 long on this.

17 A. I see the first paragraph, "Towards the end of your

18 letter you imply the opposite. My records show that

19 Canio Limited is one-third owned by Foxtown Investments

20 Limited, but Ardcarn Limited is owned by three

21 individuals."

22 696 Q. Do you see that?

23 A. Yes.

24 697 Q. Now, by the time the telex comes in from Mr. Wheeler,

25 on the 15th of June, it is now down into three parts,

26 Gasche Investments Limited, Kalabraki Investments

27 Limited and Foxtown Investments Limited, and there is a

28 couple of internal memos, in which the setting in train

29 of the putting the structure in place, properly in

30 place commences. 667 and 668 talks about, "The present

1 arrangements are not satisfactory," this is the second  
2 paragraph, "and what we must reflect in the paperwork  
3 is that Canio is wholly-owned by Ardcard, which is in  
4 turn owned by one-third to Gasche Investments Limited,  
5 one-third by Kalabradi Investments Limited, which in  
6 due course will be owned by a Jersey trust, which AFM  
7 is forming, and the remaining one-third must be  
8 beneficially owned by Foxtown Investments Limited which  
9 is owned by College Trustees Limited of Guernsey." And  
10 "LAW."

11 .

12 That seems to be Mr. Wheeler's - now, Mr. Wheeler, I  
13 presume, would have gotten that instruction from you,  
14 would he, since you set it up?

15 A. Well, the first paragraph says Tom Brennan was in  
16 Jersey on Tuesday, or wherever. It is that - "not  
17 satisfactory. We must reflect in the paperwork that  
18 Canio is wholly-owned by Ardcard, which, in turn, is  
19 owned as to one-third by Gasche, Kalabradi, and  
20 Foxtown."

21 698 Q. Mmm.

22 A. That was always my --

23 699 Q. That was the way it was meant to have been set up?

24 A. That was the way it was meant to be, yes.

25 700 Q. So the structure was your structure?

26 A. Yes.

27 701 Q. So in essence this is, whatever Bedell & Cristin had  
28 done up until now, this was making sure that it  
29 actually corresponded with your instructions?

30 A. Yes.

1 702 Q. And I think that continues on, then, at page 668, where  
2 I have dealt with the question of ownership. This is  
3 MRC of the above two companies. "And have arranged for  
4 new blank share transfers and Declarations of Trust to  
5 be executed.

6 .  
7 The statutory records of Foxtown Limited are not in our  
8 possession, being held, so far as I can gather, by  
9 Guinness Mahon of Saint Peter Port, Guernsey."

10 .  
11 That has taken place by the 15th of June, in that the  
12 ownership --

13 A. Yes.

14 703 Q. You indicated to Mr. Hanratty, before lunch, as I  
15 understand it, that you had dealt with Mr. Wheeler for  
16 a long number of years. You found him very formal?

17 A. Yes.

18 704 Q. But you indicated that you always found him to be  
19 straight down the middle, he was meticulous?

20 A. Well, these papers indicate that he is not meticulous,  
21 but that he was straight down the middle.

22 705 Q. Yes, yes. Meticulous. Sorry, I understand the  
23 distinction. Yes. In the sense that he was always,  
24 he was straight down the middle?

25 A. Yes.

26 706 Q. And while some of the paperwork might have been a bit  
27 raggedy, he certainly wasn't in the habit of not  
28 following instructions or doing what - acting in  
29 accordance with instructions?

30 A. That's correct.

1 707 Q. And in that regard, had that been your experience of  
2 him at all times in relation to your dealings with him,  
3 that he would seek instructions and follow  
4 instructions?

5 A. Yes.

6 708 Q. And obviously, from March of 1984, you are identifying  
7 to Mr. Wheeler, if he hadn't already known this  
8 beforehand, but that Foxtown was going to be operated  
9 as a - Foxtown was one-third of this and Foxtown's  
10 interests had to be protected? He confirms that to you  
11 on the - not to you, but he confirms that to  
12 Mr. Wheeler. Mr. Barry does so on the 20th of March,  
13 1984. Mr. Barry is then put in place as a director.

14 .  
15 So when it came to the division of the monies, just - I  
16 understand the time constraints, so forgive me if I am  
17 jumping up very fast, but the summer happened and the  
18 events of the summer in relation to the comings and  
19 goings of the various Offer Letters, do you have a  
20 recollection of seeing any of the Offer Letters from  
21 Lombard and Ulster?

22 A. No.

23 709 Q. That being said, it comes up to the position in  
24 relation to what Mr. Hussey was talking to you and Mr.  
25 Hanratty was talking to you about, the division of the  
26 monies and the payment of the monies in the ú420,000.  
27 Sorry, whilst I omitted to mention it when I had opened  
28 the telex or the internal memo of Lombard and Ulster,  
29 at page 696, at the bottom of that it identifies part  
30 of the reason why the structure was put in place in

1 relation to the share acquisition. There is no  
2 equivalent to Section 60 in relation to the Jersey Act  
3 legislation. Do you see that at the bottom? That  
4 would seem to tie up with the - that seems to be the  
5 position in Jersey, anyway.  
6 .  
7 But also at page 1072, this is vis-a-vis your position  
8 that Mr. Finnegan, as you understood it, wished to  
9 remain silent. This is an internal Lombard and Ulster  
10 memo on the 27th of September, 1985. You will see the  
11 penultimate paragraph:  
12 .  
13 "As a matter of interest, a third party unknown to us,  
14 a John Barry has been in touch with Fergus Smith  
15 claiming to represent parties interested in the  
16 company, and has asked Fergus to agree to meet John  
17 Finnegan, auctioneer. You will recall that Mr.  
18 Finnegan's name only came into the picture following a  
19 very recent discussion I had with Paddy Dowling of AIF.  
20 .  
21 Fergus has agreed to meet Finnegan on the basis that he  
22 will merely listen to what he has to say. As far as we  
23 are concerned Finnegan has no connection with Canio and  
24 we are not at liberty to divulge any information to  
25 him."  
26 .  
27 That would appear to equate with your own understanding  
28 of the position, that Mr. Finnegan wished to remain  
29 silent, as this is an internal bank memo of the 27th of  
30 September, 1985, a year later. This is an internal

