

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 12TH JANUARY, 1999

AT 10:30AM:

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CHAIRMAN: Morning everyone.

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REGISTRAR: Tribunal of Inquiry into certain planning matters and payments. The tribunal will commence taking evidence today.

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CHAIRMAN: The purpose of today's public sitting is to hear, at the earliest opportunity, the evidence of Mr. James Gogarty, a person named by the Oireachtas in the Terms of Reference of this Inquiry and also any related evidence.

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The Tribunal has decided, in view of Mr. Gogarty's age, his general condition of health and the importance of ensuring that his evidence is available to the Tribunal, that the Tribunal should sit in public and hear his evidence at an early stage of the proceedings of this Tribunal.

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This course is neither unprecedented nor unusual. Courts and Tribunals frequently make arrangements to take the evidence of particular witnesses at a time or at a place out of the usual sequence or place in which that evidence would normally be heard. This is but a particular example of the established practice of hearing evidence *de benne esse*.

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The Tribunal has decided that the evidence of Mr. James Gogarty should, in the public interest, be heard at this time. Mr. Gogarty has appeared in answer to the witness summons served on him by the Tribunal and I intend to hear his evidence directly.

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These proceedings, established under the Tribunals of Inquiry

(Evidence) Acts 1921 to 1998, are an inquiry by this Tribunal into definite matters of public importance identified by the Oireachtas in its Terms of Reference. These proceedings are also inquisitorial in nature.

The central purpose of this Tribunal is to seek to establish facts and to make appropriate recommendations in relation to those facts.

There is no person on trial in this inquiry. There is no prosecution and no defence. It is important to note that Section 5 of the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979 provides that any statement of admission made by a person before a Tribunal of Inquiry is generally not admissible against them in any criminal proceedings.

Similarly, these proceedings is not an adversarial civil trial concerned with attributing civil liability as between a plaintiff and a defendant.

Equally, there is no jury, criminal, civil or otherwise in this Tribunal. The Oireachtas has decided that this Tribunal should comprise a sole member, a judge of the High Court, to hear evidence, find facts and make recommendations.

Lest there should be any doubt, it should be clearly understood that this Tribunal is the sole authority in relation to what evidence is heard by the Tribunal and as to the weight, if any, to be attributed to any evidence so heard.

The Tribunal does not intend to be limited in its inquiry by inflexible adherence to traditional adversarial rules of

evidence. In the course of this inquiry it may be necessary, on occasion, for the Tribunal to relax the rules of evidence in regard to some particular witness or an aspect of their evidence. The Supreme Court has anticipated and approved of this approach in its decision in *Goodman International & Another -v- Mr. Justice Hamilton & Another* (1992) 2 Irish Reports, 542.

In relation to this aspect of evidence which may be heard by the Tribunal, Lord Diplock in his decision of *R. -v- Deputy Industrial Injuries Commissioner, ex parte Moore*, 1965, 1 All England Reports at page 81 helpfully states at page 94 of that report.

" The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based on material which tends logically to show the existence or nonexistence of facts relevant to the issue to be determined... he must not spin a coin or consult an astrologer but he may take into account any material which is a matter of reason as has some probative value... if it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue."

This does not mean, and should not be taken to mean, that in the words of Mr. Justice Henchy in *Kiely -v- the Minister for Social Welfare* (2) (1997) I.R. 276, at 281, the Tribunal can "... act in such a way as to imperil a fair hearing or a fair result."

The correct approach in this matter can be found in the decision of Mr. Justice Hamilton when, as sole member of the Tribunal of Inquiry into the Beef Processing Industry, he indicated that the Tribunal having, "Sifted through rumour and hearsay... relied "... only on evidence properly admitted for its findings." (See page 9

of that report, paragraph 34).

This approach was specifically approved by the Supreme Court in the Goodman International case already referred to.

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This Tribunal, at all times, must respect the constitutional rights of all persons whose interests may be affected by the course of this inquiry. Those constitutional rights include the right of fair procedures, the right to constitutional justice, as interpreted by the Supreme Court in a series of recent decisions including Haughey & Others -v- Mr. Justice Moriarty & Others and Bailey & Others -v- Mr. Justice Flood & Another, both delivered on the 28th July, 1998 and Redmond -v- Mr. Justice Flood delivered on the 6th January, 1999.

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The decision as to what witnesses will be called to give evidence before the Tribunal and the order in which those witnesses are to be called is a matter within the sole discretion of the Tribunal.

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The Tribunal has requested witnesses to provide statements of their intended evidence in advance of any hearing so that the Tribunal is aware of the nature of any evidence sought to be adduced and to ensure that notice of that evidence is given to interested parties.

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The Tribunal will, where appropriate, issue and serve summonses under the Tribunals of Inquiry (Evidence) Acts 1921 to 1998 on persons to ensure their attendance before the Tribunal.

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Procedure:

Counsel for the Tribunal will, in the first instance, question any person giving evidence before the Tribunal. At that stage, only

those persons who can satisfy the Tribunal that they have a legitimate interest in the evidence of that witness will be permitted to ask questions of that witness. The order of questioning of a witness by any interested parties will be decided solely by the Tribunal.

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The legal representatives appearing on behalf of the witness may question his client at the conclusion of the opening questioning by counsel for the Tribunal or he or she may defer their questioning until all other interested persons have concluded their questions of that witness. Finally, counsel for the Tribunal will be permitted to conclude the questioning of that witness.

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If any interested person wishes to have evidence of a particular witness adduced before the Tribunal, they should first provide the solicitor to the Tribunal with a written statement of the person's intended evidence, together with any relevant submissions. If the Tribunal decides to call that person in evidence, the Tribunal will issue and serve a summons on that person, notify interested persons of that person's intended evidence and call that witness in evidence in the same manner as all other witnesses.

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Conduct:

The Tribunal is required to devise and regulate its own procedures and in that regard, it should be clearly understood that it is an unalterable minimum standard of this Tribunal that all witnesses, whatever the nature of their evidence, are to be treated with courtesy and respect.

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The Tribunal will not tolerate any attempt at bullying, intimidation or rudeness to any witness or person attending at or

giving evidence before the Tribunal, in particular the tone and language of any questioning of a witness or of any submission made to the Tribunal must reflect the courtesy and respect due to a Tribunal established by the Oireachtas.

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In addition, it should be clearly understood that when the Tribunal has decided any particular question or matter of procedure, that decision, in the ordinary course, is final. The Tribunal will not permit serial submissions from any legal representative in an effort to revisit the decided question or matter.

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This Tribunal, in common with other tribunals, has received almost weekly threats from various persons that the Tribunal will be injunctioned by them in the High Court. Where appropriate, the Tribunal welcomes the supervisory jurisdiction of the High Court. At the same time, the Tribunal does not intend to desist from its work in the face of these threats.

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In the event that some interested person announces to the Tribunal their intention to apply to the High Court for relief, the Tribunal will continue with its inquiry work unless it is considered by the Tribunal not appropriate to do so or the High Court makes an order injunctioning the Tribunal.

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The Tribunal remains and found at the apparently systematic pattern of unauthorized disclosure in the media of documentation and information confidential to the Tribunal. The Tribunal has been carrying out its own inquiries into this matter and has made a detailed criminal complaint to An Garda Siochana in relation to this matter.

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An Garda Siochana has informed the Tribunal that a criminal investigation under the supervision of two experienced Garda superintendents, is presently being carried out on foot of this complaint. The Tribunal is satisfied that this criminal investigation has been afforded an appropriate level of priority and resources, having regard to the importance of the matters being investigated.

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The Tribunal now intends to proceed to hear the evidence of Mr. James Gogarty. It should be clearly understood by all persons attending this Tribunal that Mr. Gogarty is a person of mature years. The Tribunal has already decided that it is in the public interest that his evidence be heard. While in no way expressing a view on any evidence this witness may give, I require that this witness be treated with dignity and respect that will be afforded to all witnesses who give evidence before this Tribunal.

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I will deal with any submissions in relation to the admissibility of this witness's oral evidence as it arises in the course of his giving evidence.

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It may be necessary from time to time to take short breaks in this witness's evidence and these breaks will be indicated at the appropriate time.

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Mr. Kavanagh, would you call Mr. Gogarty and have him tender his evidence.

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MR. COONEY: Mr. Chairman, before Mr. Gogarty is called to the witness box, I have a number of submissions to make to you if I may.

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CHAIRMAN: On what subject?

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MR. COONEY: First of all, on the fact that you intend to call Mr. Gogarty giving evidence without there being any opening statement whatsoever to this Tribunal which will set the context of Mr. Gogarty's evidence. That's the first matter upon which I wish to make a summation, Mr. Chairman.

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But apart from that, Mr. Chairman, I also want to make a submission to you concerning the failure of the Tribunal to furnish me, on behalf of my clients, with certain vital documentation which is necessary for protecting my clients' interest before this Tribunal.

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Now, I will take the first point first. That is the question of there being some context set for the evidence of Mr. Gogarty. In your opening remarks, Mr. Chairman, you said that it's not unusual for a witness to be called in the circumstances in which it is proposed to call Mr. Gogarty in other tribunals. I have to say, Mr. Chairman, that I have never experienced any tribunal opening in this fashion which you propose to do with this Tribunal. All other tribunals of which I have experience, and I am sure this is correct, follow a normal sensible rational procedure whereby counsel for the Tribunal will outline the circumstances which led to the establishment of the Tribunal, will outline the issues which have to be decided by the Tribunal, and will give a resume of the evidence which the Tribunal counsel intend to call before the Tribunal.

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In other words, it sets a context, Mr. Chairman. And in this instance, we would have expected at the very least an opening

statement by counsel for the Tribunal in which he outlines the circumstances which led to the establishment of this Tribunal and the issues into which it has to inquire by reference to the Terms of Reference. For instance, Mr. Chairman, one of the Terms of Reference requires you to identify the lands stated, 726 acres and extent, referred to in the letter dated 8th June 1989 from Mr. Michael Bailey to Mr. James Gogarty, are produced in the schedule herewith and the establishment of beneficial ownership of the lands on that date and changes to the beneficial ownership of the lands since the 8th June 1989, prior to the development.

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The Terms of Reference go on to require you to establish the planning history of the lands, including their planning status in the development plan of Dublin local authorities current on the 8th June 1989; the position with regard to the servicing of the lands for development as of that date; changes made or proposed to be made to the 8th June 1989 planning status of the lands by way of proposals put forward by Dublin local authority; officials pursuant to the review of the development plan or otherwise; motions by elected members of the Dublin local authorities proposed rezoning; application for planning permission including any involving material contravention of the development plan and so on.

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Now it seems to me Mr. Chairman, and I make this submission respectfully to you, is that these are fundamental matters which must first be established publicly to the satisfaction of the Tribunal and upon which evidence must begin, if necessary, before Mr. Gogarty gives his evidence. You are aware, Mr. Chairman, as is indeed is everybody else in this room, that Mr. Gogarty is the sole allegor in these proceedings. He has alleged corruption against my clients and against other assorted parties in this

room. This corruption, Mr. Chairman, relates specifically to lands which were formerly the property of my clients and which were transferred in 1991 to another party. Lands which are all in the Land Registry and lands which were referred to in various files in the planning departments of various local authorities.

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The history of these lands, Mr. Chairman, and what rezoning proposals or what planning proposals have been made in respect of these lands are matters of public record, but they are not matters which are generally known, Mr. Chairman, and these matters should first be established before Mr. Gogarty gives evidence.

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For instance, Mr. Chairman, I think it's important that before Mr. Gogarty goes into the witness box, it should be made abundantly clear that when my clients sold these lands, they were sold as agricultural lands and for a price which reflected that nature of the lands. It should also be established, Mr. Chairman, before Mr. Gogarty goes into the witness box, that very few of these lands subsequently were the subject of any planning permissions or the granting of any planning permissions or rezoning. These are matters of utmost importance, particularly as we know that Mr. Gogarty has already told somebody, quite erroneously, that of these 726 acres, 400 acres have been the subject of rezoning and planning permissions. That we know, Mr. Chairman, from our own inquiries is factually inaccurate but this is a fact, Mr.

Chairman, which should be established for the purpose of putting Mr. Gogarty's evidence into context. That's my first point, Mr. Chairman.

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The second point is this, Mr. Chairman. There is an onus on this Tribunal, in fairness to all of the parties, to give a resume of the evidence which it has already received and intends to hear,

not just the evidence of Mr. Gogarty which is derogatory of my clients and other people in this room, but you have received statements from various of my clients, Mr. Chairman, in which they contradict directly and succinctly and, in my respectful submission, comprehensively the allegations that are being made by Mr. Gogarty.

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Now, in the course of your opening remarks, Mr. Chairman, you stated that it was the intention of this Tribunal to be fair to everybody. It is unfair to my clients, in my respectful submission, if you commence this Tribunal without a statement from the Tribunal counsel setting out what our side of this case is, what our defence is, what our position is and I think that considerations of fundamental fairness and constitutional justice require that these facts be first put on the table before Mr. Gogarty goes into the witness box.

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So that is my submission on the first point, Mr. Chairman, is that at the very least, there should be an opening statement by counsel for the Tribunal in which he deals with all of these matters. Ideally, preferably, and from the point of view of fairness, much more desirable, would be that there should be evidence called to establish these facts. Evidence from the Land Registry where the document titles, where the documents of title are concerned. Evidence from the officials of the appropriate planning sections of Dublin County Council and Dublin Corporation to establish the rezoning and planning history of these lands. These, in my respectful submission, should be given ideally in order to set the context of Mr. Gogarty's evidence.

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I know what you say about Mr. Gogarty's state of ill-health. These matters, a proper opening statement, followed by this

uncontraversial evidence, would not take more than a day or two and that sort of an interval of time couldn't possibly jeopardize the intended evidence of Mr. Gogarty or his fitness to give that evidence. In my respectful submission, what you propose, Mr. Chairman, is not only unprecedented, Mr. Chairman, but it represents an element of unfairness to my clients, which you should correct.

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Now the second matter upon which I want to address some remarks at least, Mr. Chairman, you will be aware, Mr. Chairman, that since the establishment of this Tribunal, my clients, through their solicitors, have been in constant communication with the solicitor for the Tribunal and indeed these matters have occasionally, as it were, been aired in front of you at sittings which you have held publicly and privately.

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Among the matters which were canvassed here in the course of this correspondence and in the course of appearances before you, Mr. Chairman, is the question of the discovery to us of certain categories of documents. Now, as recently as Friday last, Mr. Chairman, that is four days before this Tribunal is concerned and indeed at the close of business of Friday last, the Tribunal's solicitor sent to us a massive documentation including, in particular Mr. Chairman, a document which we referred to as reference document 7th January 1999. Now, this book of documents, Mr. Chairman, which I hold in my hand runs into 364 pages. It appears to be an amalgam of documents which have been extracted from the discovery which has been made on behalf of my clients, from discovery of documents made by Mr. Gogarty, from newspaper articles and from Dail reports.

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We were astonished, Mr. Chairman, to receive this documentation at

that late stage. We were also astonished, Mr. Chairman, by the fact that the documents which appear to be extracted from Mr. Gogarty's discovery are so limited, bearing in mind that as long ago as February of 1998, we were seeking a list of documents which had been discovered by Mr. Gogarty to this Tribunal and an inspection of the same. Because it is our firm view, Mr. Chairman, that there is, among those documents, many, many documents which bear upon the interests of my clients and which, if produced in evidence, will tend to establish the veracity of my clients' account of what happened and will tend to discredit Mr. Gogarty's evidence and the veracity of his account of what happened.

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But instead of being furnished with this list of documents or being provided with an opportunity to inspect these documents which, in our submission, was mere fundamental justice and procedures, we were given at the last moment a carefully selected extract from Mr. Gogarty's documents, mixed up with some other documents. Now the interesting thing is when one looks through these books, Mr. Chairman, we see references in typescript on the top right hand corner of each page. For instance on page 113 of the book which you have given to us, there is a reference, JG 5-188.

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Now it's apparent to us, Mr. Chairman, that that document on that page is an extract from volume 5 of documents which were furnished by Mr. Gogarty to this Tribunal and it's page 188 in those volumes. Now in my respectful submission, Mr. Chairman, we are entitled to a full list of all documents furnished by Mr. Gogarty to this Tribunal and we are entitled to inspect the same.