1 Lombard and Ulster bank memo.  
2 .  
3 I was just going to put to you in relation to the loans  
4 - during the summer, I think there was on the 11th of  
5 September, 1984, a request made of Mr. Wheeler as to -  
6 page 722. It was a request made to Mr. Wheeler by Mr.  
7 Barry, in which he is asking for a breakdown of the  
8 663,743. He says: "Please write to Hugh Owens to  
9 request these details."  
10 .  
11 This is the request of the sum in Canio, 663,743. I  
12 think that letter is sent to you, that request is sent  
13 to you by Mr. Wheeler in the letter of the 17th of  
14 September asking for a breakdown of the 663,743. You  
15 reply on the 9th of October, 1984?  
16 A. That refers to the account prepared for Canio.  
17 710 Q. Yes. At that stage, the undertaking, as I understand  
18 it, in 1981, which you've referred to, you are aware of  
19 that, and, in fact, had the letter and sent the letter  
20 over - sorry, sent the text of it over, having obtained  
21 a copy of the text, from your recollection, from Reid  
22 and McNabb. It is sent over under cover of letter 12th  
23 of May, 1981. That is page 443.  
24 .  
25 You are aware of that.  
26 .  
27 You didn't say anything to Mr. Finnegan in the meeting  
28 of March '84, because as I understand it, as you  
29 understood it he was aware of the situation, but you  
30 didn't discuss --

1 A. No.

2 711 Q. And no accounts had been prepared at this stage, by  
3 1984, coming up to the summer of '84?

4 A. No.

5 712 Q. And in relation to that, had you been asked to prepare  
6 accounts beforehand? You say those accounts would have  
7 shown this undertaking had you prepared the accounts  
8 before this June '84 meeting?

9 A. Mmm.

10 713 Q. And that is as a consequence of it being a collateral  
11 security?

12 A. Yes.

13 714 Q. Was that in accordance with the then prevailing  
14 accountancy practices, or when did the SSAP come in,  
15 that required the notification of collateral securities  
16 under the --

17 A. You should ask the Institute of Chartered Accountants,  
18 I haven't an idea.

19 715 Q. Yes. I don't think that was until 1987.

20 .

21 CHAIRMAN: Don't worry.

22 A. I haven't a clue.

23 716 Q. MR. HAYDEN: You haven't a clue?

24 A. No.

25 717 Q. As I understood it, at that stage, not having many  
26 accounts myself in 1984; at that stage a collateral  
27 security was not an item that was - it was an election,  
28 whether it was included or not, it wasn't an SSAP  
29 requiring its incorporation?

30 A. I can't enlighten you on that one, I am afraid.



1 718 Q. All right. Fair enough. But, in any event, by the  
2 time it came around to you preparing the accounts in  
3 August of 1984, you understood that there had been this  
4 meeting in, on the 26th of June, 1984, and therefore  
5 there was now no longer an issue to concern yourself  
6 with it, in any event?

7 A. That's correct, yes.

8 719 Q. Did you not do the accounts for three years?

9 A. I did.

10 720 Q. So therefore, would it not have been in the accounts  
11 for the first two years and not the last year?

12 A. No, I did one balance sheet and three years Profit and  
13 Loss.

14 721 Q. Well, would the balance sheet have included --

15 A. The balance sheet of the 31st of December, '83?

16 722 Q. Yes.

17 A. No, it didn't. Perhaps it should have, but it didn't.

18 723 Q. That is the point I was being to make. Had it been the  
19 case that you felt that it was a matter of inclusion,  
20 the balance sheet was for the 31st of December, 1983.  
21 Therefore, as a matter of accountancy practice, in  
22 accordance with your own evidence to Mr. Hanratty  
23 earlier on, you say had it not been the case of the  
24 meeting of 26th of June, 1984, you would have included  
25 this, had you thought it was something that should have  
26 been included.

27

28 Sure, the meeting of the 26th June, 1984, wouldn't have  
29 altered the balance sheet as of the 31st of December,  
30 1983, in any event, sure it wouldn't?

1 A. The balance sheet of Canio Limited was prepared in  
2 accordance with the laws of Jersey, not to the laws of  
3 Ireland, because Jersey - because it was a Jersey  
4 company.

5 724 Q. So therefore --

6 A. It was in Sterling, and it showed in brackets the  
7 Irish, the Punt equivalent.

8 725 Q. The Punt equivalent. I am not - you need not worry  
9 about the Sterling.

10 .

11 We will go to where it was you said you done up the  
12 accounts. Sorry, you did do the accounts for three  
13 years. You did a Profit and Loss for years one and  
14 two. And for year three you did a Profit and Loss as  
15 well. And did only one balance sheet, for the period  
16 as of the 31st of December, 1983?

17 A. Yes.

18 726 Q. And as I understand the position, you say had the  
19 accounts been - had there not been the meeting of the  
20 26th of June, '84, had this undertaking been one that  
21 you thought affected Canio, you would have included it?

22 A. Yes.

23 727 Q. But since the balance sheet was as of the 31st of  
24 December, 1983, then if it was an undertaking that you  
25 felt affected Canio, whatever happened in '84 is  
26 irrelevant if the accounts are to be accurate, isn't  
27 that correct? It should have been in it, if you felt  
28 that that undertaking actually affected the accounts?

29 A. Well, there is the categorical statement from George  
30 Russell that there was no charge on those --

1 728 Q. Yes?