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It is our view, Mr. Chairman, that there are documents in Mr.

Gogarty's possession which are of crucial interest to our clients in establishing the case which they want to make before this Tribunal. You have stated, Mr. Chairman, that this is an inquiry, it's not a prosecution, it's not an adversarial contest. It is an inquiry. My understanding of an inquiry is that an inquiry let's the chips lie where they fall. Or to mix my metaphors a bit, all cards are put on the table. The inquiry itself has no interest in establishing one case or the other. The inquiry is interested in putting all the evidence out front and giving every party an equal opportunity to consider that evidence. That has not happened in this case, Mr. Chairman.

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Mr. Gogarty's evidence, statement of evidence was not furnished to us until the 20th October last and then in the form of an affidavit which was prepared for Mr. Gogarty by his solicitors. It was given to us on the understanding that no earlier communication or information has been furnished by Mr. Gogarty to the Tribunal. This is now manifestly not so, Mr. Chairman, because it now appears that Mr. Gogarty had been in communication with the Tribunal at a very early stage. It seems quite clear to me, Mr. Chairman, that whatever he communicated to the Tribunal at those earlier stages, must have been recorded in writing in memorandas and we are entitled to see those, Mr. Chairman, for the -- at least for the purpose of establishing whether or not there is a consistency in what Mr. Gogarty has said about our clients.

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We know from other documentation that there are inconsistencies in Mr. Gogarty's evidence. For instance, his evidence on the crucial matter of the visit to Mr. Ray Burke's house. He has given contrary and conflicting accounts to various people. I will give you an example of this, Mr. Chairman:

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He has stated in his affidavit and presumably will state in his evidence today that he was accompanied by two people on that visit, that was Mr. Michael Bailey and by my client, Mr. Joseph Murphy, junior. He has stated on two other occasions that there was a fourth person present, Mr. Frank Reynolds, and yet he has resiled from that. In other words, he has given conflicting evidence in relation to that crucial issue.

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Now it is our firm belief, Mr. Chairman, that among the huge volume of documentation which we believe has been furnished by Mr. Gogarty to this Tribunal, are documents which bear on that and similarly related issues which tend to Mr. Gogarty's credibility, which tend to his unreliability as a witness and which tend to show his inconsistency, yet these documents were not given to us, Mr. Chairman, despite our repeated requests to be shown them. And we can see no -- particularly in view of what you said earlier about the rules of natural justice invariably -- we see absolutely no reason why these documents were never furnished to us. We are not asking for unnecessary documentation, but it seems to follow as night follows day, Mr. Chairman, that all documents in Mr. Gogarty's possession must be relevant to the issues which affect my client in this particular inquiry.

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Mr. Gogarty has been our employee for nearly 30 years. We know from other statements which were given to us, Mr. Chairman, that he has a mass of documentation. For instance the journalist, Mr. Frank Connolly, to whom he was the first to leak information, Mr. Gogarty had him in his house and Mr. Connolly recites in his statement to this Tribunal how he saw a mass of documentation on the table in Mr. Gogarty's house. He also, I think to superintendent McElligott, handed over files. Where are those files, Mr. Chairman, and why have we not seen those files?

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So I respectfully submit, Mr. Chairman, as a matter of ordinary common sense fairness, we are entitled to see much more than the documents carefully selected by the Tribunal team and included in this book of documents which was sent to us on Friday last. We are entitled to see all documentation and it's for us to decide, Mr. Chairman, whether or not any of these documents are relevant to our interest, in my respectful submission.

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You have said, Mr. Chairman, that this is not a criminal prosecution. It's not, of course. But if there was a criminal prosecution, Mr. Chairman, in which the prosecution deliberately kept from the defence documentation which was relevant to the issue of the defendant's guilt or innocence and that subsequently came to light, the conviction of that defendant, if such had happened, would at once be set aside.

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Now, how much more does that duty of fairness apply to a Tribunal, Mr. Chairman? So I am respectfully asking you, Mr. Chairman, to now immediately put in foot arrangements for us to inspect this documentation and to take such copies from that documentation as we consider necessary.

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Now, another bundle of documentation which has not been made available to us at all, Mr. Chairman, is the documentation which has been furnished to this Tribunal by the firm of auctioneers, Messrs Mangan, Duffy and Butler. We know that an order for discovery has been made by you, Sir, against that firm and we assume that that firm of auctioneers has made discovery of the documentation in its possession which is relevant to the issues which you have to decide upon in this inquiry and that further they have produced all of this documentation to you, yet we have

not been furnished with a single one of those documentation. And yet that documentation is crucial to us for a number of reasons,

Mr. Chairman:

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First of all, Duffy Mangan and Butler were the auctioneers who were retained by Mr. Gogarty, apparently acting on behalf of my clients, to conduct the sale of these land. A valuation was commissioned from these auctioneers by Mr. Gogarty. We also know, Mr. Chairman, and it will be part of our case that at least from 1982 until 1989, Mr. Gogarty had sole and exclusive control over these lands and the way in which these lands were managed. We know that these lands were let, were the subject of various letting agreements over those six or seven years and the documentation relating to those lettings and to the collection of rents from those lettings and to the management of the lands, must be in the possession of Duffy Mangan and Butler and must have been discovered to you. We require to see these documents, Mr. Chairman, because they will establish, in our view, the control which Mr. Gogarty exercised over those lands during that period and that that control was exclusive and dominant.

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Now again, Mr. Chairman, we have already written to the Tribunal and we have asked you for these documents and we have received no satisfactory response and with respect, Mr. Chairman, and I don't intend to be discourteous or rude to you in any way but I have to say to you, Mr. Chairman, that that's not good enough. It's unfair to my clients and they should not be put in that position.

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The next matter I want to refer to you is this, Mr. Chairman. We know that the firm of solicitors practicing in Newry called Donnelly Neary and Donnelly have also discovered documents in this

Tribunal. Now, the exact part which that firm of solicitors will be playing in this Tribunal and the exact part which they have played in the events which led to the establishment of this Tribunal is not altogether clear to us, Mr. Chairman. But we do know from some documents which has been furnished to us that Mr. Gogarty has been a client of that firm of solicitors, although he is apparently represented by another firm of solicitors here today. It seems to us, Mr. Chairman, that that firm must have documents in its possession which are relevant to my clients' interest in this Tribunal and that that firm has discovered those documents and produced them to the Tribunal and yet the Tribunal, despite many requests, Mr. Chairman, and despite the fact that the Tribunal has had these documents in its possession for a considerable period of time, has not furnished to us a single one of these documents, much less identify the documents in its possession. And again Mr. Chairman, I respectfully ask that we be furnished with a list of all documents supplied to this Tribunal by Donnelly Neary and Donnelly and that we be given an opportunity to inspect the same so that we may use them if we consider that it's in the interest of our clients to do so.

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Again, I respectfully submit, Mr. Chairman, that that request amounts to nothing more than simple fair procedures and elementary justice.

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Now another matter, Mr. Chairman, which we have raised with you on at least two occasions in the course of correspondence is a matter which was referred to specifically in a letter which we wrote to you yesterday and which I want to read out to you. It's a matter which we raised in earlier correspondence and which has been ignored and to which we have received no response and it is this, Mr. Chairman, and I am going to quote directly to you from page 4

of the letter which we wrote to you on yesterday, 11th January.

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"Our third request is in relation to Mr. Gogarty is a repeat of the request made on our letter of the 22nd December, 1988. Has the Sole Member had direct dealings with Mr. Gogarty? Has the Sole Member interviewed Mr. Gogarty? If the Sole Member has interviewed Mr. Gogarty, on how many occasions has he done so? What were the dates of these interviews? We are of course aware that the Sole Member has already had some involvement in ensuring that Mr. Gogarty be provided with Garda security but the information which we now seek is of much greater significance. It seems to us far preferable that this information be provided in correspondence rather than having a debate or argument as to whether or not it ought to be provided in an open session."

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Now, as we received no reply to this request, we have no choice but to open the matter now in open session before this Tribunal.

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It's of paramount importance for us to know, Mr. Chairman, whether or not you have been in direct communication with Mr. Gogarty. If so, on how many occasions and in what form that communication took. Now it is clear to us, Mr. Chairman, that you have personally intervened to some extent on behalf of Mr. Gogarty and this is apparent from the Garda documents which have already been furnished to us and I want to refer to those documents.

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First of all I want to refer, Mr. Chairman, to the statement of Detective Chief Superintendent John McGroarty. He says in that statement "I am the officer in charge of the liaison office at Garda Headquarters. In this capacity I am responsible for carrying out risk assessment in respect of Irish citizens and visitors to Ireland when it is necessary to do so." He says that

he is a specialist in risk assessment and obviously follows from this whether or not a particular individual requires Garda protection.

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He then goes on to describe various visits which he made to Mr. Gogarty and examinations he carried out and he said on page 2 of his statement, "At the conclusion of the interview" -- this is an interview which he had with Mr. Gogarty -- "I informed Mr. Gogarty that the Garda risk assessment carried out in his case did not induce the belief that there was a treacherous... person's safety and that it was not intended for the Gardai to provide state security at his home."

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Now that was the expert opinion of perhaps the leading expert in this country on Mr. Gogarty's repeated demands to Gardai at all levels that he be provided with personal security. Yet I see, Mr. Chairman, from another statement included in the Garda book of evidence, that's the statement of Detective Superintendent John McElligott of the National Bureau of Criminal Investigation, I see from page 7 of that statement that on Saturday, 3rd January 1988, Garda Patrick Nolan, crime prevention officer, and I went to Willie Nolan Road for the purpose of assessing the security needs at the home of Mr. Gogarty who is now residing at 3 Willie Nolan Road, Baldoyle. I told Mr. Gogarty that the Chairman of the Tribunal had contacted the Garda Commissioner regarding security arrangements for him."

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Now Mr. Chairman, here is a statement that you were in direct communication with the Commissioner of the Garda Síochána for the purpose of arranging Garda security which the Garda themselves didn't believe was necessary for the protection of Mr. Gogarty. Now there are various comments which could be made on this, Mr.

Chairman, but so far as my clients are concerned, my only interest arising out of that piece of information is the degree of communication which you personally have had with Mr. Gogarty, because it seems to me that any arrangement which you entered into with the Commissioner of the Garda Síochána must have been preceded by some form of discussion with Mr. Gogarty in which he made known to you his desire for Garda protection. And if that's the case, Mr. Chairman, why was he given Garda protection when the guards believed it wasn't necessary? And what was he giving, if anything, in return for that, Mr. Chairman? Now, this is a matter of the utmost seriousness to my clients. We have already raised it twice privately in correspondence but the request for information was fobbed off; therefore I have no choice but to raise it in public, Mr. Chairman, and again I say without any, I hope, any discourtesy to you or any rudeness to you, Mr. Chairman, as we do respectfully ask you for a full and informative answer to that query, Mr. Chairman, because it's a matter of the utmost importance to us.

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So in summary there, Mr. Chairman, and, in my respectful submission, in the interests of fair procedures, some context must be set for the evidence of Mr. Gogarty even if it means delaying his evidence for 24 hours, no more than that. And secondly, Mr. Chairman, it's my submission that we are entitled to see the voluminous documentation furnished by Mr. Gogarty to this Tribunal and not merely the limited amount which has been extracted by the Tribunal team and given to us.

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Thirdly, Mr. Chairman, we are entitled to see the correspondence and documentation which has been furnished to the Tribunal by Messrs Donnelly Neary and Donnelly.

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Fourthly, we are entitled to see the documentation which has been furnished to the Tribunal by the auctioneers who had control under Mr. Gogarty's supervision of the lands which are the kernel of this inquiry.

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And fifthly, Mr. Chairman, we are entitled to know, in my respectful submission, what communication you have had with Mr. Gogarty and the extent of that communication as indicated by the matters which were referred to in the Garda documents.

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And again, as Mr. Herbert reminds me, we do require all of this information or most of it, Mr. Chairman, before we can properly cross-examine Mr. Gogarty. May it please you, Mr. Chairman.

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MR. ALLEN: I wonder if I might indicate to you as a matter of courtesy and entirely at your own convenience as to how you feel the matter should be dealt with that following on the preliminary submissions which Mr. Cooney has made to you, that I also have a number of preliminary submissions to make to you as well, Sir. Now it may be that you wish to deal with those that which have already been made by Mr. Cooney in the first instance. I am entirely in your hands, Sir, but it would be wrong of me not to indicate to you that I have a number of parallel submissions as well as additional submissions of a preliminary nature which I would wish to make.

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As I say, I am entirely in your hands, Sir, as to when those should be made.

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CHAIRMAN: Mr. Allen, before actually answering your questions, I just want to ascertain, are you the only additional person who wishes to make submissions or is there any other person before the

Tribunal who would be following on Mr. Allen?

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Mr. Leonard -- you are the only one. Very good, we will take the whole of the -- any preliminary submissions and I do hope, Mr. Allen, if the matter has been covered by Mr. Cooney, that you will not go back all over the same territory except insofar as you say it's germane to you as well because he has been very comprehensive in his approach.

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MR. ALLEN: I accept Mr. Cooney has been, as one would expect of Mr. Cooney, extremely comprehensive. I will do my best not to trespass on ground which he has already covered but on the other hand, I am sure that you, Sir, will understand that I have the interests of particular clients to vindicate here or to attempt to vindicate and that I must, subject obviously to your reasonable direction, do so without being trammelled.

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CHAIRMAN: And to my general brevity.

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MR. ALLEN: I have been on my feet for approximately 30 seconds and you are talking to me about brevity. Mr. Cooney has just finished and hour. Perhaps you might just indulge me ever so slightly to enable me to get off the ground, as it were.

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I wonder, Sir, could I refer you to the opening statement made to you at the preliminary hearing to hear applications for representation on Wednesday the 14th January, 1998. Before doing so, Sir, may I make the following points:

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Firstly, I welcome your declaration today which I think, in fairness, was no more than a repetition of what was said in your preliminary remarks at the hearing on Wednesday, 14th January,

1998. That insofar as you personally are concerned, these particular proceedings are inquisitorial in nature, that there is no prosecution, no defence, no adversarial civil trial.

.
Now whilst welcoming that, and it is however something I shall have to return to in the context in which you have indicated your intention of adducing the evidence of Mr. Gogarty and the particular and I say unique circumstances in which it is intended currently to adduce that evidence, I also want to place on record, Sir, that I fully accept, as do my clients, that your remarks in relation to the advanced years of Mr. Gogarty and his state of health are matters to which due account should be given and you may take it that insofar as I personally am concerned, that he will receive all due courtesy and civility.

.
I also, Sir, wish to address one other matter arising from your opening statement this morning. When you said that almost on a weekly basis you have received threats from various parties that they will injunct you or injunct the workings of the Tribunal, this is a matter which was reflected in a detailed article in last Sunday's edition of the Sunday Post -- excuse me, the Sunday Business Post, written by a gentleman called Connolly Frank -- excuse me, Frank Connolly, who is a witness, who is to be a witness in these proceedings, a note of whose evidence was shoved through our letter box after close of business on last Friday evening where he opined on the fact that many individuals, including at least one government minister, were of the view that "powerful sources" were determined to destabilize the workings of this Tribunal in a variety of different ways.

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Now I speak for my clients and my clients alone and I want to make it perfectly clear that my clients, having been to court on one

occasion, have no intention whatever of going back to the courts until the business of this Tribunal has been completed and then and only then, if it be necessary. We will not in any way seek to interrupt, to delay or to frustrate the workings of this Tribunal, although it is equally important to let you know, Sir, that subject to any ruling you may make in response to the submissions made by Mr. Cooney which I will be mirroring, that we are in fundamental disagreement as to the priority of the procedures and I say this with no disrespect whatsoever as to the propriety of the procedures which we have been told it is proposed to announce -- I beg your pardon, which we have been told it is proposed to pursue.

.
Now, in relation -- I had referred you to your preliminary -- your opening statement at the preliminary hearing on Wednesday 14th January, 1998 and it bears scrutiny, in my respectful submission, and you were -- you said as follows "There are a number of points I wish to make before taking applications for representation. I draw the attention of parties interested in the business of the Tribunal to the fact that the nature of the Tribunal is primarily an inquisitorial rather than an adversarial one. Consequently the evidence before the Tribunal will be led by counsel on behalf of the Tribunal. Any person whose interest -- this is numbered paragraph 2 -- "Any person's whose interests are, in the opinion of the Tribunal, likely to be affected will be allowed such representation as is necessary to protect those interests and such parties will be allowed to cross-examine relevant witnesses." Number 3 and most significantly: "All proceedings before the Tribunal will be conducted in a manner so as to ensure compliance with the requirements of natural justice" and I lay particular emphasis on paragraph 3 of your statement, Sir. You then go on at Paragraph 4 to say as follows: "In the first instance, it is

necessary for the Tribunal to carry out a considerable amount of investigative work. The Tribunal has been engaged in this work since shortly before Christmas." That of course was Christmas of 1997.

"In the course of this work, a large volume of material falls to be considered. The Tribunal has already received material from a number of sources and will be in contact with persons and companies who may have relevant documentation and information." 5 and I lay emphasis on this in the context of the Gogarty Affidavit to which I shall be coming.

"The members of the Tribunal legal team will be available to provide assistance to any party seeking to make statements or to forward documents to the Tribunal." That apparently was not a form of assistance which was required for or needed by Mr. Gogarty.

"The Tribunal earnestly hopes that all persons who have an interest in the business of the inquiry will cooperate fully in the provision of information of documentation to enable the inquiry to be brought to an expeditious and speedy and successful conclusion." I do fully appreciate concerns which persons wishing to assist the Tribunal may have in relation to the issue of personal and commercial confidentiality. "In order to protect these legitimate concerns, I propose to adopt the following protocol in regard to documents..." I will pass on from that and deal specifically with paragraph 8 and I draw, with the greatest of respect to you, your specific attention to what you said at paragraph 8 of your opening statement.

"With regard to the question of public hearings, it should be noted that under its Terms of Reference, the Tribunal is obliged,

in the first instance, to carry out such preliminary investigations in private as are necessary to determine whether sufficient evidence exists in relation to any of the Terms of Reference to warrant proceedings to a full public inquiry. These preliminary investigations are already in hand and I hope to be in a position to make this determination before my interim report to the Dail in February." That of course was February of 1998.

.

"The fact that representation may be granted to any person or company should not be taken as implying that the Tribunal has made any findings that there is sufficient evidence to warrant proceeding to a full public inquiry." And it is on this particular point, Sir, that I wish to lay special emphasis.

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I accept what you say and what you said in your document. Unless you resile from what is contained in that document and of course I don't for a moment expect that you would, it has to be the case that you have, in the course of the investigative work of this Tribunal, satisfied yourself that there was sufficient weight to be attached to Mr. Gogarty's document to warrant the necessity of public hearings. Nowhere and at no time have we been told that you so did, and perhaps more importantly, nowhere and at no time have we been told as to the basis upon which you arrived at this opinion. And again this is not a matter, I hope you will accept, Sir, in any way of personalised criticism. It is however -- it would be wrong of me not to make these observations to put them on the record because I believe that it -- that these and other matters taken together demonstrate that the approach -- and I say this with the greatest of respect to you -- that the approach which has been adopted by this Tribunal to the holding of these public hearings is fundamentally and fatally flawed.

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Let me now turn to the question of the so-called Gogarty Affidavit and its provenance.

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Mr. Gogarty's affidavit came with a certain limited amount of documentation in the first instance, thereafter we discovered that there was a great deal more relevant documentation which was at a later stage furnished to us. This documentation, and I wish to acknowledge properly and fairly provided to us, the documentation which called in a very serious way into question Mr. Gogarty's bona fides, his credibility, his trustworthiness and indeed highlighted the perception amongst others of an Garda Siochana, that he was a -- that he was in a number of significant ways a seriously flawed individual. And that is a fair representation of the documentation which was provided to us.

.

Now we sought from you, Sir, that is my solicitors, Messrs Smyth Foy, sought to establish the provenance of the 'Gogarty Affidavit' and we received a reply from you on the 16th November 1998 referring to two letters, both dated 12th November 1998, which my instructing solicitors, Messrs Smyth Foy had written to you.

"The Tribunal -- it reads, it's addressed to Messrs Smyth Foy and partners and it reads as follows -- "Dear Sirs, the Tribunal is in receipt of your two letters both dated November 12th 1998. These two letters deal with different subjects but in heading and reference there is no distinction. For easy identification in the succeeding paragraphs, I propose to refer to the letters by reference to time of transmission by fax which is to be found at the top of the copy letters received here and which are annexed hereto. The first letter was transmitted at 16.01. The second letter was transmitted at 16.05.

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Re: The letter of the 12/11/1998 transmitted by fax at 16.01. In

that letter you state that a number of matters were canvassed in the course of the submissions of counsel to the hearing of the Tribunal which took place on November 4th 1998, in particular specifically, counsel requested that all relevant documentation including but not confined to the two documents expressly referred to in the Gogarty Affidavit and all documents which exist in relation to the preparation of that affidavit should be made available to our client."

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In the foregoing quotation, there are two categories of document referred to, namely A, all relevant documents including documents referred to in the Gogarty Affidavit. "You were furnished on Friday last with the majority of the relevant material. A limited amount of additional documentation will follow shortly."

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That letter, I will point out, was written on the 16th November, 1998. We were still receiving documentation including Mr. Connolly's missive, after the close of business on last Friday, Mr. Connolly's affidavit or note of evidence being dedicated entirely on its face to the purposes of shoring up and propping up the various assertions and contentions made by Mr. Gogarty in his affidavit.

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"The second category of documents referred to are all documents which exist in relation to the preparation of that affidavit. In the first instance, the affidavit by Mr. Gogarty is not the Tribunal's document." And I pause there, Sir, because I have a difficulty in relation to this matter. We were informed in this letter of the 16th November 1998, that Mr. Gogarty's affidavit was not the property of the Tribunal, indeed you go on to distance from it -- distance the Tribunal from it further by saying as follows: "It was not drafted by any person connected with the

Tribunal. It is, as far as the Tribunal is aware -- as far as the Tribunal is aware" -- this is a repetition by the way -- "a document prepared by Messrs McCann Fitzgerald, solicitors for Mr. Gogarty, on Mr. Gogarty's instructions. Such documents as may exist and which come within the said category of documents in the possession of Messrs McCann Fitzgerald as solicitors for Mr. Gogarty, if you require them, it is a matter to be dealt with between your good selves and Messrs McCann Fitzgerald. The Tribunal considers these documents protected by legal privilege."

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That, with respect, Sir, seemed to me to be quite a remarkable assertion having regard to the fact that you had just told us in the previous sentences that you didn't know what the documentation was. But notwithstanding that lack of knowledge, apparently, your legal team were able to decide that the documents, the existence of which or the nature of which you were unfamiliar with, were protected by legal privilege.

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In your letter -- in your said letter, in the same third paragraph you go on to say "Counsel also sought full details of any meetings which took place between Mr. Gogarty's solicitor and the members of the legal team of the Tribunal. Such meetings as have taken place took place at a point and time when the Tribunal was conducting investigations and their contacts in relation to such investigations were dealt with on a confidential basis. The confidential nature of such meetings, not only in this particular case but in all instances, is a matter which goes to the heart of the capacity of the Tribunal to carry out such investigations. In support of that principle, the Tribunal must decline to furnish information in this category."

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"The Tribunal notes that you are prepared to make a formal

application for discovery. It is not within the provenance of this letter to express any opinion as to the outcome of such an application." And I pause there, Sir for a moment, because I come now to what I say is a rather remarkable follow-on from that.

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"An alternative approach might be that your client will treat this letter as a formal decision to refuse your request for the said information. In the event of your deciding to pursue the matter by applying to the High Court for such order as you see fit, the Tribunal would make no point that no normal order refusing your application for discovery was made, providing the matter was proceeded with despatch. I now proceed with an item in your letter under the heading Terms of Reference."

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Now I don't need to trouble you with the remainder of that letter, Sir, but since the writing of that letter, we have -- my solicitors have sought again and again to establish the provenance of Mr. Gogarty's affidavit. I do have to say, Sir, that in -- during the controversy which arose in relation to the leakages to the media, I was somewhat surprised to hear a positive assertion from this Tribunal that it had property rights in the very affidavit, the ownership of which it had denied in a communication with my solicitors. And indeed to note the very stringent criticisms which were made of counsel, solicitors and Independent Newspapers when they didn't appear to find themselves in a position to agree with you.

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Now I raise this point, Sir, not for the purposes of being in any way adversarial or argumentative, I raise it because I genuinely believe, Sir, that it goes to the route of the concept of fair procedures as to how the evidence of Mr. Gogarty is to be taken. What I ask rhetorically, what is the provenance of Mr. Gogarty's

affidavit? Where did it come from? Who produced it? How was it produced? Was it a team effort? Was it a solo run? Who do we look for -- to whom do we look for the documentation which supposedly or purportedly backs up that affidavit? And in that regard, you did quite rightly, Sir, ask me not, insofar as was possible, not to trespass in consideration of terms of time on what Mr. Cooney has had to say to you and I will simply say that at this particular juncture,, I adopt his submissions in relation to the issue of discovery, the issue of the large bundle of documentation which we received after the close of business on Friday last, from which it is clear that a selective rag bag of documentation from Mr. Gogarty's files has been provided to Mr. Cooney and to myself, the process of selection is something to which we are strangers, we don't know the basis upon which the determination was made as to selection and I have to say to you, Sir, that in the context of your letter to my solicitors saying that you have no responsibility for and had nothing to do with Mr. Gogarty's affidavit, it seems strange indeed that your legal team should have subsequently presumably, after the writing of that letter, find themselves in a position to trawl through the very documentation which we sought and which you sought to deny us and I accept your bona fides in relation to that, Sir.

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I simply want to highlight the differences which exist between us. I want it to be absolutely clear in this very public forum that I accept without reservation, Sir, your personal bona fides in all of this matter. I have seen matters canvassed in the media which I have found personally distasteful. I have the height of regard and respect for you and I have -- I would like that, I would like that to be on the record at this particular hearing.

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In anything that I say to you Sir, I hope -- indeed I am confident that you will accept that I do so as a matter of legal argument and as a matter of bona fide legal argument. I accept without reservation that there is ample room for differences of opinion but it would be profoundly wrong of me to ambush you, as it were, at some point in the future with these particular points and it is in that context that I refer to those matters.

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Now a point which is of particular concern to me, Sir, goes back to Clause 8 of your opening statement at the application in February of 1998. Because accepting what you have had to say about the status of these hearings, it is nonetheless, if one follows not simply the logic but the language of your opening statement, the case that my clients are here to have their reputations examined, putting it at its politest. Certainly not the intention of Mr. Gogarty, if one reads what he has had to say, to have their private affairs canvassed in public because of a determination by a judge of the High Court sitting as a chairman of a Tribunal mandated by the Oireachtas that there should be public hearings because he is satisfied that there is sufficient evidence, the only evidence that we are aware of being the evidence of Mr. Gogarty, to warrant the holding of public hearings.

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In those circumstances, Sir, and I accept again at the risk of repeating myself, without questioning your bona fides in this regard, but in those circumstances I say that it follows as night follows day that because my clients are about to be exposed or because it is the declared intention of this Tribunal to expose my clients to the type of scrutiny and the type of allegation which is contained in the affidavit of Mr. Gogarty, wholly unsupported by anything other than Mr. Connolly's document and we all know

about Mr. Connolly's history both in this and other matters, wholly unsupported by anything other than that of a journalist who had been running a campaign in relation to these matters for some number of years, it seems to me, Sir, that it behoves this Tribunal to ensure that you err on the side -- you err on the side of not the allegator, if there be such a word, I am not entirely certain, Sir, that there is, but I think you know what I mean -- but on the side of the allegatoree, if there be such a word. Mr. McEnroy ensures me that there isn't and I am sure he is accompanied by his thesaurus, I must accept that he is correct. But it is perhaps a more felicitous way of putting it would be that it behoves you to err on the side of those against whom the gravest of allegations are made to ensure that the manner in which those allegations are ventilated and the manner in which those allegations are canvassed is one which affords the maximum protection to those against whom the allegations are made, consistent with what I accept is your bounden duty to carry out these particular inquiries.

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And in that regard I want to trespass once again on Mr. Cooney's area of submissions. I must resile, with respect, Sir, from your suggestion that there is nothing unusual about what you propose to do here today. It is, in my respectful submission, unprecedented that a witness, whatever his age, whatever his condition, should willy-nilly be ferried into this Tribunal for the purposes of giving in vacuole and with no reference to anything whatever, a body of evidence which, we assume, but I believe, not safely assume, is confined to that which is set out in the affidavit sworn by him on the 12th October of last year and published in the Sunday Independent very shortly thereafter.

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It seems to me, Sir, with respect, that it is profoundly wrong

that there should be no context whatever for the taking of this witness unless one accepts that it is -- that it is a proper matter and that the only context in which this evidence is being taken is the age of Mr. Gogarty and the state of his health. It beggars belief, frankly, Sir, that a Tribunal of the importance of this Tribunal -- and I don't think anybody will seek to deny that this is anything other than a Tribunal of major importance -- of major public importance which has attracted a vast amount of interest amongst the citizens of this land. It beggars belief that the rather large legal team which you have assembled to assist you in your endeavours have nothing whatever to say on the opening day of the hearing. They sit there mute. I won't say of malice, but certainly mute. Not a whisper from anybody to tell us what this hearing is about, to tell us what the relevant facts are, to tell us where the lands are, to tell us what happened to the lands, and I raise this particular point in the same way that Mr. Cooney did, Mr. Chairman, for a very specific reason because there is a widespread public perception that the 734 acres of land which are identified in the Terms of Reference, in some way, through some golden process, acquired zoning, planning permission, and a variety of other benefits and led to the accrual of vast profits to my clients.

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That, as I assume Sir you know, is hogwash. The vast majority of the lands remain unzoned. The vast majority of the lands remain unsold. Would it not have been proper, I ask, Sir -- would it not have been proper that these matters, in the context of the evidence which Mr. Gogarty is going to give, should have been made clear to --

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CHAIRMAN: Mr. Allen, I hate to interrupt your flow of language, but I think we are certainly departing from the world of legal

submissions into the world of propaganda. So perhaps you will go back to legal submissions.

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MR. ALLEN: Very good, Sir, but may I tell you that it may be your propaganda. It's my fact, and I defy you to tell me that it is not fact and I don't use the word defy in any disrespectful sense, Sir, it is a fact that these lands remain in the condition in which I have indicated to you. That is not a matter of propaganda. That is one of the matters which you are expected to inquire into, but you are not going to inquire into which you tell us. No, Sir, you are going to have dear old Mr. Gogarty get into the box and give his evidence and be treated very nicely at your request by everybody and then tottle off and then presumably some rationale will be found to justify the continuance of the proceedings.

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I draw to a close, Sir, you will be no doubt relieved to hear, on this note; what is being sought to be done here today is profoundly wrong and profoundly unfair. I say to you, with the greatest of respect, that if you follow the course of action which you have indicated you intend to follow, you will do my clients a grave and a gross injustice and the Tribunal and yourself a serious disservice. I ask you to take on board, as I know you will and to consider the submissions which have been made by Mr. Cooney and by myself as to matters which I most respectfully say are of absolutely fundamental importance to the concept of fair procedures and I know, Sir, that I do not have to remind you of your oft-repeated assurance that fair procedures will be afforded to all. I recall a phrase from correspondence from the Tribunal in which, whoever the author was, referred to a level playing pitch.

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Now, that is in fact a term of art which goes back to much earlier -- a much earlier controversy than the one with which this Tribunal is concerned. It goes back to the days of a particular radio station which is no longer with us. A level playing pitch, Sir, is what my clients seek. We do not believe that we are on a level playing pitch at the moment. We believe that we are, as it were, on the hairiest of grounds at serious and serial risk of ambush. We believe that the procedures which you have announced today, I say respectfully, are grossly weighted in favour of an individual whose credibility is shredded in the documentation, the limited documents which you have provided to us but he is to be protected and closeted while my clients are to be left twisting in the wind. That is a matter of great regret to me, Sir, and I hope that you will change your mind and that you will accede to Mr. Cooney's requests and that you will afford me the same facilities that he sought.

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I thank you for your patience, Sir.

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CHAIRMAN: Mr. Leonard.