2 A. -- on that land.

3 729 Q. No, don't get me wrong. I am not saying - you see, as

4 I understand it from Messrs. Brennan and McGowan, the

5 undertaking that was given in 1981 was only to be, in

6 their view, an undertaking had monies been advanced on

7 the strength of the Canio lands. And since no monies

8 were advanced on the strength of the Canio lands, they

9 didn't feel that that undertaking actually affected the

10 position. And therefore, 1981 had well passed by the

11 time this came around in 1984. Since no monies were

12 advanced, as is their understanding, on foot of that

13 undertaking in 1981, it wasn't an undertaking they

14 understood, or the mistake which the Tribunal

15 Chairperson has heard about, the mistake was a mistake

16 made by Mr. Brennan, Mr. McGowan, and Mr. Russell, that

17 --

18 .

19 CHAIRMAN: Mr. Hayden, are you giving evidence, or are

20 you examining the witness?

21 .

22 MR. HAYDEN: I am trying to stick to your direction to

23 hurry it up. And I thought it might be quicker if I

24 synopsised.

25 .

26 CHAIRMAN: If you gave the evidence, yes?

27 .

28 MR. HAYDEN: I think that is what Mr. McGowan said. We

29 can go to the transcripts and take the day.

30 .

1 Just to be fair to the witness, given that, as I  
2 understand his position to be, he said that had the  
3 meeting of the 26th of June not happened, he indicated  
4 to you, Sir, that he would have put in this, and as  
5 matter of accountancy practice, and as a matter of  
6 accounting, that couldn't be so because the balance  
7 sheet was at the 31st of December, 1983, so if it was  
8 an event that he thought affected the lands it could  
9 have been in there.

10 .

11 CHAIRMAN: Okay.

12 .

13 MR. HAYDEN: You have the air of it. We will move  
14 along.

15 A. I fail to see what the point of that is, but however --

16 730 Q. MR. HAYDEN: Oh, well, it just goes to show, perhaps  
17 when you said you would have put it, had you not -  
18 well, never mind. That is for - I think moving along  
19 then swiftly, you had been asked about the 663,743.  
20 This is just for the purposes of clarification.

21 .

22 You wrote back on the 9th of October, 1984 - 726 -  
23 "All the monies were paid in equally by the three  
24 shareholders"?

25 A. Yes.

26 731 Q. That is your understanding of it. The Green Trees, the  
27 300,000 had come across?

28 A. Yes.

29 732 Q. In fact, you always understood it to be the case that  
30 these were always investments, not loans? Am I correct

1 in that?

2 A. You are not.

3 733 Q. I am not?

4 A. They were loans, and it is quite obvious that the  
5 purpose of raising the money from Lombard and Ulster  
6 was to repay those loans.

7 734 Q. If that is the case, can you tell us, then, how you  
8 gave Mr. O'Neill a certificate? If I can ask you to  
9 look at page 783.

10 .

11 Insert H: "I received a certificate from the company's  
12 accountant" - which I presume is you - "to the effect  
13 that no loans had been advanced or made by the  
14 directors/shareholders to Canio Limited." At the  
15 bottom.

16 A. Where is that?

17 735 Q. H. There is a lot of difficulty before - the first  
18 line is on the bottom, the very bottom, then the top of  
19 the next page.

20 A. I don't remember ever issuing such a certificate.

21 736 Q. Well, to be fair to Mr. O'Neill, he is not - he is  
22 acting for the bank.

23 A. Yes, he is a cousin of mine.

24 737 Q. I wouldn't hold that - I am not suggesting he would  
25 write that on the strength of your relationship.

26 Presumably you gave him a certificate?

27 A. If he says so, I must have.

28 738 Q. So, therefore, back in 1984, at least it wasn't a loan?

29 A. They were loans, they were shareholders' loans. They  
30 weren't share capital. So if they weren't share

1 capital, they were loans.

2 739 Q. Well, if you look at - well, I am not sure ultimately  
3 what this has, as an impact, probably as an accountancy  
4 exercise it means something, but all I am saying is  
5 that you gave a certificate to the bank's solicitor.  
6 Lombard and Ulster's solicitors say there were no  
7 directors' loans or shareholders' loans to Canio  
8 Limited back then.

9 .  
10 And if you look at page 726 you call it.

11 "All the money was paid in equally by the three  
12 shareholders of the original investment."

13 A. Yes.

14 740 Q. Is an investment different to a loan, or is it one of  
15 the same, or --

16 A. The original - it is the same thing. They put in  
17 ú660,000.

18 741 Q. Whatever you want to call it?

19 A. Pardon?

20 742 Q. Whatever you want to call it?

21 A. Whatever you want to call it, but it was called in the  
22 balance sheet "Shareholders' loans".

23 743 Q. I thought you never did a balance sheet after the 31st  
24 of December, 1983?

25 A. That refers - if you go to the balance sheet, you will  
26 find that is the figure in the balance sheet, as of the  
27 31st of December, 1983.

28 744 Q. Well, then, I just don't understand, then. If that is  
29 in the balance sheet that you had prepared in August of  
30 '84, and if you have called it a loan in the balance

1 sheet, how did you give a certificate to the, to Mr.

2 O'Neill to the effect that there are no loans?

3 A. I have no idea.

4 745 Q. Mmm. Another conundrum. Anyway, I suppose it won't be

5 the - leading up to the event of December, sorry,

6 November. I think as I understand it, in any event -

7 sorry, I should put to you; Messrs. Brennan and McGowan

8 both thought of it as an investment, that they had

9 given their monies in as investments, whatever way, and

10 then that - you did indicate that you had sight of the

11 loan application to Lombard and Ulster. Am I correct

12 in that?

13 A. The purpose of that --

14 746 Q. Was to repay --

15 A. -- was to repay the loans. You can't repay investments

16 that easy.

17 747 Q. What? Mmm.

18 A. A reduction of share capital and all that sort of

19 stuff.