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MR. LEONARD: Mr. Gogarty in his affidavit makes a number of unpleasant allegations against a whole series of different people and you, Sir, chose fit, by a letter of the 20th October, 1998, to write to my client, Mr. Downes, and say to him, "That in view of the nature of the allegations which are made against you, the Tribunal has decided to grant you limited legal representation." And I am here before this Tribunal to defend and to vindicate the good name of my client.

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Now since the 20th October 1998, we have furnished the Tribunal with a written statement at the request of the Tribunal, we have

given evidence to the Tribunal, and we have been furnished with a various amount of information. The affidavit furnished to us by Mr. Gogarty made, inter alia, reference to a letter that I had written to Mr. Murphy on the 10th May 1988. Now that letter is referred to at paragraph 40, I think it is, of Mr. Gogarty's affidavit and the letter itself was not included by Mr. Gogarty in the documents which were furnished to us at that time so that we have no idea of contents of that letter.

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The letter itself is included in the book of documentation which you sent to us last Friday evening and if I could draw your attention to that letter, it's at page 2 of the book of reference documents. The head of the document it says "JG 3-96. And the first paragraph of the letter says "Dear Mr. Murphy, I am enclosing for your confidential and urgent attention ammunition to assist you in your present difficulties."

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Now, the second part of that paragraph says "There is a very strong case indicating that your businesses at best are being conducted in such a careless, negligent and reckless manner as to indicate that in a very short time, the entire organisation will come crashing down."

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Now, I learnt to my surprise here this morning that Mr. Gogarty had furnished the Tribunal with an affidavit of discovery and with a vast amount of documentation. Now I am only concerned before this Tribunal to do two things:

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One is to protect my client's good name and the other is insofar as I can, Sir, to assist the Tribunal. But in defending my client's good name, it is absolutely essential, in my respectful submission, that before Mr. Gogarty starts giving evidence, that

any documentary evidence which is in Mr. Gogarty's power, possession or procurement or in the Tribunal's power, possession or procurement which reflects in any way on my client's good name, be furnished to us so that we can properly deal with the allegations and that's why I am here. I am here to answer, as a party, allegations that have been made against us.

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Now if I could refer you very briefly to Bone -v- the Beef Tribunal, the judgement of Mrs. Justice Denham, 1993, I am not sure which volume it is. It's page 218, going back to the Haughey case, where Mr. Haughey's counsel submitted in that well known passage "The minimum protection which the state should afford his client was that he should be furnished with a copy of the evidence which reflected on his good name and that he should be allowed to cross-examine by counsel, his accuser or accusers."

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Now the only person who has made the remotest allegation against my client's good name that I can see is Mr. Gogarty. He apparently has furnished this Tribunal not just with his evidence on an affidavit but has furnished the Tribunal with what appears to be a vast amount of documentary evidence and I suspect that in one or two or three or more pages, there will be reference to that. There is one other reference to that in the documentation which the Tribunal has seen fit to give us in the book of reference documentation. The document is at page 285 at sequence which are under Mr. Gogarty's reference, JG 14-114 at sequence. There is a reference again there to an allegation which may reflect to my client's good name.

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But what I am concerned about, Sir, is this: If Mr. Gogarty gets up today and starts giving evidence and his evidence is based on documents which exist which reflect in on my client's good name,

then I would be deprived of a fundamental fair procedures which had been laid down and affirmed by the Supreme Court time and time again. So my submission to the Tribunal is that Mr. Gogarty should not be called upon to give evidence without my client being afforded an opportunity of reviewing the documentary evidence that reflects upon my client's good name and that's why I support Mr. Cooney's submission in relation to discovery.

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Thank you, Sir.

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CHAIRMAN: Thank you. Just one or -- Mr. O' Reilly.

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MR. O'REILLY: I will be brief, My Lord. I have heard what the Chairman has said. The first submission, My Lord --

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CHAIRMAN: Mr. O' Reilly, just to identify you to the public.

You are counsel for the public interest.

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MR. O'REILLY: With my brother, Mr. Eamon Galligan, My Lord.

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The first submission is that the concern of the public interest is that the Tribunal proceed as expeditiously as possible with its work. That is common case with almost all the people here. The second matter so far as procedures are concerned that it is a matter for the Tribunal itself to determine what are appropriate procedures to proceed upon.

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CHAIRMAN: Thank you, Mr. O' Reilly.

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MR. COONEY: I think perhaps before Mr. Gallagher replies, on behalf of the Tribunal, may I just draw your attention, Mr. Chairman, to a fact which has come to our attention.

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Apparently Mr. Downes has furnished to statement to this Tribunal,
a copy of that statement has not been given to us, Mr. Chairman.

Although Mr. Downes is a former director of our companies and a
former financial director of Joseph Murphy Structural Engineering
Limited. This is astonishing, Mr. Chairman. How could we not
be served with a statement? If I may say so, Mr. Chairman, again
trying to keep the temperature down, is that this is fairly
characteristic of the level of cooperation which we have been
receiving from the legal team of this Tribunal from practically
the beginning. There is no point in looking dismissively at me,
Mr. Chairman. I don't want to go into this in any great detail
but the fact of the matter is that a statement from Mr. Downes has
not been furnished to us Mr. Chairman. As I say, this is fairly
characteristic of the level of cooperation.

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MR. HANRATTY: Sir, if I might hopefully reasonably briefly refer
to the applications which have been made. Just to take up the
last point first.

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It is true to say that a statement has been furnished by Mr.
Downes, the statement was supplemented and we decide that we would
not circulate his statement until we had his entire statement.
There is no question of withholding any statements as Mr. Cooney
quite unjustifiably suggests.

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If I might just begin then with Mr. Cooney's first argument,
namely that there should be an opening speech from counsel to put
the evidence of Mr. Gogarty in its context.

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The first and most obvious point, Sir, I would make about that is
that -- sorry, Sir, I should have indicated I would prefer with

your permission to make my submissions from a seated position because I am referring among other things to a computer screen. The first and most obvious point in relation to Mr. Cooney's contextual argument is that that argument has already been made and already been dealt with by you at the sittings where applications forcing an adjournment were taken and if I might just refer you to your determination on that argument.

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You said "The submissions that the evidence of a particular witness can only be heard at a time when all persons interested in that evidence are satisfied that all contextual evidence has first been adduced and only when all investigations on any matter contained in the Terms of Reference are exhausted is rejected by the Tribunal. The suggestion that a failure to adopt this model of procedure constitutes a violation of the applicant's rights to fair procedures is also rejected. The Tribunals of Inquiry (Evidence) Act 1921 to 1998 can impose any particular model of practice and procedure on tribunals. This is not only a matter of law, it is also rudimentary common sense. The procedures appropriate to inquire into major accidents or disasters are likely to be quite unsighted to an inquiry into the truth or otherwise of allegations which may suggest corruption. The taking of evidence of a witness in public in advance of full hearing..."

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"The criminal law has many situations where evidence of a particular witness is taken to court in sworn deposition prior to a trial. The civil law is also replete with many similar examples including the taking of evidence on commission, the Tribunal is not satisfied that the applicants have made out any reasonable factual or legal basis for the claim that Mr. Gogarty's evidence may only be heard at a time or in the manner that they

suggest."

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So in my respectful submission Sir, the question of the contextual argument has already been dealt with by this Tribunal. The only variation that I see today is simply that as part of that argument, Mr. Cooney suggests that it is essential that counsel for the Tribunal should make an opening speech. And before I leave that particular submission, might I just make the observations if I may that it appears to me, if I may say so, that Mr. Cooney's arguments completely ignore the fact that this exercise that we are engaged in today is simply the taking of Mr. Gogarty's evidence and as a matter of fairness to the parties, any related evidence including evidence in rebuttal.

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It also ignores the fact, it seems to me, Sir, that fair procedures are more than adequately met by the fact and the ruling that you have made, namely that Mr. Gogarty can be cross-examined by any of the witnesses or parties who disagree with his evidence and may call evidence in rebuttal at this sitting.

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That's all I have to say, Sir, in relation to the contextual argument.

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The next argument which Mr. Cooney makes, Sir, is in relation to various categories of documents and may I say at the outset that the Tribunal has, as you are aware, been engaged in strenuous efforts to get, to assemble as many of the documents as possible as are intended to be put in evidence to circulate to the parties who are interested in those documents. There are a number of specific categories of documents which My Friend refers to, the first is the Donnelly Neary Donnelly documents which they have in their own right apart from documents supplied directly by Mr.

Gogarty. The position there, Sir, is that these documents have been requested by Donnelly Neary and Donnelly, they have agreed to furnish them, although we have not yet physically received them.

the position is that when these documents are received, they will be considered in the usual way and such of them as are relevant and that you decide will be put in evidence will be circulated at the earliest possible opportunity.

My Friend also mentioned documents from Duffy Mangan and Butler, Sir, and the position in relation to those documents is that we received documents from Duffy Mangan and Butler this morning. And again the same exercise will be done in relation to those and such of those documents as are deemed by you to be relevant and decided by you to be put in evidence will be circulated to all interested parties at the earliest possible opportunity.

The next category of documents, Sir, are the documents which came into existence in connection with the Tribunal's preliminary investigations in private. My Friend refers in particular to any documents concerning any meetings which you, as Sole Member of the Tribunal, may have had with Mr. Gogarty as part of the confidential preliminary investigations in private. What you say in relation to that, Sir, is that this is a matter which has already been dealt with in correspondence with Mr. Cooney's solicitors as I presume he knows and if I can just briefly refer you to that correspondence.

These documents were requested by Fitzsimons Redmond, Sir, in a letter dated 18th November of 1998, and what they requested was, "Request details of all meetings between the Tribunal and Mr. Gogarty and/or his legal representatives prior to the 12th October

last including the identity of persons involved in those meetings, the dates upon which they occurred and sights of memoranda, notes and documents which were generated as a result of those meetings."

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That letter was replied to by the Tribunal, by letter dated 23rd November of 1998 and if I can refer you to the second page of that letter, at paragraph 2. "Your query directed to Mr. Gogarty's statement of evidence and allied matters contained in the Garda statements which have been furnished to you proceed on your assumption that they represent the only communications which have been passed between the Tribunal and its legal team and Mr. Gogarty and the relevant Garda authorities. Your assumption in this regard is erroneous and is not based on any statement to that effect from the Tribunal. The Tribunal has furnished you with all relevant documentation. This has been culled from the Garda files, the content of which is in the main irrelevant and only relevant material has been furnished to you. Should you wish to have sight of full file from which this information was culled, facilities will be made available to you to inspect these files at the offices of the Tribunal."

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And then, Sir, the Tribunal went on to say, "A, your request for details of all meetings between the Tribunal and Mr. Gogarty and/or his legal representatives will not be acceded to. The Tribunal carries out its investigations in private and the identity of persons involved in meetings, the dates upon which such meetings occurred or the memoranda, notes or documents generated as a result of those meetings are confidential and will not be disclosed."

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So the position, Sir, is that the Tribunal made its position on

that point quite clear as far back as the 23rd November, 1998 and as I understand My Friend's submission, it is merely a repetition of that request which was refused by letter dated 23rd November, 1998.

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So I would respectfully submit, Sir, the Tribunal has made its position clear on that point, has already, in effect, ruled on that point and that there is nothing further to be said on the matter.

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I also understand that was repeated last week in correspondence exchanged with Fitzsimons Redmond last week.

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I think the last category of documents to which My Friend Mr. Cooney refers, Sir, are other Gogarty documents which have not been circulated to him. Now, as you are aware, Sir, and as I am quite certain Mr. Cooney is aware, this Tribunal has received literally tens of thousands of documents from a huge variety of sources. The Tribunal has been in the process of sifting through these documents for the purpose of identifying documents which may have any form of probative value, including any value with regard to the credit of witnesses or the motives of witnesses. The Tribunal, as you are aware, Sir, has circulated all documents which it considers has any such value and in my respectful submission, it is, if I may say so, somewhat unrealistic for anybody to suggest that all of the documents submitted by any party should be circulated to all the parties who may be affected by those documents. It is quite clear from the investigative exercise which the Tribunal team has been engaged in, that there are a huge volume of documents which are either entirely irrelevant or which have no probative value on any issue whatsoever including credit or motive. And in my respectful

submission, there is no reality in the suggestion that documents which fall within that category should be circulated to parties.

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The Tribunal has circulated to parties documents which in its view might reasonably be regarded as documents which might have a probative value either on the merits of the issues themselves or on the question of motive or credibility.

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I might then turn, Sir, to the submissions made by Mr. Allen, insofar as I can understand them.

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The first submission he makes is in relation to the question of the documents underlying the production of Mr. Gogarty's affidavit and again, all I have really to say about this, Sir, is that this is also a matter which has already been dealt with in correspondence. If I can just briefly refer you to that correspondence.

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Messrs Smyth Foy solicitors for Messrs Bailey and Bovale Developments Limited requested this documentation and again this was dealt with by the Tribunal in its reply to them of the 16th November of 1998. And if I could refer you to the second page of that letter at paragraph 3 where it is stated, "The second category of documents referred to are all documents which exist in relation to the preparation of that affidavit. In the first instance" -- Then the Tribunal goes on to say "In the first instance the affidavit by Mr. Gogarty is not the Tribunal's document. It was not drafted by any person connected with the Tribunal. It is, as far as the Tribunal is aware, a document prepared by Messrs McCann Fitzgerald, solicitors for Mr. Gogarty on Mr. Gogarty's instructions. Such documents as may exist and which come within the said category are documents in the

possession of Messrs McCann Fitzgerald as solicitors for Mr. Gogarty. If you require them, it is a matter to be dealt with between your good selves and Messrs McCann Fitzgerald. The Tribunal considers these documents protected by legal privilege. In your said letter on in the same third paragraph, you go on to say "Counsel also sought full details of any meetings which took place between Mr. Gogarty's solicitors and members of the legal team of the Tribunal."

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Then the Tribunal's letter goes on "Such meetings as have taken place took place at a point in time when the Tribunal was conducting investigations and their contacts in relation to such investigations were dealt with on a confidential basis. The confidential nature of such meetings, not only in this particular case but in all instances, is a matter which goes to the heart of the capacity of a Tribunal to carry out investigations. In support of that principle, the Tribunal must decline to furnish information in this category."

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So here again, Sir, this was a matter which was clearly canvassed in correspondence and where the Tribunal, in this instance on the 16th November 1998, made its position absolutely clear. And if the parties who both were respectively told this in relation to this category of documents, had any quibble with it, they had their remedy.

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In my respectful submission, the position which you as Sole Member ought to adopt and the ruling, I respectfully suggest to you, is that these applications be rejected on the basis that they have already been dealt with by the Tribunal in correspondence.

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My Friend, Mr. O' Neill, draws my attention to the fact, Sir,

also, that this is also a matter which was dealt with at the public sitting on your ruling in respect of the public sitting of the 10th November 1998 under the header of the disclosure of information where you say "The Tribunal accepts that there is a duty on... relevant documentation or information in its possession may be material to a party's interest before the Tribunal.

In certain instances this disclosure may be in redacted form where elements of that form of documentation or information are not relevant or where a recognised ground of privilege existed... Free access to privileged documentation or information gathered by the Tribunal in the core of its investigative work."

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So again that is a matter which has already been raised in front of you, not only in correspondence but also at the public sittings and in respect of which you have already made a ruling. And again I would respectfully invite you, Sir, to repeat your original ruling in respect of that aspect of the application.

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As a general observation, Sir, if I might also make such a general observation, as you are aware the position of the courts and the jurisprudence on this particular aspect is that in virtually every case in which litigation involving a Tribunal of Inquiry established under the 1921 Act occurred, the courts have repeated the assertion and repeatedly stood over the principle that a Tribunal of Inquiry conducts its business in essentially two phases. One is the preliminary investigative phase which is conducted in confidential and in private and the second arises only if and when, having regard to such investigations as have been conducted, the Tribunal reaches a decision that certain matters should be put before the public at a public sitting of the Tribunal, in the event that the Tribunal makes that decision the material information, documents and evidence is then circulated to

parties who are affected by the evidence intended to be given and it is put before a sitting, a public sitting of the Tribunal.

But the courts have repeatedly underscored the proposition that it is fundamental to the workings of a tribunal that it be enabled to conduct preliminary confidential investigations in private and what these applications amount to are attempts to get behind that principle, to undermine the proposition that a Tribunal can conduct confidential investigations in private and to endeavour to parse through documents which came into the existence that came as part of that confidential investigation or of some conspiracy theory which they seek to adduce in some course.