20 748 Q. In Jersey?

21 A. Anywhere.

22 749 Q. The Chairman has already seen the loan application

23 form. It says, "To repay the investment by the

24 original shareholders." You didn't say anything to him

25 at that stage, "You are calling in the wrong thing."

26 .

27 Anyway, if I can ask you to look at page - sorry,

28 "A distribution to the beneficial shareholders" is what

29 it is described as. Page 694.

30 .

1 You had sight of that.

2 .

3 So, whether it is a repayment of capital or otherwise,

4 it seems certainly in 1984 you had no difficulty

5 certifying the absence of any loans.

6 .

7 You do not - if I understand you correctly, you

8 received the telex on the 14th of November, 1984, page

9 755, from Mr. Wheeler?

10 A. Yes.

11 750 Q. You then contacted Mr. Brennan, because you had a phone

12 number for him. One or other, either Mr. Brennan or

13 Mr. McGowan got a copy of the telex. Ultimately the

14 10,000 is agreed, and as you have indicated to both

15 Mr. Hussey and Mr. Hanratty, you feel you can't

16 remember at this remove whether it was a phone call or

17 a meeting face-to-face with Mr. Finnegan, but certainly

18 he told you, in your recollection of events, that

19 Mr. Barry had been informed, and as far as - you were

20 happy at that stage, you have been given the clearance

21 that Mr. Barry was being advised. I presume at this

22 stage you knew Mr. Barry was, or did you know that he

23 had become a director at this stage?

24 A. Oh, I did.

25 751 Q. So far as you were aware certainly --

26 A. Well, if I - the telex that I got from Mr. Wheeler, I

27 think it said something on the lines that it suggests

28 that each put in ú20,000.

29 752 Q. Yes.

30 A. "But Mr. Barry does not agree." Now, he didn't, Mr.



1 Barry did not mention any figure at that stage.

2 753 Q. Yes, yes. He says, "I put this to Barry" - this is  
3 page 2949. There is two versions of it.

4 .

5 2949: "I put this to Barry of College Trustees Limited  
6 who says this was not agreed. By the time I learned  
7 this, I was not able to re-contact Mr. McGowan.  
8 Perhaps you would inform him, and hopefully the three  
9 could arrange" - so-be-it.

10 .

11 The 20 wasn't agreed between that date, between the  
12 14th and your telex on the 16th, which is at page 757.

13 The 10 was agreed, and 10 retained.

14 .

15 You indicated that Mr. Wheeler, your experience of him  
16 had always been of an individual that did things in  
17 accordance with instructions, straight down the line.

18 And do you have any reason to believe that he wouldn't  
19 have done that on this occasion?

20 A. I am puzzled.

21 754 Q. Well, save insofar as Mr. Finnegan had sanctioned it,  
22 then obviously Mr. Wheeler would be acting in  
23 accordance with instructions?

24 A. Had sanctioned what?

25 755 Q. The payment onwards of the ú10,000. If he had - I  
26 mean, are you aware one way or the other?

27 A. "Confirm ú10,000 by three agreed as a reserve."

28 756 Q. That was your telex?

29 A. Yes. There is no reference there to passing it on.

30 757 Q. Oh, no, I accept that. I am not saying you gave the

1 instruction. I am not saying you gave the instruction  
2 to pass it on. Don't - what I am indicating, what I am  
3 asking you is, your experience of Mr. Wheeler had been  
4 always of an individual --

5 A. Absolute trust, yes.

6 758 Q. And, in fact, in fairness to Mr. Wheeler, when the  
7 first suggestion of the \$20,000 is made to him he said  
8 "Wait, no, that is not agreed." And he refused to  
9 deduct the \$20,000, isn't that correct?

10 .

11 CHAIRMAN: Mr. Hayden, I am sorry to interrupt you in  
12 your flight. We will have to change the reporters,  
13 they have become exhausted.

14 .

15 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND  
16 RESUMED AGAIN AS FOLLOWS:

17 .

18 759 Q. MR. HAYDEN: What was initially indicated, I suggested  
19 to Mr. Wheeler that \$20,000 be - he said he got on to  
20 Mr. Barry. Mr. Barry hadn't agreed, so Mr. Wheeler  
21 didn't do anything without clearance from Mr. Barry or  
22 getting - and Mr. Barry said, "Hold on" - we had the  
23 sequence of events, resulting in the telex from you for  
24 "ten by three" for the reserve.

25 .

26 So clearly Mr. Wheeler wasn't going to do anything  
27 without making sure his position was properly  
28 protected, and that he had clearance?

29 A. Correct.

30 760 Q. And that would seem to tie in with the events that had

1 led up to November, whereby we had your initial  
2 correspondence of the 6th of March, '84, saying  
3 Mr. Finnegan wanted to make sure Foxtown's position was  
4 protected. We had Mr. Barry's letter to Mr. Wheeler  
5 saying similarly he wished to make sure that Mr.  
6 Finnegan's interests were properly protected. So  
7 Mr. Wheeler was in no doubt of the fact that whatever  
8 happened here in the context of any monies deducted, he  
9 was going to be answerable, if he didn't have  
10 instructions?

11 A. Yes.

12 761 Q. And likewise, on the ú10,000, he was going to be  
13 answerable if he did something with that ú10,000? I am  
14 asking you because I don't understand you to say that  
15 you ever gave instructions about that ú10,000, other  
16 than as we see in the telex, which was as a reserve?

17 A. Yes.

18 762 Q. But Mr. Wheeler was going to be answerable, and Bedell  
19 Cristin were going to be answerable for that ú10,000 if  
20 it was done - if any conduct or action in relation to  
21 it was done without clearance?

22 A. Yes.

23 763 Q. And as we know, I mean you've indicated yourself that  
24 as trustee one would have kept accounts in relation to  
25 a trust and accounts for certain things. And just to  
26 be clear on this, if it's the case that the ú10,000 was  
27 to be retained by Bedell Cristin, presumably in due  
28 course that would come up for consideration again? The  
29 accounts of Canio are going to have to be done at some  
30 stage, Foxtown was going to have to account --

1 A. I can't speak for Bedell Cristin. I can speak for

2 Owens Murray, but not for Bedell Cristin.

3 764 Q. In your own experience as a trustee, presumably in due

4 course if you were acting in accordance with the Trust,

5 ú10,000, ú30,000 because there were - not a small

6 amount of money, and presumably, since you were aware,

7 or were you aware that the arrangement between the

8 parties was that they would share these things, the

9 profit equally and the cost equally?

10 A. Yes.

11 765 Q. So obviously the trustee would in due course make sure

12 --

13 A. The trustee should --

14 766 Q. The trustee should seek an account at some stage, at

15 whatever stage. In fact, the Tribunal Chairperson has

16 seen, in the context of Mr. Barry taking steps to put

17 everything in order leading up to these events, that he

18 sought an account from Mr. Russell in Reid & McNabb and

19 - so Mr. Barry seems to be certainly an individual who

20 - to use the words of Mr. Howard, the "eyes of a hawk".

21 He was certainly crossing his Ts and dotting his Is -

22 he seems to be putting in place the information.

23 .

24 So one would have thought, and in your own experience

25 as a trustee, one would have thought that this issue of

26 the ten or the ú30,000 would have come up for

27 consideration in due course. Has that money been

28 spent? Has there been equal sharing of the costs, if

29 costs have been incurred?

30 A. Yes.

- 1 767 Q. And there is, in fact, an event which does touch upon  
2 what this sum was supposedly, if Mr. Finnegan is  
3 correct, what the sum was supposedly retained for, came  
4 up for discussion, in the - in September 1989, 28th -  
5 well, I think it's one or two days, September '89. If  
6 I could ask you to look at page 1608, Insert D.  
7 .  
8 "The motorway proposal is definitely going ahead and  
9 this may leave 13 acres of land landlocked. James  
10 Monaghan of Monaghan OD believes, however, that access  
11 can be provided to this 13 acres through a nearby pitch  
12 and putt course. The firm of Monaghan O'Dea have been  
13 instructed to advise generally on town planning, and  
14 they have also agreed to advise an architect to prepare  
15 the necessary plans for the purposes of planning  
16 application.  
17 Mr. Brennan thought that the current planning costs  
18 would be approximately ú10,000 for the application  
19 itself, though this may have increased lately, and  
20 approximately ú30,000 for the by-law application.  
21 .  
22 The representatives agreed that the shareholders would  
23 have to make equal contributions to fund an application  
24 for the development of the lands."  
25 .  
26 That's the type of expenses this reserve was supposedly  
27 to cover?  
28 A. Yes.  
29 768 Q. And yet, at that stage in 1989, people are talking  
30 about having to put their hands in their pockets to pay

1 for it?

2 A. Yeah, with whom was this meeting --

3 769 Q. Sorry. Yes. I apologise. It's actually Michael

4 O'Shea meeting between Joe McGowan, Tom Brennan and

5 John Finnegan and Michael O'Shea, solicitor of Kennedy

6 McGonagle.

7 .

8 So had the ú10,000 been retained - sorry, had the

9 ú30,000 been retained? In fact, one would have thought

10 that this very topic that we are talking about, the

11 planning costs, rather than having to put your hand in

12 your pocket to fund the 40 - if it had been retained,

13 there would have been 30 already there?

14 A. Yeah, I would have thought so.

15 770 Q. And I understood Mr. Hussey to put to you that it

16 wouldn't be unreasonable for somebody to expect over

17 time that the ú30,000 that had been retained would have

18 been used up. Would one, as a trustee, have expected

19 documentary evidence of expenditure of ú30,000,

20 receipts for any costs incurred, if the 30 had been

21 used up, or at least asked for them?

22 A. Well, a good trustee would.

23 771 Q. Of course, this is a meeting chaired by - sorry, which

24 Mr. Finnegan himself is present and Mr. O'Shea.

25 .

26 Just quickly finishing out, hopefully.

27 .

28 You don't ever recollect or - sorry, you were never

29 asked to prepare any accounts after the year end 31st

30 of December, '83?

1 A. For Canio.

2 772 Q. For Canio?

3 A. No.

4 773 Q. If I could ask you to look at page 1374.

5 .

6 This is a handwritten note of - I think it's Mr.

7 O'Shea's - yes. It's actually McGonagle of Kennedy

8 McGonagle Ballagh. It's a handwritten note as to the

9 mechanism being put in place for the acquisition of

10 Foxtown's one-third share.

11 .

12 You see to the bottom left - this is the idea - this is

13 the initial structure in relation to Rush Cliff buying

14 out the shares, et cetera, and so forth. You see there

15 in the bottom left-hand side: "John to get Foxtown

16 accounts plus Canio."

17 A. Well, I was long gone at December 1989 --

18 774 Q. You were gone as a consultant?

19 A. Hopefully be gone from here shortly too.

20 775 Q. I think that aspiration is shared by many. I don't

21 mean that in a nasty sense.

22 .

23 But you weren't asked, anyway. And is there any record

24 of the firm being asked, to your recollection?

25 A. No. I don't know.

26 776 Q. Ultimately, that ú30,000 or that ú10,000 was - well,

27 the Chairman has heard. It was never addressed again.

28 .

29 But if I can ask you to look at page 1385. And that's

30 a document - Sovereign Management Limited was the

1 successor to College Trustees, which effectively were  
2 the administrators of Foxtown. And in that you see on  
3 the bottom of page 1385, the paragraph:

4 .  
5 "The original investment of ú300,000 was injected in  
6 December 1978 into a company called Green Trees. The  
7 sum was loaned to Canio Limited in May 1979, and was  
8 used to pay the deposit on their property. In February  
9 1980 Foxtown loaned 50 to Canio. In November 1980  
10 Foxtown loaned a further 70.