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Firstly, in my respectful submission, in any event you have dealt with these applications already both in correspondence and in part in the earlier public sittings and, secondly, and in any event the documents in question are documents which came into existence as part of the confidential preliminary investigations in private of the Tribunal and should not be provided to the parties.

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The other submission which Mr. Allen makes and again insofar as I can understand it as part of an application, has to do with the question of the decision of the Tribunal to go to a public hearing. And really all I want to say about that Sir, is two things:

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Firstly, the decision to go to a public hearing has been long known in correspondence to Messrs Smyth Foy solicitors for Messrs Bailey and Bovale, long before the 20th October when Mr. Gogarty's affidavit was first circulated and if they had any quibble with that, again they had the remedy and decided in their wisdom not to invoke it.

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The second point I would make in relation to that is that in the recent decision of the Supreme Court in the case of Redmond -v- Mr. Justice Flood, which was delivered as recently as last week, the Court said in reference to one point which was raised before the Supreme Court, "The Tribunal is not obliged to hold a private inquiry before proceeding with its public inquiry. The allegations against the applicant in this case could be false. At this stage, we simply do not know. But they are grounded on a sworn affidavit. In these circumstances, it appears to this Court that the Tribunal was entitled to decide that they were of sufficient substance to warrant investigation at a public inquiry. Indeed it would have been surprising if the Tribunal had decided otherwise."

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So I think that effectively deals with My Friend's point in relation to the question of a public hearing or the decision to go to a public hearing having regard to the evidence which was available to the Tribunal.

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Finally, Mr. Allen makes a submission in his rather pejorative and verbose sort of way about the large legal team to the Tribunal not having anything to say on the opening day of the Tribunal. As My Friend Mr. Allen very well knows, this is not the opening day of the Tribunal. It is the opening day of the sittings at which Mr. Gogarty's evidence and related evidence is being taken and Mr. Allen will be assured that in the fullness of time on the opening day of full sittings of this Tribunal, there will be a very detailed opening statement by counsel.

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If I might just then turn, Sir, to the submissions of Mr. Leonard. I would suspect that perhaps his submission is based to some extent at least on a lack of information and, hopefully, this

is something which we can redress with Mr. Leonard. The position about Mr. Gogarty's affidavit of discovery which was only very recently received by the Tribunal is that the documents had already been received by the Tribunal, but that there was apparently a huge amount of work involved in finalizing the affidavit itself. The Tribunal will, of course, have to go through the usual exercise of checking the schedules in the affidavit against the documents although at this stage, it appears on a first look that they are entirely in sync with each other. But it may well be that Mr. Leonard may, by reason of the fact that the affidavit was delivered late, have come to the conclusion, I think wrongly and hopefully we can explain to him that there was some new category of documents discovered. Mr. Gogarty's documents have been gone through and such documents as are deemed to have any relevance or may reasonably by any party be deemed to have any probative value, either on the merits or on the question of motive or credit, have already been put out and if any other documents come to the attention the Tribunal having those characteristics, I have no doubt that in the fullness of time they will also be circulated. But the fundamental position with regard to documents is that all parties have been circulated with all documents to date which have been identified by the Tribunal as having or may have any probative value.

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If you just bear with me for a moment, Sir. As you are aware, the question of the distribution of documents is continuing and is likely to continue throughout these sittings. It is the belief of the legal team for the Tribunal that all important documents and the documents central to the points made by Mr. Gogarty have already been identified but the Tribunal, as this sitting progresses, is continuing its investigations and if any other documents come to light and indeed if the parties are able to draw

the attention of the Tribunal to any other documents which may have a relevance, these will be circulated to any other parties who do not have copies of those documents in due course.

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CHAIRMAN: Thank you. I will give my decision at two o'clock.

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MR. COONEY: May I not reply, Mr. Chairman?

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CHAIRMAN: Do you have something to add?

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MR. COONEY: No, I have a reply to make to Mr. Hanratty, very briefly.

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CHAIRMAN: Certainly.

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MR. COONEY: First of all, may I say, Mr. Chairman, I am quite astonished by his statement to you that there will be an opening statement to this Tribunal at what he refers to as the appropriate time. What more appropriate time could there be than today, Mr. Chairman? This is the first public sitting of the Tribunal and as a matter of propriety and logic, it should have started off and prefaced with an opening statement in which the issues are described and a resume of the evidence to all the parties should be given. It's quite absurd to say, Mr. Chairman, in my submission, for some reason or another this is not the beginning of the public sitting but this is going to occur later on. As I said to you earlier on, an opening statement could not have taken more than a full day which would have meant the postponement of Mr. Gogarty's evidence for no longer than that.

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This is not analogous, Mr. Chairman, to evidence being taken on commission and subsequently being given to the tribunal or court

which is hearing the matter. Evidence taken on commission is usually taken in private, Mr. Chairman, and then is read into the transcript during the trial proper. So it is not correct, Mr. Chairman, to draw an analogy between that judicial exercise and what is happening here today.

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Now so far as the documentation is concerned, Mr. Chairman, I seem to gather from what Mr. Hanratty has just told you that Mr. Gogarty has only recently furnished this Tribunal with an affidavit of discovery. This seems to be in conflict with what we were told earlier on that Mr. Gogarty had furnished a large volume of documents to the Tribunal, but irrespective of when it came into the possession of Tribunal, Mr. Chairman, we are entitled to see it because it follows, Mr. Chairman, that if Mr. Gogarty came this documentation to the Tribunal, it is ipso facto of relevance. If it's of relevance, Mr. Chairman, we are entitled to see it and decide which specific documents we would care to use in the course of the hearing. It's not for Mr. Hanratty or any other member of the legal team to decide what documents are irrelevant to the protection of my clients' interest in this. That is a matter for my clients' legal team, Mr. Chairman, and it is simply a wrong interpretation of the respective duties of the lawyers in this Tribunal to suggest, as Mr. Hanratty has done, is that he can decide what is in our best interest.

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Now insofar as the other documents from Donnelly Neary and Donnelly are concerned and also Duffy Mangan and Butler, it seems that these documents either haven't arrived or have just arrived in the last 24 hours or are about to arrive. Are we expected, Mr. Chairman, to defend our clients' interests in the course of cross-examining Mr. Gogarty without access to those documents or

without knowing what's in them? Is that the standard of fair procedure which we are to expect from this Tribunal, Mr. Chairman? That we have to cross-examine the chief accuser against our clients without access of these documents? Is this what this Tribunal is seriously proposing we should do and that's how its business will be conducted?

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What do you propose to do, Mr. Chairman, if upon production of these documents, we find documents, if they are given to us of course, which are relevant to the cross-examination of Mr. Gogarty, but the cross-examination of Mr. Gogarty has terminated and he is gone? Is Mr. Gogarty to be brought back for further cross-examination, Mr. Chairman? I would respectfully like an answer to that, Mr. Chairman, because it affects profoundly the reputation and interests of my client. This is no game, Mr. Chairman. This is no argument, Mr. Chairman. This is a very important serious matter so far as my client is concerned.

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Now, the other final point I make is that Mr. Hanratty has referred to the fact that you have already dealt with the contextual argument, as he says, on an earlier date. Mr. Chairman, there is no precedent for adopting the procedure that you proposed to adopt today. There wasn't such a procedure when you made your ruling last November. It doesn't exist today. And I cannot see why, Mr. Chairman, in the interval between the time of your last ruling and today, this Tribunal could not have decided to devote 24 hours to a proper opening of the public hearing. I can't see any reason for it, Mr. Chairman. It was originally intended to take Mr. Gogarty's evidence on the 16th November. That was adjourned from the 16th November until the 12th January. Is there any earthly reason, Mr. Chairman, why not in the interest of the propriety and proper procedures, that date

could not have been further postponed until the 13th or 14th January, Mr. Chairman? I fail to see, Mr. Chairman, why proper procedures are not being adopted by this Tribunal when there is no possibility of the adoption of those procedures jeopardizing Mr. Gogarty's evidence in any way. What's the point of it, Mr. Chairman?

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MR. ALLEN: Mr. Chairman, I have two very brief points to make. The first is that I believe Mr. Hanratty to be the only individual in this country who thinks that this is not the opening -- that this does not represent the opening of this inquiry and the opening of the public phase of this inquiry and with the greatest of respect to him, it is putting it, at its politest, disingenuous of him to suggest to the contrary. I accept that he may have not had the capacity to understand the gravamen of my submissions, that's not a matter for which I can be held responsible.

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The other matter which seems to me to be one of the very serious importance is that it is alarming, to say the least, to learn at this late stage from Mr. Hanratty of the cheque-in-the-post approach which is going to be adopted to documentation. These hearings are going to be conducted apparently on the basis that documentation, as and when it becomes available, if and when Mr. Hanratty decides or if somebody decides it should be given to us, will be given to us. That puts us in the sort of position of disadvantage which we have always feared we would be in. It beggars belief that we should find ourselves in this situation on this day in circumstances where Mr. Hanratty and his other colleagues sought to persuade you in November of last year that you were ready and in a position and that they were ready and in a position to lead the evidence of Mr. Gogarty at that point in time, at a point in time when we now know he hadn't even made an

affidavit of discovery.

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I regret to say, Sir, that that is no more than characteristic of the manner in which these matters have been approached. It seems to me to be quite unusual, to say the least, that parties against whom there is most serious of allegations are made, should be told on the day upon which those allegations are to be announced, that Mr. Hanratty will, as it were, distribute the cheques when they arrive in the post and will hand out the documentation as he deems appropriate throughout the course of the hearings even in circumstances as anticipated by Mr. Cooney, where that documentation -- and it is not fanciful to so think or to so suspect -- could arrive long after Mr. Gogarty has departed the scene. That seems to me, Sir, to be a profoundly unhappy situation and I regret it very much.

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MR. LEONARD: Very briefly. I'd just like to stress I am not seeking privilege documents from the Tribunal or documents relating to private investigations from the Tribunal. My role in the affairs of this company ceased on the 31st October, 1988 and Mr. Downes had nothing to do with Joseph Murphy Structural Engineers at that time. But what I am concerned about, and Mr. Hanratty I think concedes that my fears are justified, Mr. Gogarty has made unpleasant allegations against a number of people including persons who aren't able to answer themselves because they are dead, and it appears from the documents that the Tribunal has furnished me on Friday, that he furnished Mr. Murphy with ammunition back in May of 1988 containing allegations relating to the management of this company. Now I have never seen any of that. It's my job to defend my client's interests. Nobody else's. And I am concerned that any documentary evidence which Mr. Gogarty intends to rely on, either directly or indirectly,

should be made available so that when Mr. Gogarty is being cross-examined in due course, that fair procedures can apply in accordance with the passage which I opened to you earlier, Sir.

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CHAIRMAN: Thank you, Mr. Leonard. Well, I will give my decision at two o'clock on the various points that are being made and accordingly I adjourn the Tribunal until two o'clock.

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THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:00PM:

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REGISTRAR: Ruling in relation to this morning's applications.

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CHAIRMAN: I have considered the applications and submissions made to me in relation thereto by Mr. Cooney on behalf of Messrs. Murphy, JMSE and connected companies and Mr. Allen on behalf of Messrs. Bailey, Bovale and connected companies, Mr. Leonard on behalf of Mr. Downs and Mr. O'Reilly on behalf of the public interest.

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I am satisfied that none of the submissions made to me should fundamentally affect the decision of the Tribunal to proceed to hear in public the evidence of Mr. Gogarty today. Accordingly I intend to proceed with the questioning of him immediately. I will prepare a written decision giving the basis on which I have come to this conclusion and deliver it at a later date, probably late tomorrow. Thank you. Mr. Gallagher --

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MR. GALLAGHER: Mr. Gogarty please.

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CHAIRMAN: As Mr. Gogarty is coming up, I think it would be of convenience to everybody and Mr. Gogarty and counsel, whether examining or cross-examining or questioning a witness, should do so from a seated position.

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MR. GALLAGHER: Thank you, Sir.

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JAMES GOGARTY, HAVING BEEN SWORN WAS EXAMINED AS FOLLOWS BY MR.

GALLAGHER:

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MR. GALLAGHER: Mr. Gogarty, can you hear me, Mr. Gogarty? Can

you hear me?

A. Yes.

1 Q. If you cannot hear me or if you don't understand any question I ask you, would you please tell me so?

A. Yes.

2 Q. If necessary, we can get a loud speaker perhaps positioned closer to you so you can hear what is being said.

A. Yes.

3 Q. If you don't understand or hear anything that's been said to you --

A. I beg your pardon?

4 Q. If you don't hear what is being said to you, will you please let me know?

A. Yes. Yes.

5 Q. Now, Mr. Gogarty, I know you are not as young as you once were or you are not as strong as you once were and I ask you to concentrate on the questions before you answer them to try to help the Tribunal as much as possible?

A. Yes.

6 Q. Did you swear an affidavit in relation to the matters which are the subject of investigation by this Tribunal on the 12th October, 1998?

A. I did.

7 Q. Can you identify that affidavit for me please. (Document handed to witness.)

A. Yes.

8 Q. Is that the original affidavit sworn by you on the 12th October?

A. Yes.

9 Q. Of 1998?

A. Yes.

10 Q. And do you have the exhibits there beside you also?

A. I beg your pardon?

11 Q. Do you have the exhibits that are referred to in your affidavit?

A. No.

12 Q. Would you hand them to Miss Howard please, perhaps if you hand them into the registrar.

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CHAIRMAN: Mr. Registrar, we will call that Exhibit 1.

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13 Q. MR. GALLAGHER: Mr. Gogarty, to the best of your knowledge and belief, are the matters that you have sworn in that affidavit true and accurate?

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MR. COONEY: With respect, Mr. Chairman, that's not evidence.

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CHAIRMAN: Just a moment. Please address me and not your colleague.

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MR. COONEY: I am addressing you, I am looking at you, Mr. Chairman, I object to that question. First of all, it's a leading question. Secondly, it's asking him to refer to the truth of something that's not been opened to this Tribunal and shouldn't be. It's an entirely improper question.

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CHAIRMAN: Mr. Gallagher, perhaps you could approach in a more roundabout manner.

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14 Q. MR. GALLAGHER: Mr. Gogarty, you swore that affidavit in order that it should be submitted to the Tribunal; is that correct?

A. I beg your pardon?

15 Q. Did you submit -- did you swear that affidavit in order that it would be submitted to the Tribunal?

A. Yes, yes.

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MR. COONEY: Mr. Chairman, that's another leading question.

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MR. GALLAGHER: I am entitled to ask leading questions.

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MR. COONEY: He is not entitled to ask leading questions of his own witness, My Lord. I understand that Mr. Gogarty is going to give sworn evidence in the normal fashion out of his recollection and not out of any documents, Mr. Chairman. With respect, he cannot be led with reference to a document which has no relevance.

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CHAIRMAN: He is simply being asked to identify a document.

There is nothing more than that.

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MR. COONEY: He has already done that. He is now being asked another question, Mr. Chairman, and he is being asked it in leading form.

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MR. GALLAGHER: Mr. Gogarty, what age are you on?

A. I am going on 82.

16 Q. Where were you born?

A. Kells, County Meath.

17 Q. Would you outline to the Tribuna details of your background, your education and your early years?

A. Yes. I beg your pardon?

18 Q. If you just tell the Tribunal about where you were born, your early education and your employment?

A. I was born in Kells, County Meath in 1917, the 20th May and I went to school locally to the Christian Brothers school and I left that with my Intermediate Cert and I went to work with my father in the building trade and I attended the local technical school in the evening time and I studied technical engineering and drafting and

drawing and Irish and I was working at the same time and that went on for some years and then in 1939, it was in September, or just before that, the war broke out and the army and then the Guards were looking for recruits and my mother was always anxious that the trade was so uncertain, I could maybe go for a Civil Service job and I applied for that and when they started recruiting then, I was taken in at short notice into the Taca Siochana which was a temporary police force in 1939. It was the day after the All Ireland Final and I was in Croke Park the previous day, I remember it, unfortunately we were beaten by Kerry but I was in the depot the next day as a recruit guard, Taca. We were kind of minor, not regular guards and I think I stuck that for two years but during that time, during that time I put me bit of training as a draftsman to some use in the Guards as well but then I thought that I had an opportunity of furthering myself and I was introduced to a teacher, I think he lived in Copeland Avenue near Fairview and I studied with him. I sat for the Matriculation examination, it was at that time, for Dublin University and I passed that exam but my interest was in engineering and it wasn't sufficient and you had to do a special entrance exam in mathematics and I did that and passed it and then I started, got into the university but at that time I applied to the superintendent to give me some facility so that I could do that and I got a tour of duty to go on duty at 8 o'clock at night until 2:00 in the morning without a break and then I go home to the barracks and I go to the university of a morning.