11 .  
12 From correspondence it appears that these last two  
13 loans were matched by loans from the other two  
14 shareholders. In November 1984 Foxtown received back  
15 126,426, being its share of the loan arrangement  
16 through Lombard & Ulster Bank. The amount shown in  
17 Foxtown's accounts re Lombard & Ulster - the latter  
18 amount less 120. I can't find any further details  
19 relating to the funds sent to Green Trees."

20 .  
21 This is the information furnished to Mr. O'Shea  
22 turned -- this is a document that was sent to Mr.  
23 McGonagle that was subsequently turned into a memo at  
24 page 1403 from Mr. O'Shea, which talks about the  
25 ú300,000 being contributed to equally at No. 4, and so  
26 forth.

27 .  
28 But interestingly, identifies an overpayment at the  
29 bottom of paragraph - two paragraphs in Section 4 of  
30 6426. And that arose because there was only 120 paid



1 in, and 126 was the share of the distribution arising  
2 out of the Lombard & Ulster loan.

3 .

4 But nowhere therein is there any reference made to the  
5 ú10,000 retention. And would you have thought that  
6 that would have been a figure that would have - as a  
7 trustee would have manifested itself as a figure to be  
8 assessed in the calculation?

9 A. Not in relation to the size of the other figures, I  
10 don't think it would be.

11 777 Q. You would have thought that - well, you see where they  
12 are down to 6,426. So Mr. O'Shea was quite detailed in  
13 what he sought. Isn't that correct?

14 A. Mm-hmm.

15 778 Q. So that's a fairly - that's a smaller sum, even. If  
16 you want to go down that small, if that's the point you  
17 are making --

18 A. I can't answer for other trustees --

19 779 Q. A fair point. A fair point. Then, in relation to the  
20 structures, I think I won't delay you very long on the  
21 structures.

22 .

23 The schemes themselves, you have indicated already that  
24 you advised in relation to the structure of the  
25 schemes. Just in relation to one point, if I can ask  
26 you to look at page - sorry. I think it's 161.

27 .

28 What I am looking for, if I can find it at all, is the  
29 Monkstown schedule.

30 .

1 MR. HANRATTY: 153.

2 .

3 780 Q. MR. HAYDEN: 153. Yes.

4 .

5 This is your letter of the 7th of July, 1977, and it's

6 the - a letter to Mr. Wheeler. And it encloses the

7 schedule which is contained at page 155. You see that?

8 .

9 And it talks about a letter of the 29th of June from

10 B&C to Vincent and Beatty. A reply from Vincent and

11 Beatty, the 1st of July, 1977.

12 .

13 You drafted the first letter, as I understand it, of

14 the 29th of June, 1977, for Bedell Cristin to be sent?

15 A. I drafted all those letters.

16 781 Q. Well, did you draft the reply for Vincent and Beatty?

17 A. Yes. I drafted all - every one --

18 782 Q. Every letter on that document?

19 A. Yes.

20 783 Q. So therefore, as a matter of reality, the letter of the

21 1st of July, 1977, couldn't have come into existence

22 before your letter of the 7th of July, 1977?

23 A. Yes, that would be true.

24 784 Q. It's just that - so that you know the point.

25 Mr. Walter Beatty on Day 299, page 24, question 114

26 says the following in relation to his letter of the 1st

27 of July: "It seems, or it's suggested if one looks at

28 what Mr. Owens had said in his earlier correspondence,

29 and the timetable of letters and all of that, that

30 somebody is orchestrating a series of correspondence

1 for some purpose?

2 Answer: Yes, it does seem like that, but I would like

3 to assure you that the date on the letter is the 1st of

4 July. I didn't backdate the letter."

5 .

6 That was Mr. Beatty's statement in relation to that

7 document. If I understand your position, if you

8 drafted all the letters and the letters couldn't have

9 come into existence until at least the 7th of July,

10 1977, that couldn't be correct?

11 A. Obviously.

12 785 Q. In relation to the sequence of events - Mr. Hanratty at

13 some speed - I have driven him off. Mr. Hanratty at

14 some speed went through a whole number of documents,

15 some of which I got after we had gone through them,

16 relating to correspondence from - to you, starting with

17 a letter of the 15th of July, 1980, which is 5054.

18 .

19 And it was to do with the issue of site fines, and the

20 400,000 loan, and the ú48,000 licence fee.

21 .

22 And again, just telescoping it, and correct me if I'm

23 wrong; you had, in the correspondence to Mr. O'Connor

24 from the Inspectors' Branch, and subsequently,

25 identified it as a site fine?

26 A. Yeah.

27 786 Q. I presume, and correct me if I'm wrong, from an

28 accountancy point of view, a "site fine" is your term

29 for the cost that a site was ultimately going to be for

30 the acquiring company -

- 1 A. The cost of each plot would be the site fine.
- 2 787 Q. Yes. So whether it's a question of €1 in total for the  
3 plot or 50p for the plot - for a licence plus interest  
4 fee - interest-free 50 p loan, it's still a cost to the  
5 company acquiring it?
- 6 A. Yes.
- 7 788 Q. Whether it's to provide a facility of the loan  
8 interest-free or pay an outright figure?
- 9 A. Yes.
- 10 789 Q. So from a point of view of answering - it's nearly over  
11 - from the point of view of your correspondence with  
12 the Revenue Commissioners, am I correct in stating that  
13 what you did was tell them exactly the position. This  
14 was the cost to the company for these sites?
- 15 A. Yeah.
- 16 790 Q. Albeit called a "site fine", albeit a combination of  
17 costs, both the outright licence fee and interest-free  
18 loan aspect?
- 19 A. Yes.
- 20 791 Q. And in that context, it is an actual cost to the  
21 company acquiring that individual site?
- 22 A. Yes.
- 23 792 Q. And how that was paid back, we saw in the agreement,  
24 was at the completion of each sale the - a proportion  
25 or percentage of the loan would be discharged. My  
26 recollection serves me correctly, at €30,000 per site.  
27 That was the loan aspect of it. Ultimately when all  
28 the sites went through, the loan was cleared?
- 29 A. Yes.
- 30 793 Q. And that's how it happened?