I didn't have to be in every morning at 9 o'clock but most mornings I would be in at 9:00 to attend lectures and then I would have to stay on to do some practical work. This was in Merrion Street now, that's years ago, and I got my first examination, okay, and then I went onto the second year and I sat the second

examination but I failed one subject, it was in graphics and it upset me a bit and it threw me back and I was, at the same time, my head wasn't too good and I made it a decision that I wasn't able to stick it for the time being, you know, when I got permission that I could resume it later on.

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So I continued on in the Guards and I used my talents with the drafting and going to court proving maps and that kind of thing but I had hoped to get into the technical bureau but it didn't work out that way and I applied to the superintendent to see could I get into the technical bureau and his reply was that to continue working the beat and it will come eventually but eventually anyway, in 1946 myself and another chap that was in the Guards, we decided to leave it and we'd go in to do a bit of building ourselves in Frank O'Brien and we did that. I lasted for a few years then, you know, and it didn't work out so well at that time. They were tough times, tough times but I went back on my tours for a while then and then I finished off a few jobs and when I was in 1942 and in '41 and '42 at that time in the university, what do you call him was studying at the same time, was studying at the same time, the same course, you probably heard of him, Dan McInerney, he was a Clare hurler and I had a reasonable relation with Dan. He gave me a job in 1954 out on a couple of sites, building sites, one in Rathfarnham and the other in St. Annes in Clontarf and I stuck that for two years and it was satisfactory but I got a bit of time off to do a little bit of study, you know what I mean, to brush up on my affairs so I decided in mid, in 1956 to resume my course in university. I got permission to do it so I left McInerneys and I pursued my course full-time but having left them, I was still chased by one of the McInerney, Frank McInerney and he persuaded me to work part-time and he would facilitate me again so that I could do the university and I did

that and I worked for him for about two years and I got my degree then in '58 and shortly after that I went in work with Higginbottom & Stafford, at that time I would say it was a leading architectural firm in building and property development in all Dublin. They were the architects for the Clontarf Estate and Vernon Estate and Howth, all that type of thing and Bill Malcolmson was also the architect to the, I think it was the Educational Building Society, you know, they had a very good clientele at that time.

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So that went on, I suppose, for nearly ten years but during that time, we had a number of clients, do you know -- you see we were, the architects did a number of estates and there were a number of state companies who were developing their hands and our firm was the architects to those estate companies, for instance, one of them was the Clonmel Estate, I remember it well. They built an awful lot of houses up in Ballymun and Ballymun Avenue, Ballymun, all that area, thousands of houses there and I took part in the design of roads and sewers and sites and all that type of thing and these were being let out to builders in small quantities, two or four sites a time. The fine was about 100 pounds a site and when you got and it sold, the lease was paid out and the transaction was completed but there was a, the firm at that time O'Shea and Shanahan were small shop fitters, O'Shea and Shanahan and the boss of that, the two bosses, they were equal bosses, were Pat O'Shea and Tom Shanahan and they were located in a place called Buckingham Street. I am going back a long time now, maybe fifty years or forty but Pat O'Shea eventually, I found out Pat O'Shea was a particular friend of Joe Murphy senior, he was a neighbour of his at home. I think they went to school together, grew up together, they were fairly close together but anyway O'Shea and Shanahan used to take a couple of sites from us, the

most they ever took would be four sites and this was mainly in Ballymun and then we had other sites on the southside and I think they went a bit bigger there and I think they took six sites out on the southside and they paid a deposit on that, two and six, but during that time, am I rambling now --

19 Q. No, go ahead.

A. During that time there, they were improving, you know, progressing and something happened that time whereby they got a chance of developing or buying or developing a site out in County Dublin near Swords called the Rathdeale in Swords and they had some contact with Senior about it.

20 Q. When you say Senior, who do you mean?

A. That would be Mr. Murphy and they came to some arrangement with him and he took a 50 percent equity in their company. I think at the time he paid 40,000 pounds in cash for it but as well as that, they got permission to take back the 600 pounds deposit they had paid for sites out in the southside because for them it was big money and we were the architects on that estate and developed that estate and the relationship with Joe Murphy continued then. They were doing work for -- he was buying land in Ireland and the context may be wrong but I am just trying to fill you in, I will go back if you want me to.

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Senior then was buying land in Dublin, all around County Dublin and in the city itself and I may be jumping a bit now, they were the building company, they would do the, they would do the architectural side of it as well, they would do the planning and the permission for planning. There was a man at that time who was secretary of Joe Murphy's company found in Ireland, a man by the name of Brendan Devine, an accountant whom I had great respect for and he ran them companies, he ran them companies. Am I going a bit too fast?

21 Q. Go ahead.

A. Anyway, I come on the '60s, I think '67 or '68 and in the course of that, Pat O'Shea approached me to say that Senior had bought a company in Dublin, he says, by accident. "By accident," that's the word he says and he told me the company, the company was George Miller and Sons Limited Structural Engineers. They were an old firm as well too that had grown up and they were in Santry but it was the second generation. The father, I think he had died at the time and the sons were running it and they were in a bit of trouble and they weren't agreeing among themselves and one of them was the -- George himself was a bit of a character, he was drinking heavily and having fits of business and drinking. He had seven sons, I think, six or seven sons. I think they were all working in the company. But his brother, Harry, a very nice man too as well, he was the financial man in the company and he had six or seven daughters but he had none of them working in the company and they weren't agreeing among themselves and George says to Pat O'Shea, "If I could get out, get rid of Harry, and get control of the company, I would be happy enough," you know, and that was how Pat O'Shea introduced Joe Murphy to buy George Miller and Sons Limited and having bought it, he was head-hunted because it was in a bit of mess. I don't want to go into too great detail with you, bit of a mess and Pat O'Shea recommended that he would talk to me and that's when he talked to me and encouraged me to join him but I was 51 at this time and, you know, it's a big step to take when you get to that age. I was only 10 or 11 years married at the time and we decided I would take it on.

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He promised me a number of promises and I worked very hard over the years and he made me joint managing director first for about a year and then he bought out, sorry he only took a 50 percent share in Millers first and then he took the whole lot and he made me

managing director. Could I take a drink of water?

22 Q. Certainly, yes.

A. When I did a bit of survey in the company then I told him to close it, there was too many problems, there was industrial problems, financial problems, relations with architects and engineers, all that kind of thing and he says, "No, we will stick it out, we will stick it out," and he says, "I will back you" and we stuck it out and they were tough times because at that time we weren't the leading firm. We were maybe the third or fourth firm in the structural steel business. Some very big firms at that time, Smith and Pearsons, Burke Higgins and McNulty in Tipperary, Keenan's in Bagnelstown, there were a good few of them, you know, but it was a tough business and they were all in trouble and you see they were running to Bord Teoranta for assistance and Murphy wouldn't do that and he says we will stick it out and beat them without any financial support from the Government and we stuck it out by sheer hard work and performance, I believe. We rationalised it, we cut out these representatives, agents, just put it into getting good performance, delivered on time, good quality work and that's how we recovered and we progressed then to take a lot of work more orientated towards the state or semi state sector, to work for the E.S.B. and Post Office and Telecom Eireann and those companies, they were good for the money if you did the work right, you were sure of getting it instead of in the cut and thrust of ordinary un-nominated contractors, you see, so we were becoming very successful.

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Am I wandering a bit?

23 Q. No. Would you tell the Tribunal about your own personal input at that time, the type of hours that you put in and the work you put into it?

A. I thought I worked very hard, very hard.

24 Q. Would you tell about your social life during that time, what social activities?

A. My social life would be home life. My wife and family. I didn't go out socialising. I go into work and I would work there for the full ten or twelve hours a day and I wouldn't go out for lunch but I would have sandwiches in the office. Anybody won't deny that and I would bring my files home at night, two or three files home at night and work on them and back in the morning I would be directing men what to do. We pulled it around and made it very successful and he was very pleased with that. I should say also that as he progressed in owning lands, he formed companies, he had some of the companies formed at the time but then he asked me to be nominee director of these companies and which I did and there were a good few companies. There finished up maybe ten or twelve or thirteen or fourteen; Grafton Construction Company, Finglas Industrial Developments, Finglas Industrial Estates, Turvey Estates -- I could go on for a long time and I think some of them were on the book -- all of the companies --

25 Q. Do you have any shareholding in any of those companies?

A. Oh no, sorry that's wrong -- he made me a nominee director but he also gave me one share, it was a nominee's share, you know, and I had to sign a document that -- you see, his companies were in trust and there was a document that Brennan Devine used to have, he would get you to sign it, that at the settler's request, you would resign your shareholding and your directorship at his request at any time, any time, so that you had no real control over your -- you were a director of course but that's on the record now there, there's a record there of the directorships I had but I had no shareholding as such, no equity as such.

26 Q. Do you have any beneficial interest in the lands yourself?

A. No, none whatsoever, none whatsoever and my only salary was from

Joseph Murphy Structural Engineers. Now, the setup was, you see, that Brendan Devine controlled all the companies as secretary and you could divide the work that he did. Grafton was the main company, at that time it was the holding company, it would do all the administration. You see, when he buys the lands --

27 Q. Who is he?

A. That's Senior.

28 Q. Yes.

A. He would buy the lands and go into the company and now those lands would be maybe agricultural lands or development lands or they may have been already zoned for development but what happened was the holding company would have the land and then his other company O'Shea and Shanahan would apply for permission to develop them and build houses on them, whatever it was, you see, the point and there was another man later on who would, there was at that time people that did the architectural work was Jack Manahan was an architect and you would see there he would do the plans and get the planning permission but sometimes he would be in his own name, Jack Manahan or sometimes Conroy Manahan and Associates and it transpired that Conroy was the leading man in the firm, Liam Conroy. He was the principal in the architectural firm and when they would get permission then, you see, that would be going through Devine and then the lands would have been on drawings broken down into individual lots and Grafton Construction Company would have signed, by prior agreement, a number of sites to the building firm O'Shea and Shanahan and they would develop them with the roads and houses and all that type of thing and sell them, do all that work and in turn then when they had a customer for them and finalise them, he would send the documentation through the solicitors to Brendan Devine or for to work out the applications for registry in the land registry so that eventually because they were mainly all leasehold at that time, mortgaged and so the

leases would be registered in the land registry and that's the way it operated.

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I would have no input into that, very minimal but my input would be most of the lands you see -- sorry, there were agricultural lands, you see, and naturally he wanted some income from them and his way of doing it was that he would let them on the eleven month system but when I went in, there was already a firm used to do that, a firm Duffy Mangan and Butler and the boss of that firm at that time when I went in there was Luke Duffy, the Lord have mercy on him, and he continued on that and I had relations with him that every eleven months Joe would tell me to chase the reletting of them and I would discuss it with Luke Duffy and he would tell me what price he could get and he would tell me what fields should be under grass or under tillage and there was a different price for tillage and we were also always anxious that we made the lessee on the eleven months system responsible for the fencing and maintenance except for any buildings so we would have little come back although you will always have some kind of problem because there will be such a thing as dumping, you know, unlawful dumping on the lands or up against the dumps in the lands, you know, and the next thing Brendan would send on a letter from the council to Murphy's with that complaint and Murphy's would then, I would get Frank Brennan or somebody in Murphy's to clear the rubbish, you know.

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Then when he would get the rents, he would get a deposit on the signing of the lease and I would pass that over to Brendan Devine who would lodge it. Later on, it was Gerry Downs that took over that aspect of it and then if there was interim payments, the same thing would happen, the cheques would come in by post and for my attention and I would hand them over to Gerry Downs and that's the

way they were dealt on the letting side.

But as soon as the lands would become, any of the lands would become zoned or permission of a building, O'Shea and Shanahan would take over as the operating company and they did that right up until they retired some years ago and stopped operating.

29 Q. You mentioned --

A. Am I rambling --

30 Q. You are fine.

A. Sorry.

31 Q. You mentioned Mr. Devine?

A. Yes.

32 Q. He is a chartered accountant?

A. Yes.

33 Q. He was partner in the firm of Ernst & Whinney; is that correct?

A. Yes, he finished up senior partner in Ernst and Whinney and he had been with other firms before that but all at that time. My understanding afterwards he was a personal advisor to Joe Murphy. It transpired eventually, whether I have said it in my affidavit or not, it eventually transpired he finished up as a trustee on the trust councils, you know, he had great influence with, in looking after Joe Murphy's affairs in Ireland anyway, you know. You see, that was Brendan Devine. He lived in Gracepark Road. His father was a colonel in the army, Colonel BJ Devine,. He was over the Irish Amateur Boxers Association at that time. He was a nice man.

34 Q. Can you tell the Tribunal how you first met Mr. Joseph Murphy senior?

A. With Pat O'Shea.

35 Q. And how your relationship developed?

A. He encouraged me, he put a proposition to me he would make me joint managing director and he wanted me to help run the company

and take over and he would back me up, you know.

36 Q. What company are you talking about now?

A. I am talking about Joseph Murphy Structural Engineers Limited.

37 Q. Yes. I think that that was the company formally known as George Milner?

A. Yes. After a year he took the full equity in it and he named it, on his advisors, named it Joseph Murphy Structural Engineers Limited. Can you hear me?

38 Q. I think that you later met a Mr. Liam Conroy; is that correct?

A. That's down the line, yes. You see, I went to work for him in 1968 and I devoted, I suppose, 110 percent of my time to Murphy because he wanted it all and we were very successful, you see, but as time went on in the late seventies, I told you about Jack Manahan being the architect and I don't know how they came together or whether they were together before that but Conroy Manahan and Associates surfaced on the scene, they were involved then in getting planning permission for lands in the Murphy group for designing them and had an input into letting them and getting the builders because when O'Shea and Shanahan stopped building, Conroy brought in a friend. He knew him as a big builder, he was a brother of a man that's in Telecom Eireann, Mulholland. There was a Mulholland in Telecom Eireann but his brother was a builder and he nearly took over where O'Shea and Shanahan left off because there was a row also between Senior and O'Shea and Shanahan. There was never a dull moment, as the fellow says, you know, but they took over and built houses, an awful lot of houses in north County Dublin for the Murphy group, for the Murphy group of companies. Yes.

39 Q. Did you resign as a director of that JMSE at one stage?

A. Yes. You see, when Conroy came in that time, some problems arose. I learned a lot more about it later but the problems were seemingly Senior, as well as Brendan Devine advising him, in the

late sixties, he was very big in England and making a lot of money, more luck to him, and he was making so much money that it is said he put his companies unlimited --

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MR. COONEY: That's hearsay --

A. Unlimited. This is in another document that -- I am only just saying what's in the other document. What was I saying there? That -- sorry, at that time and he had a firm in of accountants in England called Midgely Snelling & Associates, they were fairly big, they were accountants but they were fairly big tax consultants and they came in and they were advising him how to deal with his tax affairs, how to deal with the tax affairs in the most effective way and they advised him to retire and to put his companies into trust which he did. He formed a trust for all his English companies called -- I forget the name of it now, it's in the affidavit and he formed an Irish trust called Ashdale Limited, Ashdale. And this was, these were, I think what they call, that's the name for them, it's called a non discretionary trust whereby as a result of that, he had no legal entitlements to these companies or to the trust. That's my understanding of it. But he was making a lot of money and they also encouraged Midgely Snelling to join with them in an investment bank they were setting up in the Isle of Mann and that was called the International Finance Trust Corporation and they set it up and they were running it with some of their officers in the Isle of Mann and in the Isle of Mann and they encouraged a few investors and two of the main investors were Joe Murphy and John Murphy and my understanding and I believe it's borne out in evidence, that Joe Murphy senior I call him, that he invested about six or seven million in that, that's a way back in the sixties which was a lot of money.