1 A. Mm-hmm.

2 794 Q. I think the mechanism of a structure, whereby there was

3 a building contract and a separate agreement for the

4 land. That was a quite common structure --

5 A. Yes.

6 795 Q. -- in those days, and up till a number of years ago

7 when one of the Finance Acts changed it, because it had

8 the effect of giving rise to a Stamp Duty saving?

9 A. Yeah.

10 796 Q. And that was in accordance with the then prevailing

11 financial regulations?

12 A. Yes.

13 797 Q. I think, ultimately, if Mr. Wheeler had passed the

14 ú10,000 on without instruction, from your understanding

15 of the position, would you feel that that is something

16 that would have incurred a liability for his company,

17 Bedell Cristin?

18 A. Unless he had a very good answer for it.

19 798 Q. Yes. Thank you.

20 .

21 Thank you, Sir.

22 .

23 CHAIRMAN: Does anybody else want to ask any questions?

24 .

25 MR. GLEESON: I speak with some hesitation. I just

26 have four questions to ask.

27 .

28 CHAIRMAN: Certainly, Mr. Gleeson.

29 .

30 .

1 THE WITNESS WAS THEN EXAMINED BY MR. GLEESON AS  
2 FOLLOWS:

3 .

4 799 Q. MR. GLEESON: May we have Document 4016, please.

5 .

6 Mr. Owens, you have seen this document before. As I  
7 understand it, that's a document that was prepared by  
8 you in contemplation of Hastings Limited acquiring the  
9 share capital of Dublin Airport Industrial Estates  
10 Limited?

11 A. No, I think it was Pagebar.

12 800 Q. Pagebar, sorry, acquiring the share capital of Dublin  
13 Airport Industrial Estates. And in Schedule 1, I think  
14 there are four professional payees referred to. And I  
15 take it the - the Sole Member may take it that those  
16 are sums that you considered would be incurred if that  
17 sale actually took place?

18 A. No. There would be the figure - the figures are as  
19 told would be paid.

20 801 Q. And who told you those figures would be paid?

21 A. That would be Tom Brennan.

22 802 Q. And the figure of €15,000 that is payable to Mr. Burke,  
23 were you told on what basis that figure was arrived at?

24 A. It was just a blanket fee for the sale.

25 803 Q. Yes. And as we know, the sales didn't take place, and  
26 therefore, I take it, the fee wasn't paid?

27 A. No, for the sale to Pagebar, I think. For the sale of  
28 the company.

29 804 Q. But I think we do know that that sale didn't actually  
30 take place?

1 A. That's correct.

2 805 Q. So may we take it that therefore the fee wasn't  
3 discharged?

4 A. That's - I understand from Tom Brennan it wasn't.

5 806 Q. Yes. Now, may we have Document 4016. Sorry, we just  
6 had that document. I'm sorry, document - your letter  
7 to the Detective Branch at Dublin Castle, the 24th of  
8 July, 1974. I don't appear to have the number for it.  
9 Could we go to the second page, please. Thank you.

10 .

11 Mr. Owens, you see where the typescript runs out and  
12 then there is manuscript?

13 A. Yeah.

14 807 Q. That is your manuscript?

15 A. It is.

16 808 Q. Is that typical of your writing in 1974?

17 A. Yes. I don't know - I don't have any other manuscript  
18 from 1974.

19 809 Q. I did note this morning that Mr. Hanratty asked you to  
20 read out your own writing.

21 A. Yeah.

22 810 Q. And I think you've indicated to Mr. Hanratty that,  
23 going back to Document 4016, that the reference to  
24 "Ray Burke - planning" should have been "Ray Burke -  
25 Estate Agent", and that was a typographical error?

26 A. Yeah.

27 811 Q. When that letter was sent to the Garda, was there any  
28 indication from the Gardai that you were anything other  
29 than fully cooperative with them in the course of their  
30 investigation?

1 A. I didn't hear anything more from them.

2 812 Q. Do you know what the outcome of their inquiry was?

3 A. I think it was negative.

4 813 Q. And finally, if I could ask you - if you could see

5 Document 1863. This is the handwritten note, we

6 believe, prepared by Mr. Laurence Wheeler. When did

7 you first see that document?

8 A. When I got the Brennan and McGowan brief files, you

9 know --

10 814 Q. This is after the Tribunal of Inquiry was set up?

11 A. Yes.

12 815 Q. And in 1984, that appears to be the time in which this

13 document was created, were you aware of the identity

14 of the people behind, or person behind Caviar Limited

15 referred to in that document?

16 A. I had never heard of Caviar.

17 816 Q. You had not heard of Caviar Limited until this Tribunal

18 commenced?

19 A. Exactly.

20 817 Q. And I think we now know that that was a company that

21 was largely owned by Mr. Burke?

22 A. Yes.

23 818 Q. And do you think, from your dealings with Mr. Wheeler,

24 in Jersey, whether Mr. Wheeler would have known who

25 Mr. Burke was in Ireland?

26 A. In 1984, I would be very doubtful if Mr. Wheeler knew

27 who the Taoiseach was, let alone Mr. Burke, because

28 Jersey leans towards England.

29 819 Q. Yes. And my last question: You mentioned this morning

30 to the Sole Member that if you had been told, whether



1 by Mr. Brennan or Mr. McGowan, or both, of a payment of  
2 ú10,000 to Mr. Ray Burke, it would have, to quote you  
3 "stuck out like a sore thumb"?