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MR. COONEY: What's the relevance of this to the Terms of

Reference of the Tribunal? With respect, Mr. Chairman, this is supposed testimony of Mr. Murphy's private affairs which has nothing to do with the matters being inquired into by the Tribunal.

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CHAIRMAN: I think you find it probably leads in. As far as I am concerned, it's relevant for the moment I will, I am monitoring it at the moment to see how far it goes.

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MR. COONEY: What's its relevance, with respect, Mr. Chairman, to the Terms of Reference? These are Mr. Murphy's private affairs and not, in my respectful submission, to be publicised in this form. They have nothing whatever to do with the Terms of Reference.

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CHAIRMAN: Mr. Gallagher, I think we are wandering a little wide.

A. I think -- sorry, it's very important.

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MR. COONEY: Perhaps Mr. Gallagher might make the point.

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MR. GALLAGHER: With respect to this information, this witness's credibility has been challenged not merely today but on other occasions in terms that were on one view, somewhat less than restrained. Credibility will be crucial in the investigation in the inquiry in the determinations that you have to make and in order that you can evaluate the various witnesses, it seems to me that evidence should be heard because the evidence --

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CHAIRMAN: Carry on for the moment but please, please bring it back to the immediate subject matter of the inquiry as soon as possible.

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40 Q. MR. GALLAGHER: You were saying, Mr. Gogarty. Would you continue on please.

A. Yes --

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MR. COONEY: With respect, you, Mr. Chairman, you just ruled he should --

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CHAIRMAN: Get to the background of the situation.

Mr. Cooney, I have made a ruling.

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MR. COONEY: I am asking that the ruling be observed. You told Mr. Gallagher to bring the witness back to the Terms of Reference. He asked him to continue with something which implied he ruled to be outside the terms. Perhaps I am living in Alice in Wonderland but it seems to me, Mr. Chairman, if you say it's not relevant --

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CHAIRMAN: I didn't say it was not relevant. I said bring him back to the subject matter of the Tribunal as soon as possible. This background is relevant.

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MR. COONEY: What's the point of saying bring him back to the subject matter as soon as possible? It's either relevant or irrelevant and I would respectfully ask for a ruling on that.

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CHAIRMAN: I have already told you, Mr. Gallagher, to come back as soon as you can get from the background to the JMSE in Dublin.

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MR. GALLAGHER: I am seeking to establish the background in which Mr. Conroy became involved and the other matters which I say are

material.

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Would you deal, Mr. Gogarty, please with the circumstances in which Mr. Liam Conroy became involved with Mr. Murphy senior?

A. This is the part of it, this is important.

41 Q. Yes.

A. This is why he got involved in it. You see, because as I say, Senior had invested about six million in this trust, in international -- IFTC, International Finance Trust Corporation and his brother John, who was working independently in other companies, he invested roughly the same, you see, and Midgely Snelling were running in the Isle of Mann and lending money at good interest and at that time in the late sixties there was a bit of an oil crisis and that was big business there, shipping oil under difficult circumstances and there were speculators coming in and buying tankers and all that type of thing and they were lending money out for that work and it's very relevant but there's a report on it, an interim report, it went into trouble anyway and it went into liquidation owing a lot of money and Joe Murphy was in an awful state because he was losing six million and the worst of it was that he had invested six million and the six million was at risk. John had invested roughly the same but John had borrowed roughly six million so he was on the safe side and Joe was in trouble right to his neck and he started drinking and going into very serious nerves problems and at this time he was associating with Liam Conroy.

42 Q. I see. Well now would you tell us about --

A. On a social level and business level and socially, I believe, their main socialising was in the Irish Club in London which was big that time and you had a lot of big Irish men there having a good time.

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MR. COONEY: This is now gossip.

CHAIRMAN: Mr. Gallagher, you really must bring him back on a course.

A. Anyway, Liam Conroy came in and he was very helpful, I believe, and he liaised with Brendan Devine who was also very much concerned in it to see what they could do for Joe Murphy's money and the liquidation took a good while. What do you call him was the liquidator, he was well known at the time, Paddy Shortall, and he has a report and also A & L Goodbody, Conroy engaged A & L Goodbody as solicitors and there's a report from them I think in the documentation but after some years anyway, legal you see, you recovered most of his money, I think 70 or 80 percent of his money but he had been in woeful trouble mentally during that time which caused him a lot of problems, you see, and Conroy was taking over full responsibility, everything, his private and business affairs, that's what brought Conroy in and it was taking up so much of Conroy's time that in 1982 or roundabout '81 or '82. He insisted that he be there on a proper level, you know, full-time and that's how he came full-time into it. Eventually about 1983 it was well established that he was the chief executive of both the English trust and the Irish trust companies. He was stationed in Dublin. He lived in Sidmonton Court Road, resident in Dublin, very actively engaged on a day-to-day basis in the Irish work and commuting regularly to England and I understand he used to be in telephone conversation with Murphy senior daily, you know.

43 Q. Well at this time, in the 1980's, what was your position in JMSE?

A. Well, in 1982, as far as I am concerned, he was chief executive.

It was formalised in 1983 or the middle of '82.

44 Q. And what was your position at that time?

A. Well, you see, an incident happened at that time which worried me very much in the end of '81 or the middle of '81.

45 Q. If you just answer the question for the moment, we will come to that perhaps at a later stage.

A. I beg your pardon?

46 Q. Just to tell me as a fact what position did you have as of 1982 in JMSE?

A. Well, in May, 1982 in JMSE, I had resigned my managing directorship in early 1982 and it was formalised effectively from my birthday in '82. The 20th May, 1982 I ceased to be managing director.

47 Q. What was the date of your birthday again?

A. 20th May.

48 Q. I see. And what role do you have in JMSE after the 20th May, 1982?

A. Well, you see, arising from that incident I didn't want to have anything to do with JMSE, you know, and I wanted to get my pension, I wanted to get out.

49 Q. What age were you at that stage?

A. I was 65 in '82 and I was -- no, and Senior had promised me a pension at that time, do you know, but --

50 Q. When had he promised a pension?

A. In '82, but he was, he prevailed on me and his wife Una, a lovely girl, they prevailed on me to stay on for another twelve or eighteen months or two years, that they hoped to sell Murphy's and transfer the steel business to England and would I hang on for that twelve or eighteen months or two years and then at that time he said that he named a figure of about a half a million pounds that would set me up pension wise when I was officially retired and I was looking forward to that.

51 Q. Why was a pension so important to you at that particular time? What family, if any, did you have?

A. First of all I was 65, I was married to a girl, a fine girl but she was nearly 20 years my junior and we had six or seven in the

family at that time so we had a big responsibility and our finances weren't good because I was depending on my salary which, looking back, wasn't big at that time for the work I was doing but I was anxious to, if anything happened to me because I was suffering from diabetes too. If anything happened to me she would be reasonably secure in the family and that was my prime aim at that time and for years after and it broke my heart.

52 Q. What kind of salary were you getting as an employee or as a director of JMSE around that time?

A. At that time a little over 20,000 a year.

53 Q. Was that your total income around that time?

A. It finished up in 1983 at 23,000 odd, that was my total salary except I would get a bonus in August and December of 1,000 pounds each time, taxed.

54 Q. And were you also looking after the, what we will describe as the property companies, the Grafton --

A. What would happen is this, you see, any problem with the companies would be sent on to JMSE were the active company. JMSE would do the work. I would organise the work either through Frank Reynolds, he was construction manager, he would do all that work, get that work done and at the end of the year then, they had an interim accounting and adjusting for that and that was left between the accountants to do that work.

55 Q. Did you get any special payment or bonus for your work on behalf of those companies?

A. No.

56 Q. So you are saying that as of 1983, the total monies that you were receiving were of the order of 23,000 pounds?

A. That's right, that's right.

57 Q. And is it the position also that you didn't have any shareholding in any of the companies?

A. None whatsoever.

58 Q. And did you have any shareholding in any of the lands in question?

A. None whatsoever.

59 Q. For example, you have heard of the six lots with which --

A. I beg your pardon.

60 Q. You know or do you know of the six lots with which this inquiry is concerned?

A. Sorry, sorry the six lots, oh yes I do, yes.

61 Q. Did you at any time have any personal interest?

A. No.

62 Q. Or beneficial interest in those?

A. None whatsoever. None whatsoever.

63 Q. So the position then as I understand it is as of 1983, you were receiving 23,000 pounds approximately and you had been promised, you say, by Mr. Joseph Murphy senior a pension or equivalent of a half a million pounds?

A. That's right, that's right. And to induce me further, he set up a trust fund in Guernsey for me, for my family, a trust fund and he says he put 100,000 pounds into that. He says he put in 70.

64 Q. When did he set up that trust fund?

A. He started that in 1982, he started it.

65 Q. And how much money did he put into it on your behalf?

A. Well, I am not fully sure but I accept what he says, he said he put in 70.

66 Q. 70 what?

A. 70,000. Eventually. It finished up around about 100,000 with interest and all that, you know, but I settled that with the Revenue.

67 Q. Did you later withdraw that money?

A. I withdrew that money, yes.

68 Q. You say you settled with the Revenue, what do you mean by that?

You mean you declared it and paid your tax on it?

A. I paid all that money and I am clear with the Revenue for years

and years, you know.

69 Q. What was your personal relationship with Joseph Murphy and with his family around that time?

A. Well, it was very good. You would want to take it in the right sense, you know, I was very good with his wife who was very anxious over himself because he was going through a rough period and she was a bit upset about what she thought was the influence that Conroy had over him because Joe was drinking a lot and in fact, Conroy did say to me at one time that he had a difficulty in saying Joe considered committing suicide over the IFTC affairs, that would give me an indication of the psychological control.

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MR. COONEY: That is not fair to Mr. Murphy.

A. There's evidence to back up this.

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MR. COONEY: Let's hear the evidence or not gossip or hearsay.

A. That's not gossip, there's evidence to back it up. My heart was broken for nothing.

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CHAIRMAN: Could we get on to the business side of affairs please.

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MR. GALLAGHER: Well, with respect, sir, it's important to establish the relationship, if any, that existed between Mr. Gogarty and Mr. Murphy, in my respectful submission, it is relevant.

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CHAIRMAN: I am giving you a very fair amount of latitude and I would appreciate an effort to come to terms with the business side of affairs.

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70 Q. MR. GALLAGHER: Now, how did your relationship with -- sorry,

could Mr. Gogarty have some water please. Would you like a rest?

- A. I'll take a few more minutes but I wanted to say to follow what you are saying to me, what I am saying to you is this, is that in addition to that, Senior and Conroy facilitated me in my anxieties and request to be divorced from the day-to-day operations of Murphy's by sending me to England where I was there for two years.

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CHAIRMAN: I think I will rise for about a quarter of an hour to give --

- A. I was two years in England in a steel business they had bought and I started to run it in England and we called that AGSE, Archbel Greenwood Structural Engineers Limited. Now, at the start of that, I ran it in England for two years under -- the managing director at that time was Marcus Sweeney and I commuted there and go home every Friday evening and go back every Monday morning for two years and I think, I got that off the ground and that's operating today, I believe, I don't know for sure but seemingly during that time back in Dublin, Liam Conroy was involved in a problem with the Gaiety Theatre Dublin of which I was a director, I was a nominee director of that as well but at that time there was a lot of trouble over that between Senior and Eamon Andrews, between Senior and Eamon Andrews. When Senior bought it, again if you could believe Pat O'Shea, he bought it out of chance. He didn't realise that it was nearly what we will call a preserved theatre, you know, because there was part, a lot of land he bought in South King Street, what do you call the street at the side and back up again, the Toby Jug and the Chatham Street and them streets, that square, South King Street and back up Chatham Street, he bought all that, Sunbeam Wolsley as well and the theatre was in the middle of them but anyway in the dispute with Andres -- you see, Andrews got a lease, at that time he had a

solicitor acting for him, he has gone now, the Lord have mercy on him, James Marshal, but I believe the problem was that legally Andrews only had a three year lease on the theatre at a low rent and Joe wanted to get him out at the end of the three years, that's why he had said to him but seemingly a problem arose and the Lord have mercy on him, James Marshal made a hames of it anyhow, that instead of making sure that Andrews was physically out of the theatre on the day of the third year, he kept inside it there and he claimed to be in possession and they went to court and Andrews got a longer lease, I think it was a 21 year lease which broke Murphy's heart at that time and I wouldn't blame him, at a low rent again but the lease required that the letters patent be renewed and that the lessee would be responsible for all repairs inside and outside and maintenance and even carpets and all that sort of thing but Andrews let it go into rack and ruin and there was an ongoing battle between them about getting it back and they never got it back until Conroy started on it and he succeeded in getting it back and he got it back in around about March, 1984 and he brought me back from Fleetwood, I came back from Fleetwood at the end of April, 1984 and he told me that JMSE would be responsible for the refurbishment of the theatre under my project management and I looked after the refurbishment of the theatre, to get it refurbished.

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MR. GALLAGHER: Sir, can I suggest, Sir, this might be appropriate time to take --

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CHAIRMAN: We will break for ten minutes.

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MR. COONEY: What time do you intend to --

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CHAIRMAN: I would anticipate rising at four o'clock, there or

thereabouts. Mr. Cooney, what timescale would you have in the ordinary day, 10 o'clock --

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MR. COONEY: Half ten I think.

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CHAIRMAN: All right.

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THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

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CHAIRMAN: While the witness is coming up to the witness-box, I have been thinking about the time of sitting and taking all factors into account, and I don't want to go into them in public obviously, I would suggest sitting a total sitting period of from 10 o'clock in the morning to 1 o'clock with appropriate short breaks because for the moment at least, the maximum duration which is likely to be fruitful. Now, if there's very severe disagreement with that proposition, I will obviously listen to it with sympathy but I am trying to fit in everything to try and get a reasonable degree of work done and at the same time not to impose a strain, either upon people dealing with the witness or the witnesses themselves. Thank you for your cooperation.

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MR. LEAHY: In relation to two of my clients, Mr. Michael Bailey and Mr. Thomas Bailey that are here, Sir, in response to a subpoena, would it be possible for them to be excused, if the are wish to be excused to return to the Tribunal at any stage if they are required.

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CHAIRMAN: Now as far as people as I may call players in the frame, if I may call them such, they are obviously subpoenaed here for a particular purpose but again there's no rigidity, it's a

matter for their own comfort and courtesy to hear the evidence being given and naturally enough, we would advise you and your colleagues if a particular individual is required on a particular day. Subject to that, they are free to come and go at their general convenience but within that reason or if you are going out of the country, for instance, perhaps they would be kind enough to advise us as to their telephone number where they can be contacted.

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MR. LEAHY: There will be no difficulty in that regard.

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CHAIRMAN: Mr. Martin, does that apply to your client?

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MR. MARTIN: That would be a similar position in relation to my client as well.

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MR. COONEY: It also applies to Mr. Joseph Murphy senior. He is available to give evidence at 24 hours notice.

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CHAIRMAN: That's the point. We will keep in touch with your solicitor and yourself and appropriate arrangements again within convenience and again when we come to that point, we would expand the hearing time somewhat, not necessarily that much but we will still expand it somewhat. Thank you for your cooperation. Now, Mr. Gallagher.

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71 Q. MR. GALLAGHER: Mr. Gogarty, before the break, you were telling the Tribunal about your involvement with the English company in the period 1983 and 1984 approximately?

A. Archbel Greenwood Structural Engineers Limited.

72 Q. Yes. That's the name of the company?

A. I worked there from mid '82 to April '84.

73 Q. What kind of work were you doing and over what period? Where were you living at that time?

A. I would commute over there and stay in a local hotel there and come home of a Friday night or Saturday, whatever the case would be to see my family and then I go back the Monday morning. I did that for two years, April 1984.

74 Q. When was this company taken over or acquired by the Murphy organisation?

A. By Conroy and with my assistance in England. It was a company that was, I suppose the right name is liquidation but it wasn't working, it wasn't operative but he bought the building and the land and the plant and I got it going from scratch again, I recruited local labour with the existing managing director there, Mr. Greenwood, you know, and we took on staff and then we got on tender lists and all that type of thing and it was during that period we got on the lists of contractors to semi Government state bodies and one of them was the nuclear plant in Sellafield and that was done very discreetly because I think back home they were averse to nuclear involvement at all but it was quite big in England and nothing wrong with doing it, it was business and Murphy was quite satisfied to do it and that went on for a couple of years, with Senior coming from Dublin until the thing got going there, and as I say, Conroy brought me back in April '84 when he got the theatre back and he wanted to refurbish and I should mention at that time I thought now that I was going to get my pension when I came back and instead of that he said, "Well this is a very tight project that has to be done" and there was a six month programme for it, that it had to be refurbished and opened by November, 1984 which was six months. It was tough work.