4 A. Yes.

5 820 Q. Why do you say that?

6 A. Because I knew who Ray Burke was. I knew he was the  
7 Minister - I think he was a minister at that time. He  
8 was certainly a TD and a public figure.

9 821 Q. Thank you.

10 .

11 MR. HANRATTY: Sir, there is one question which arises.

12 I don't want to trespass on your hospitality.

13 .

14 CHAIRMAN: Carry on.

15 .

16 THE WITNESS WAS THEN RE-EXAMINED BY MR. HANRATTY AS

17 FOLLOWS:

18 .

19 822 Q. MR. HANRATTY: In connection with the question put by

20 Mr. Hayden, if we could have the letter of the 24th of

21 July, Mr. Owens' letter to the Detective Branch.

22 .

23 In the second last paragraph on the first page, Mr.

24 Hayden draws your attention to the reference, to the

25 fact that Mr. Brennan may have received a copy of the

26 document, but just slightly above that, Mr. Owens, you

27 say in the same paragraph: "The only record I have of

28 sending this document out was to Miley & Miley, who

29 were solicitors for Grange Developments Limited, and

30 who are also holding a watching brief on behalf of

1 Brennan and McGowan. The solicitors for Dublin Airport  
2 Industrial Estates were Fitzpatricks."

3 .

4 After you sent the document out to Miley & Miley --

5 A. Yes.

6 823 Q. And to Fitzpatricks, did either of them come back to

7 you before Mr. McAnthony's article appeared in the

8 Independent drawing your attention to the fact that

9 there was an error in the document?

10 A. That doesn't say sent out to Fitzpatricks, that letter

11 says I sent it to Miley & Miley, not to Fitzpatricks.

12 824 Q. Sorry. So the only one you sent it out to for certain

13 is Miley & Miley, and you are not sure you sent it out

14 to Mr. Brennan, is that right?

15 A. Yes.

16 825 Q. Well, then, just confine it to Miley & Miley. Did they

17 come back to you after receipt of that document and

18 before the McAnthony article appeared in the Sunday

19 Independent?

20 A. No.

21 .

22 MR. HANRATTY: Thank you, Mr. Owens.

23 .

24 MR. HAYDEN: Sir, might I just - my apologies - it's me

25 again. It will be very short.

26 .

27 It's purely for the - to help you, Sir, honest, to

28 clarify something.

29 .

30 .

1 THE WITNESS WAS RE-CROSS-EXAMINED BY MR. HAYDEN AS  
2 FOLLOWS:

3

4 826 Q. MR. HAYDEN: Mr. Owens, in relation to the document that  
5 was filed in the Companies Office, that was a document  
6 that the Companies Registrar -- that that document  
7 wasn't a document that was stamped in the Companies  
8 Office, the two pages with the error on its face?

9 A. It was - it interposed in Form 52, which is a two-page  
10 document, and it was in the middle.

11 827 Q. Yes. And the Form 52 was the document that you sent to  
12 Fitzpatricks?

13 A. I sent it to Fitzpatricks, and Fitzpatricks sent it to  
14 the Companies Office, sir.

15 828 Q. So would it have two pages of a similar type of the  
16 Form 52?

17 A. I don't remember. As far as I can remember, there was  
18 only the one page.

19 829 Q. That's what I was going to say. It was a printed form,  
20 the Form 52? You filled in the bits?

21 A. Sorry?

22 830 Q. The Form 52, it was not a formal document, a preprinted  
23 --

24 A. Form 52 is a Companies Office document which has to be  
25 stamped because it's in relation to the allotment of  
26 shares for a consideration other than cash.

27 831 Q. Yes. So it's not a document that one would see in the  
28 context of the two pages that we've been talking about?

29 A. Not at all.

30 832 Q. Yes. That was the point I made. So from the point of

1 view of what you sent out to Fitzpatricks, and they  
2 lodging the Form 52, you have no record of how the two  
3 pages left your possession?

4 A. No.

5 833 Q. Thank you.

6 .

7 MR. HANRATTY: Sorry, the witness's evidence, just to  
8 be clear about this, because it is - it may have some  
9 significance, I don't know, but what the witness has  
10 said is that he didn't say in the letter, which I think  
11 he correctly says, that he sent it out to Fitzpatricks.  
12 What he says in the letter is "The only record I have  
13 of sending this document out was to Miley & Miley, who  
14 were solicitors for Grange Developments and had a  
15 watching brief on behalf of Brennan and McGowan."

16 .

17 That's in relation to the document.

18 .

19 CHAIRMAN: That's the - the two-page document?

20 .

21 MR. HANRATTY: This letter. Sorry, this document.

22 .

23 CHAIRMAN: Not the form, now, the --

24 A. Sorry, is the Ray Burke planning document.

25 .

26 CHAIRMAN: The Ray Burke planning document.

27 .

28 MR. HANRATTY: Which the witness believes he didn't  
29 send, as I understand his evidence, to Fitzpatricks,  
30 which he says in this letter to the Detective Branch he

1           may have sent to Mr. Brennan, but he can't say. That's

2           as I understand it.

3           .

4           CHAIRMAN: That's as I understand it too. The two

5           people he sent it to was Miley & Miley and possibly Mr.

6           Brennan. Nobody else.

7           A. Possibly Mr. Brennan.

8           .

9           CHAIRMAN: I follow that all right.

10          .

11          Thank you very much for a long day and all of that. I

12          take it that he may be stood down completely.

13          .

14          MR. HANRATTY: Yes.

15          .

16          CHAIRMAN: Thank you very much for coming along.

17          .

18          Ten o'clock tomorrow morning. We'll sit again at ten

19          o'clock to four.

20

21          THE TRIBUNAL ADJOURNED TO THURSDAY, 1ST NOVEMBER 2001

22          AT 10:00 A.M.

23

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