75 Q. All right. Before you come to that, I just want you to stay with the English company for a few moments if you would please.

A. Yes.

76 Q. You said the company was in liquidation when it was acquired?

A. Yes.

77 Q. When you left it in 1984, what was its approximate turnover?

A. I could say, I suppose you are talking about some few million pounds but it built-up from there, because later on then they extended it, physically built onto it, you know, but it was generating a lot of work for Dublin during a bad period, economically here back home.

78 Q. When you say it was generating work for Dublin, what exactly do you mean?

A. It would get a job as subcontractor.

79 Q. To supply steel, is it?

A. To supply steel and erect it.

80 Q. Dublin would supply a fair share of it. Do you mean JMSE?

A. Yes, and also JMSE would furnish labour for the erection. JMSE workers worked on the site, they worked on Sellafield.

81 Q. And are these workers who were sent over from Dublin from Santry?

A. From Santry, Santry's sites in our country and the labour force would commute and stay over there and do the work.

82 Q. And all this happened at a time when you had effectively retired; is that right?

A. Well, I was, I should have been retired by right, you know.

83 Q. You were 66 and 67 years of age at this time?

A. Well, I was 67 when I came back. I should say that I raised the question of pension again but the atmosphere seemed they wanted me for some reason to be in the company, you know.

84 Q. Who is they?

A. What?

85 Q. Who is they?

A. Conroy and Senior. Conroy and Senior. I should mention too as well, it's relevant later on that about the IFTC bank, the two names will crop up later on the principals of that bank and they

were responsible for the liquidation and that was Edward Wadley the senior accountant, he was principal accountant in Midgeley & Snelling and Roger Copsey who was an accountancy firm in Dublin, he was a partner with Wadley and they operated that and Murphy eventually got back most of his money but he got it back through what they call the professional indemnity of Midgeley Snelling but they had to cough it off and Wadley and Copsey were reported to the Institute of Chartered Accountants for malpractice.

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MR. COONEY: Mr. Chairman, it appears that this witness feels free to introduce --

A. It's not my word at all, it's evidence, it's there.

Malpractice. It's there in black and white. The Institute's findings.

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MR. COONEY: Mr. Chairman, it seems to this witness --

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CHAIRMAN: Mr. Cooney --

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MR. COONEY: It seems this witness feels free to hop from subject to subject as he thinks fit even it's if nothing to do with the questions being asked by counsel for the Tribunal. I respectfully ask, Mr. Chairman, that you direct the witness to direct his answers to the questions which he is asked and further, Mr. Chairman, I ask you that you direct Mr. Gallagher to keep some control on this witness. I mean, he has already said some of the most outrageous things. He is now defaming Mr. Copsey in the course of his evidence in a comment which had nothing whatever to do with the question which was asked.

A. I am not --

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CHAIRMAN: Please, let us have some order in the building. Mr.

Cooney, I am doing my best. The problems of an elderly witness are well known to you and to me. I certainly take this evidence very much de bene esse as you will appreciate. I am competent, I hope, to discriminate between what has any relevance and what has no relevance. At the same time, my problem is this and it's a very simple problem, I have to try and understand the background relationship between these people in many ways dictated and I don't mean in any way pejorative by the way your clients approached the problems in statements so I have to understand what is the background, how these two people interrelated to understand -- his evidence and no doubt in due course to understand your clients' evidence and I agree that he is going, ranging wide and far and I am doing my best to control him and I would ask Mr. Gallagher and I understand Mr. Gallagher's problems also to try and control him in terms of restraining him going outside the parameters of what might be relevant to Dublin.

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MR. COONEY: I think, Mr. Chairman, with respect, of course I appreciate that you would make a distinction when the time comes between what's relevant and irrelevant but in the meantime, this witness here is defaming people right, left and centre in front of the media and this would be broadcast. That's not fair, Mr. Chairman. It's an abuse of this Tribunal. And can I respectfully suggest, Mr. Chairman, that you speak directly to Mr. Gogarty and tell him that he must not raise any topic from the witness-box other than one which is put to him by counsel for the Tribunal because his last answer had nothing whatever to do with the question which was asked of him by Mr. Gallagher and I suspect, Mr. Chairman, that Mr. Gogarty is taking advantage of his position and his age to do that and it's most damaging to people who are not here and have no notice of this accusations.

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MR. GALLAGHER: It should be stated that Mr. Copsey is represented by Mr. Cooney and Mr. Copsey has provided a statement to the Tribunal and will no doubt be giving evidence in due course to the Tribunal.

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MR. COONEY: It's nothing to do with that.

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CHAIRMAN: Just a moment, you weren't interrupting --

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MR. COONEY: Sorry.

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MR. GALLAGHER: No doubt Mr. Copsey will give evidence in due course.

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CHAIRMAN: Mr. Copsey, as I say, is a person in the frame in a broader sense of the word but nonetheless, there are worlds of relevance, we should try, if possible -- now I appreciate your problems and I have sympathy for them but I must maintain a degree of discipline within the Tribunal and --

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MR. GALLAGHER: There are, as you will appreciate, Sir, issues arising as to credit which may not be otherwise perhaps be as relevant.

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CHAIRMAN: There's no doubt about that.

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86 Q. MR. GALLAGHER: In any event, I will pass on from that. Mr. Gogarty, you started to tell the Tribunal about your involvement in 1984, I understand it, with the refurbishing of the Gaiety Theatre?

A. Yes, I referred earlier there to the IFTC and I think it's very relevant to what I am saying. For God's sake it's the truth. I

am not making any allegations at all. I have sworn it and Mr. Wadley and Mr. Copsey were investigated by the Institute of Chartered --

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MR. COONEY: It must be stopped.

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CHAIRMAN: Mr. Gogarty. Will you please listen to me.

A. Sorry.

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CHAIRMAN: Will you please listen to me. Now I perfectly understand that you have a number of, shall we say, personal matters which you feel aggrieved about. I am doing my best to get evidence relating to your relationship with JMSE essentially in Dublin.

A. I can't --

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CHAIRMAN: Can you hear me?

A. I can't hear that.

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CHAIRMAN: I beg your pardon, I am trying to ensure that the evidence which you give is essentially related -- I am trying to get evidence or confine the evidence to your relationship essentially with Mr. Murphy both senior and/or otherwise in relation to his Irish company. Now, I appreciate that the English company had a relationship to the Irish company but what I want to know and essentially what we want to know here is your situation in the Irish company from somewhere around 1986 onwards.

A. From 1986 onwards.

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CHAIRMAN: Somewhere around, I don't want to fix it too tightly because you may have to go back a little but that's essentially

what we want to do, so please --

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MR. GALLAGHER: Mr. Gogarty, if you would just at the same time answer the question I am putting to you. If you don't understand or cannot hear me, then please let me know.

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I want you to tell the Tribunal about your involvement in the refurbishing of the Gaiety Theatre and the individuals you met and dealt with at that time?

A. Yes, well Joseph Murphy Structural Engineering were the company that refurbished the Gaiety Theatre. I was the project engineer paid by Joseph Murphy Structural Engineers and all the wages, as far as I am concerned, and materials were defrayed by Joseph Murphy Structural Engineers and adjusted at the end of the year through the balance --

87 Q. Adjusted in what way?

A. Between the accounts.

88 Q. An inter-company arrangement?

A. An inter-company financing.

89 Q. All right.

A. Now they did have -- there was other companies subcontracted to Joseph Murphy and there was other companies formed that Mr. Conroy formed, Reliable Construction Dublin Limited and it was supposed to have a major role in it but it hadn't, it was on the sign board and it was used as a device, as far as I was concerned, to ameliorate the costs involved.

90 Q. I want you to tell me about the individuals you met at that time, individuals you dealt with at that time.

A. Well, the main dealer with the -- I was the project engineer, Jack Manahan of Conroy Manahan Associates was the architect who did all the designs and supervision on the architectural side, Jack Manahan and Mr. Conroy was the principal of that company and

he was a regular visitor to the complex while it was being done and had a major input into decision-making and advance design, all that type of thing. He also brought, towards the end when it was coming to -- it opened around about the 1st or 2nd November, 1984 and he brought in people, well known people to look at it, to see the work that he did because there was a lot of money spent on it. They say it was over three quarters of a million pounds, you know, and there was a number of notable people brought in and I remember one or two of the names but one of the men that came to see it, he brought to see it was George Redmond of, he was assistant city and county manager for Dublin and he brought him to see it and after looking over it, we adjourned to the Westbury Hotel and had a cup of tea there, it was general conversation but it was evident from the conversation that Mr. Conroy, Mr. Sweeney were more than sociable, friends.

91 Q. Mr. Whom?

A. Mr. Conroy and Mr. Redmond were very aware of each other's business and work and Mr. Redmond was aware of Murphy's interests on the development and that type of thing so it was general conversation and he just mentioned it towards the end of it that to see that Mr. Redmond got a ticket for the box in the theatre when there would be any major show on and I pass that word on to Mr. Gerry Downs who was the group chief accountant and who looked after the day-to-day running of the theatre on the finance side, you know.

92 Q. You mentioned --

A. That finished in 1994.

93 Q. Sorry?

A. Admittedly, it ran on with what they call a snag list, you know, there's bits and pieces to be done and there was also always complaints about regulations, because you see at that time the letters patent had lapsed for some years and Conroy, through the

company, I believe, had applied for a renewal of the letters patent and went on for some years, for renewal of the letters patent and that application went to the Attorney General and he, in turn, I believe, issued what he called a schedule of dilapidations and these would have to be all complied with and certificates issued under the various regulations such as public health and safety and fire and all that type of thing, you know.

94 Q. When did the work finish?

A. We finished -- well it opened in the first week in November, 1984.

95 Q. All right. You mentioned that you met Mr. Redmond and Mr. Conroy in the theatre as I understand it and you then went to the Westbury Hotel where you had coffee and perhaps a drink?

A. Tea, I don't drink coffee.

96 Q. Do you drink anything stronger than coffee or tea indeed?

A. I do at home.

97 Q. Would you be a regular drinker?

A. I wouldn't bother me head outside. Not during working hours, no.

98 Q. Do you drink on a regular basis?

A. Sure I can't drink.

99 Q. I see.

A. I can't drink.

100 Q. During the time you were involved in the refurbishing of the Gaiety Theatre, did Mr. Murphy senior have any involvement with you or meetings with you or discussions with you?

A. He had very little. I would meet him in Winton Lodge, he lived in Winton Lodge a lot of the time along the canal there, you know.

101 Q. Yes. How often would you meet him how infrequently would you meet him?

A. He would send for me -- I wouldn't ring him, he would ring at any time of the night or the morning, you know. He hadn't much

involvement at that time in the day-to-day operations. Conroy -- at least personally Conroy maintained daily contact with him but I think he was suffering from the aftermaths of the IFTC affair. It was ongoing in fact at the time, you know. I looked for the pension again thinking it was going to be done and that was put off for the six months while I was doing the theatre and then with the theatre done then, Conroy bought a house in what do you call that road in Ballsbridge, Anglesea Road, was it Anglesea Road? I think it was, in Ballsbridge and he refurbished it and he sold it to a friend of his, a fellow who was a solicitor, a best man at a wedding, Noel McDonnell, he sold it to him and that took a bit of time and all the time I was hoping that when that would be finished, I would be on the -- I would be out.

102 Q. Were you involved with refurbishing of the house in Anglesea Road?

A. Yes, oh yes.

103 Q. What role did you have in the refurbishing of the house?

A. Just the project engineer, you know.

104 Q. And was this being done at the same time as the Gaiety was being refurbished?

A. No, after, except during that time there would be an odd visit to the Gaiety where there might be complaint from the Local Authority about fire regulation or something like that and in fact my anxiety was that the theatre hadn't any fire cert or hadn't letters patent and I was annoyed over that and I brought it to Mr. Conroy's attention and he said to leave that to him.

105 Q. How would you describe your relationship with Mr. Murphy senior during the early 1980's and with his family during the early 1980's?

A. Oh very good with the families, I thought, you know, very good with the families. I knew he had his problems but I felt at the day he was backing me, I may have disagreed with him on a number of things but I had fair respect for him, for a man that had come

up from very humble beginnings and made himself into a multi-millionaire, the only thing I had against him was he was holding on to me for so long. I should have been enjoying myself from 65 with my family and yet I had to go back and keep going and hoping for the best and this was getting to me that I was very upset over that. There's no doubt about that.

106 Q. Did you ever meet Mr. Murphy when you were in the Gardai Siochana as a Taca Garda. I understand he was also a member of the Gardai Siochana?

A. Well if I met him, I doubt if I met him personally when I was in it because I knew of him because he was in Store Street and I was in Clontarf. Now I think he wasn't more than eighteen months or two years in it.

107 Q. What age was Mr. Murphy approximately?

A. He is maybe about six months older than I am.

108 Q. So you had common background in many respects?

A. We had, yes.

109 Q. And you were about the same age?

A. About the same age, yes.

110 Q. About that?

A. About that and well, I used to go to the house when I meet him and we would have a bit of craic over the old times, you know. At that time I should have said that my understanding of it and I am fairly sure of it, that the management of Murphy's themselves back over in Santry, that's the steel business and erection, was overseen by Conroy's man who he brought in. He brought in a new team with him in 1982, he brought in Sweeney as managing director, Marcus Sweeney and brought in Gerry Downs as chief accountant and he brought in a few others and they were a block. I was the only director, what I really call a Murphy man from 1982 to 1986 because Joe wouldn't attend meetings at that time other than by phone, you know.

111 Q. Did you attend company meetings during that time?

A. Well, yes. Funny, the set up was that Conroy, he had, he would have what they call a monthly management meeting and you wouldn't know whether it was a board meeting or a management meeting but it would be dealing with AGSE and JMSE the same day and as usual they took place every month, one month in Dublin and the second month in Fleetwood alternatively and this went on, it's well documented, all that's well documented.

112 Q. AGSE is the English company?

A. It was the English company, yes, it's registered in England but it's a subsidiary. Conroy, when he came in in 1982 and then 1983, he formed a company, a holding company. He split the trust completely and he set up a company called Lagos Holdings Limited and it in turn owned about ten or twelve Irish companies, including Grafton and all the land holding companies but the main operating company was JMSE Engineering and the Gaiety, even Gaiety Theatre Dublin wasn't operating. He set up a company, I wasn't director of it, Gaiety Theatre Enterprises Limited to run the theatre and he brought in his own directors, he brought in Fred O'Donovan and a few other people, you know, at that time.

113 Q. Were they all subsidiaries of Lagos Holdings?

A. Yes, all Lagos subsidiaries.

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CHAIRMAN: Mr. Gallagher, you seem to be changing topic just at this moment in time. We are coming up to the four o'clock mark and I think Mr. Gogarty may well be getting a little weary. Mr. Gogarty, thank you very much for being, for coming in and giving evidence. Can I see you tomorrow morning -- can you hear me? Can I see you tomorrow morning here at 10 o'clock? Can you hear me?

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MR. GALLAGHER: Mr. Gogarty, Mr. Justice Flood is asking can you

be here tomorrow morning at 10 o'clock?

A. I'll be here at 9:00 if he wants me.

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CHAIRMAN: I don't know that I will.

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MR. GALLAGHER: Thank you Mr. Gogarty.

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CHAIRMAN: Just before I rise, first of all, Mr. O'Reilly, I should have expressed my thanks to you for your appearance on behalf of the public interest and I would like to indicate to you as to the other people, that I have no objection to you attending at times which you consider appropriate if it is manifest that the public interest is going to come on line, in other words, if we know in advance, we will advise you of that fact but it's up to you to maintain contact but I don't see it's on line all the time. It's a matter for your discretion.

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MR. O'REILLY: I am obliged.

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CHAIRMAN: With that, I propose to adjourn the sitting until tomorrow morning at 10 o'clock.

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THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY, WEDNESDAY,
13TH JANUARY 1999 AT 10AM: