

1 THE HEARING RESUMED AS FOLLOWS; ON THE 1ST OF FEBRUARY,  
2 1999:

3 .

4 CHAIRMAN: Good morning everyone.

5 .

6 MR. GALLAGHER: Mr. Gogarty please.

7 .

8 MR. JAMES GOGARTY CONTINUED IN DIRECT EXAMINATION BY MR.  
9 GALLAGHER AS FOLLOWS:

10 .

11 1 Q. MR. GALLAGHER: Good morning, Mr. Gogarty. On the last

12 day we were here you gave evidence about the proceedings

13 which were commenced in the High Court, arising from the

14 dispute in relation to the pension and the dispute in

15 relation to the monies paid by the ESB. And I opened some

16 affidavits that were sworn in those proceedings, finishing

17 with the second or supplemental affidavit sworn by you.

18 .

19 I think that following on the signing of, the swearing of

20 those affidavits an agreement was reached between your

21 solicitors, McCann Fitzgerald, and Gerard Scallan and

22 O'Brien, whereby the sum of £515,000 plus accrued interest

23 was transferred to Gerard Scallan and O'Brien on their

24 undertaking to hold same until the determination of the

25 proceedings in relation to the pension; is that correct?

26 A. That's correct, yeah.

27 2 Q. And I think the Statement of Claim was subsequently served

28 in the proceedings on the 20th of March, and eventually a

29 settlement was arrived at between your client, between you

30 and between your former employers; is that correct?

31 A. Well, I believe it was reached, yes.

32 3 Q. I think that it was agreed that you would be paid certain

1 monies, that your pension would be purchased and that the  
2 balance of which remained from the £300,000 would, in fact,  
3 be remitted to you. Can I refer you to a letter of the  
4 10th of May, of 1990, written by Mr. Sheedy, it is on  
5 reference 1419, written on your behalf to Mr. Strahan. I  
6 think it was agreed that both sides pay their own costs and  
7 that the sum of £284,943.36 would be paid to the Norwich  
8 Union in respect of a pension. And the appropriate  
9 deductions in respect of the PAYE and PRSI on the sum of  
10 £515,056.64 being the balance of it and Dirt Tax.

11 .

12 Was that agreement in fact entered into? And I think if I  
13 can refer you to page 1427 it may assist you in recalling  
14 what happened, and indeed 1429.

15 .

16 I understand that the pension that was purchased for you  
17 was purchased in the sum of £284,943.36, and that in  
18 addition you received a total of £105,826.12, which as set  
19 out in the form of receipt and discharge to be found on  
20 page 1429 in Book 4, Book 5.

21 .

22 If you look at the letter of the 5th of June from Gerard  
23 Scallan and O'Brien, it is 1427. They write to Mr. Sheedy  
24 in the following terms;

25 .

26 "I enclose a draft form of receipt and a discharge to be  
27 signed and sealed by your client.

28 .

29 I propose to issue to you two cheques in favour of your  
30 client in the sum of £6,926.06, being the balance of the  
31 sum of pension monies after deduction of tax and Government  
32 levy, and a cheque in the sum of £98,900, being the

1 proceeds of the ESB monies with tax and Government levies  
2 deducted.

3 .

4 I propose to pay the sum of £8,130.58 in respect of the  
5 balance of the pension monies and the sum of £116,100 in  
6 respect of the balance of the ESB monies representing the  
7 deductions for tax and Government levies to Copsey Murray  
8 to enable them to make the appropriate payments to the  
9 Revenue Commissioners and I trust that this is in order and  
10 I would be grateful if you would confirm.

11 .

12 Please return the receipt in discharge to me."

13 .

14 At the bottom of that page there are a number of  
15 calculations which show how the various figures were  
16 arrived at. They show the net figures in respect of the  
17 pension at £6926.06 on the left-hand side; ESB -  
18 98,900.06. When they are added together they arrived at  
19 125,230.58 -- so that pension money that I have already  
20 referred to were, in fact, the monies you have received in  
21 the final settlement from JMSE; is that correct?

22 A. Yes, well I accept that.

23 4 Q. And on page 1429 you and your wife signed, sorry, you  
24 signed a form of receipt and discharge in the following  
25 terms; "I, James Gogarty, hereby acknowledge receipt of the  
26 sums of 6926.06 and 98,900 which sums I accept in full and  
27 final settlement of all claims comprised in High Court  
28 proceedings issued by me against Lajos Holdings Limited and  
29 Joseph Murphy Structural Engineers Limited under record No.  
30 15481P/1981 and in consideration of the payment to me of  
31 the aforementioned sum by Gerard Scallan and O'Brien,  
32 solicitors on behalf of Lajos Holdings Limited and JMSE

1 Limited. I hereby agree absolutely and finally to discharge  
2 the said Lajos Holdings Limited, JMSE Limited and/or any  
3 associated company and Joseph Murphy and/or any company  
4 owned or controlled by him and/or any company owned or  
5 controlled by any trust established by the said Joseph  
6 Murphy and/or any servant or agent of the said companies  
7 from all claims by me of whatsoever nature related to or  
8 connected with my claims for the provision of a pension and  
9 the payment of commission on monies received from the ESB  
10 and pursuant to the provisions of an agreement made on the  
11 3rd of October, 1989.

12 .

13 I hereby irrevocably instruct my solicitors to take all  
14 such acts or steps as are necessary to secure the  
15 discontinuance of the said proceedings without any order  
16 for costs.

17 .

18 I hereby irrevocably undertake not to commence any  
19 proceedings in respect of the claims referred to above".

20 Dated the 7th of June, 1990.

21 .

22 Now, can you cast your mind back to that time, in or about  
23 the summer of June of 1990, July of 1990? You were to be  
24 employed as a consultant with the company?

25 A. That's correct.

26 5 Q. And did you in fact perform certain works for the company  
27 in that capacity?

28 A. I did.

29 6 Q. What works were they, generally speaking?

30 A. Well generally speaking, vetting tenders and looking at  
31 claims both in Dublin and in Fleetwood, claims under  
32 contracts and basically that was the kind of work I was

1 doing.

2 7 Q. Did you --

3 A. I should mention that there was some things happened before

4 that in April of 1990 when I was basically working as a

5 consultant there.

6 8 Q. Yes, what are they?

7 A. Well, you must remember that, I think I mentioned it

8 before, that both Frankie and I had reservations about

9 working with Copsey, and at the end of April of 1990

10 Frankie gave me a document that was issued by the United

11 Kingdom Institute of Chartered Accountants called --

12 .

13 MR. COONEY: I don't think this has any relevance at all,

14 Mr. Chairman.

15 .

16 CHAIRMAN: Just a moment. Mr. Gallagher, how is this

17 relevant?

18 .

19 MR. GALLAGHER: Well, it is relevant in relation to, sorry

20 I hadn't intended to introduce this at this stage, but if

21 you ask the question is it relevant, it may well be

22 relevant in relation to not only the witness' state of mind

23 and state of knowledge at the time but it may be relevant

24 in another respect, but I respectfully ask that we pass

25 from that just at the moment.

26 .

27 CHAIRMAN: We will pass from the whole subject because, is

28 there any notice to --

29 .

30 MR. GALLAGHER: There is notice.

31 .

32 CHAIRMAN: Where does it occur in the affidavit?

1 .

2 MR. GALLAGHER: The document in question is in Book 4.

3 .

4 CHAIRMAN: No, it is not that, I am referring to the  
5 affidavit. Where is it referred to there?

6 .

7 MR. GALLAGHER: I suspect the document the witness is  
8 about to refer to is not in an affidavit, it is an excerpt  
9 from a publication that he was, that was given to him. It  
10 is page 1386 in Book 5.

11 .

12 This is --

13 .

14 MR. COONEY: Does Mr. Gallagher intend opening this  
15 document, Mr. Chairman?

16 .

17 CHAIRMAN: First of all I want to find out what it is.  
18 Would you be kind enough to point out what portion?

19 .

20 MR. GALLAGHER: 1386.

21 .

22 CHAIRMAN: That appears to deal with a number of matters.  
23 Which column?

24 .

25 MR. GALLAGHER: The middle, No. 4 in the middle of the  
26 second column.

27 .

28 CHAIRMAN: You simply say this document was received by  
29 him, is that it? That's the effect of it.

30 .

31 MR. GALLAGHER: I say I hadn't anticipated the document  
32 being introduced at this stage, but the witness has

1 referred to it and we can establish where he found it and  
2 come back to it at a later stage.

3 .

4 CHAIRMAN: First of all as I see it the document is a  
5 publication of some kind, not an official document as such  
6 and certainly I don't accept you can prove it by just  
7 asking the witness did he receive this document from  
8 somebody. If you are going to prove this document you are  
9 going to have to prove the report.

10 .

11 MR. GALLAGHER: With great respect, Sir, it may not be  
12 necessary to prove it. If for example the contents of the  
13 document are relevant and if the person who is named in the  
14 document concedes that what is contained is accurate then  
15 that would suffice, in my respectful submission. For that  
16 reason I don't intend to raise it at this stage save to,  
17 now that it has raised by Mr. Gogarty, how and in what  
18 circumstances he came to be in possession of this.

19 .

20 MR. COONEY: With respect, Mr. Chairman, this witness is  
21 here to answer questions put to him by counsel for the  
22 Tribunal and not to answer questions ab extraneous. Now,  
23 Mr. Chairman, he is being allowed to use the witness-box  
24 for the purposes of --

25 .

26 CHAIRMAN: Let's not start going back to argument.

27 .

28 MR. COONEY: I am referring to this episode, Mr.  
29 Chairman.

30 .

31 CHAIRMAN: I am talking about the admissibility of this  
32 document, that's what we are dealing with.

1 .

2 MR. COONEY: That's my objection to it.

3 .

4 CHAIRMAN: At the moment I see no relevance of this  
5 document to the matters we have been dealing with. It may  
6 arise in cross-examination and that may well arise for all  
7 I know, it may well arise in cross-examination of another  
8 witness, again I don't anticipate that, but at this moment  
9 in time the status of the document -- first of all it would  
10 have to be proved in a very formal way. It is a very  
11 serious document as far as I see, and I don't think it can  
12 be done by just a publication in, even an official  
13 magazine.

14 .

15 MR. GALLAGHER: Well, I don't seek to prove it at this  
16 stage.

17 .

18 CHAIRMAN: If you don't seek to prove it we will leave it  
19 alone and if it arises we will discuss the proper means to  
20 prove it. Now, I don't want to indicate I am ruling it out  
21 as such, I am ruling it out at the moment because there is  
22 no appropriate evidence being advanced.

23 .

24 MR. GALLAGHER: Perhaps, just establish this and I put it  
25 no further than this; would you permit me ask this witness  
26 whether the contents of this document had an effect on his  
27 general attitude to matters and the matter in which he  
28 approached his dealing with people thereafter?

29 .

30 MR. COONEY: With respect, Mr. Chairman, that's absurd  
31 because the question implies information or knowledge of  
32 what is contained in the document. You have already held



1 that the document is inadmissible, so any question based on  
2 inadmissible evidence is equally inadmissible, with  
3 respect.

4 .

5 CHAIRMAN: At the moment I don't think the evidence is  
6 admissible, but it can be dealt with in another way, and  
7 perhaps yourself and Mr. Cooney can discuss the matter as  
8 to whether this form of proof would be adequate. It is a  
9 matter for Mr. Cooney. I couldn't admit it at the  
10 moment.

11 .

12 9 Q. MR. GALLAGHER: Thank you, Sir.

13 .

14 Mr. Gogarty, in my earlier question I asked you if you  
15 were, you had provided consultancy services and if so,  
16 generally the nature of those services?

17 A. Well, to be quite candid I can't go on with that until I  
18 show you that this document affected, seriously affected  
19 both mine and Mr. Reynolds' relationships with Mr. Copsey  
20 in pursuance --

21 .

22 MR. COONEY: With respect, Mr. Chairman, the witness must  
23 be stopped. He listened carefully to the discussion  
24 between counsel for the Tribunal, myself and yourself, he  
25 knows perfectly well you have made a ruling, he is  
26 attempting to breach a ruling in order to denigrate  
27 somebody.

28 .

29 CHAIRMAN: Thank you. Mr. Gogarty.

30 A. I am not, I am trying to tell the truth, warts and all. If  
31 the public are interested -- it affects my whole attitude  
32 to this, I come in here warts and all. What is Mr. Cooney

1     afraid of? He wants warts and all. What are you afraid  
2     of? I am not afraid of anything.

3     .

4     CHAIRMAN: Mr. Gogarty.

5     .

6     MR. COONEY: This can't be allowed.

7     .

8     CHAIRMAN: Mr. Gogarty please. I am simply saying that  
9     at this moment in time the document in question cannot be  
10    admitted in its present form. That's what I am saying.

11    Now that's a matter of law. That I can't bend in anyway.

12    Either a document is properly proved or it isn't, and

13    that's the situation. It may well have affected you, and

14    you don't have to read the document, you can tell us what

15    your relationship with Mr. Copsey and your colleague, Mr.

16    Reynolds, were at the time, but not based on some document

17    that is floating around here at the moment.

18    .

19    MR. COONEY: With respect, Mr. Chairman, the question that

20    was asked was to give details of the consultancy work he

21    did in 1990, straightforward matter of fact. If he would

22    confine his testimony, that I say with great respect, Mr.

23    Chairman, these difficulties would not arise.

24    .

25    CHAIRMAN: All right. What consultancy work were you

26    doing at the time?

27    A. Sorry, I have already stated and sworn here earlier on,

28    that I was working under very serious reservations about

29    Mr. Copsey and so was Frank Reynolds, that's all I am

30    saying, but further to that --

31    .

32    CHAIRMAN: We will leave it at that.

1 A. But further to that, that affected my work in the  
2 consultancy, because it was -- this finding of the  
3 Institute of Chartered --

4 .

5 MR. GALLAGHER: Mr. Gogarty.

6 .

7 CHAIRMAN: Mr. Gogarty, I have ruled that that document  
8 and that finding is not admissible in evidence here and  
9 now.

10 A. Could I consult --

11 .

12 CHAIRMAN: No, you may not consult with anybody. When I  
13 make a ruling it has to be obeyed by everyone.

14 A. Am I in contempt?

15 .

16 CHAIRMAN: No, you are not.

17 A. Because I will go up to Mountjoy. All I want is the truth,  
18 warts and all. If they are afraid of the truth, warts and  
19 all I can't help that.

20 .

21 MR. CALLANAN: I wonder if I could have a minute with, Mr.  
22 Gogarty?

23 .

24 CHAIRMAN: All right, I will rise for 10 minutes.

25 .

26 MR. COONEY: I know that Mr. Gogarty is not under  
27 cross-examination but at the same time the advice he is  
28 getting --

29 .

30 CHAIRMAN: Mr. Cooney, I am making a ruling that I am  
31 raising for 10 minutes.

32 .

1 MR. COONEY: May it please you, Mr. Chairman.

2 .

3 THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS

4 FOLLOWS:

5 .

6 A. Could I say a word?

7 .

8 CHAIRMAN: Certainly.

9 A. I am very sorry, Your Honour, if I appeared to be taking

10 issue with you, but I am very upset.

11 .

12 CHAIRMAN: Now, just relax there and we will look after

13 and see the matter is done fairly and done by the rules,

14 please.

15 .

16 Now, thank you very much.

17 .

18 10 Q. MR. GALLAGHER: Mr. Gogarty, I want to deal with the

19 discontinuance of the actions that had been taken and the

20 events that arose following the discontinuance of these

21 proceedings. I think notice of discontinuance was served

22 by McCann Fitzgerald on the 13th of August, and that

23 severance is 1449 in Book 5. And I think about this time

24 also Mr. Copsey resigned as a Director of the companies in

25 the Murphy, Joseph Murphy Group of companies. 1456, there

26 is a letter of the 17th of August confirming his

27 resignation from Joseph Murphy Structural Engineers,

28 Grafton Construction Company, Reliable Construction

29 Company, Wexburn Limited, Gaiety Theatre (Dublin) Limited,

30 Gaiety Stage Productions Limited, Archbell Greenwood

31 Structural Engineers Limited, Lajos Holdings Limited.

32 .

1 What role, if any, were you playing in these companies or  
2 what work were you doing for any of these companies about  
3 this time?

4 A. Well apart from, as I said vetting tenders and looking at  
5 claims I was doing very little, because of the developments  
6 that resulted in Mr. Copsey resigning.

7 11 Q. Well, did you have a role in that resignation? What part  
8 did you play in it?

9 A. Well, I showed my concerns to Mr., to Senior, that it was  
10 difficult for me, apart from Frankie Reynolds, continuing  
11 to carry out by consultancy work, vis-a-vis him because of  
12 the developments.

13 12 Q. And what was Mr. Murphy's reaction to that?

14 A. Well, he asked me what would he do? Can I get somebody to  
15 replace Copsey?

16 13 Q. What was your response?

17 A. I said that wouldn't be my job, but I said I would do my  
18 best, and I think what happened was, I got a name of  
19 another independent accountant which was proposed to Mr.  
20 Murphy and to Junior, and Frank Reynolds knows about this,  
21 and I think he was taken on later on, you know, but I  
22 hadn't much -- do you see, Mr. Copsey resigned in August,  
23 you see? And things got worse then between that and  
24 October with Junior, and it is on the record there that  
25 after October both Junior and Frank Reynolds told me in  
26 writing, not to do the slightest bit of work without  
27 previously being cleared by them -- there is documentation  
28 to that effect.

29 14 Q. All right, we will come to that in a moment. Now, I think  
30 that following Mr. Copsey's resignation from the company  
31 you looked to him for a P60 in respect of the money you  
32 were paid under the settlement?

1 A. Actually before he resigned, I sought it from the company.

2 15 Q. All right.

3 A. And he issued the tax documentation.

4 16 Q. And is that a letter, were they enclosed in a letter or  
5 with a letter of the 28th of August, of 1990, to you? 1457  
6 of Book 5.

7 .

8 "Dear Jim, I understand from Joe Murphy that you are  
9 looking for some details from me regarding your own  
10 remuneration. I checked my files, and it appears that you  
11 were due P60's in respect of the amount of £215,000 which  
12 you were paid under the terms of your agreement.

13 .

14 I enclose P60's in respect of the above. If you require  
15 further information, please either write to me or telephone  
16 me"?

17 A. That's correct.

18 17 Q. Were you furnished then with three -- four P 60s, in fact  
19 at 1459 to 1462 inclusive, all dated the 27th of August, of  
20 1990, and purporting to be, to show that your employer for  
21 -- in the first one was a Grafton Construction Company  
22 Limited, and that your total pay for the year the end of,  
23 to the 5th of April, of 1990, was £43,479.

24 .

25 Another P60 from Mr. Copsey dated the 27th of the 8th,  
26 1990, showing your employer as Grafton Construction  
27 Company, and showing your total pay in the year to the 5th  
28 of April, of 1989, at 14 -- sorry £147,588.

29 .

30 Third P60, also dated the 27th of the 8th, 1990, showed  
31 your employer as Wexburn Limited and your earnings, total  
32 pay for the year to the 5th of April, of 1990, at

1 £14,360.

2 .

3 And the fourth P60 from the Reliable Construction (Dublin)

4 Limited, which was dated 27th of the 8th, 1990, and

5 purported to show that your total pay for the year to the

6 5th of April, of 1989, was £9,573.

7 .

8 Is that correct?

9 A. Well, they weren't correct.

10 18 Q. No, but are they the P60's that you found or that you

11 received from Mr. Copsey?

12 A. Yes, yes.

13 19 Q. Now, had you ever worked or been paid by Grafton, Wexburn

14 or Reliable?

15 A. Never, never.

16 20 Q. What did you do when you received those P60's?

17 A. I showed them to my accountant, Seamus Howley, and to my

18 solicitors, and they both advised me that I shouldn't use

19 them at all in my dealings with the Revenue.

20 21 Q. Did you instruct your solicitor to write to Mr. Copsey

21 arising from those P60's?

22 A. I did.

23 22 Q. Did he write on the 7th of September, of 1990, 1467 in Book

24 5, in the following terms:

25 .

26 "Dear Mr. Copsey, Mr. Gogarty has passed to me your letter

27 of the 28th of August, which he received on the 4th of

28 September.

29 .

30 All the P60 forms which you enclosed with your letter are

31 incorrect. The payment which was made to Mr. Gogarty in

32 respect of the ESB claim was effected by one payment from

1 JMSE Limited. The P60 forms which you enclosed reflect  
2 payments from a number of the associated or subsidiary  
3 companies in the Group. Also one of the forms reflect a  
4 payment of £147,588 from the Grafton Construction Company  
5 Limited in the year ending 5 April, 1989. Another form  
6 reflected a payment of £9,573 from Reliable Construction  
7 (Dublin) Limited for the year ending 5 April, 1989. In  
8 fact the payments to our client was effected in May of this  
9 year, i.e. the current financial year.

10 .

11 Please let us have the appropriate P60 form from JMSE  
12 Limited for the full amount of the ESB payment to our  
13 client and confirm that the payment was made to our client  
14 in the current financial year. Please confirm that the  
15 income tax which was deducted from the payments to Mr.  
16 Gogarty has been paid over to the Revenue Commissioners".

17 .

18 Did you subsequently -- did you subsequently have  
19 conversations with Mr. Maher and with Mr. Reynolds in  
20 connection with your P60's and these outstanding issues?

21 A. I don't think I had discussions, I am not sure. Mr. Sheedy  
22 was handling it.

23 23 Q. Can I refer you to a letter of the 19th of September, of  
24 1990, 1472, from Mr. Sheedy to Frank Reynolds.

25 .

26 "Dear Mr. Reynolds, I refer to my letter of the 7th  
27 September and my subsequent telephone conversation with Mr.  
28 John Maher.

29 .

30 Mr. Maher told me that he would pay over to the Revenue not  
31 later than Friday last the monies which had been deducted  
32 in respect of the income tax from the payment made to Mr.



1 Gogarty arising from the commission earned by him on the  
2 monies due by the ESB in relation to the Moneypoint  
3 contract. Please confirm that the monies paid have in fact  
4 been paid to the Revenue Commissioners.

5 .

6 We have requested that you let us have a P60 form relating  
7 to the payment made in May of this year by JMSE Limited to  
8 Mr. Gogarty.

9 .

10 You have requested that Mr. Gogarty agrees to accept a P60  
11 form reflecting payment of the ESB commission to him from  
12 Lajos Holdings Limited. Mr. Gogarty would be happy to  
13 assist you if he can. However, as Mr. Roger Copsey  
14 personally communicated with the Revenue Commissioners both  
15 on behalf of JMSE Limited and on Mr. Gogarty's behalf (but  
16 without his knowledge or consent) in respect of the payment  
17 which was made to Mr. Gogarty and as we are not aware of  
18 what information or statements were made to the Revenue  
19 Commissioners by Mr. Copsey we would require Mr. Gogarty's  
20 inspector of taxes to confirm to us that his full knowledge  
21 of the proposed alteration to the arrangements which have  
22 been implemented between JMSE Limited and Mr. Gogarty and  
23 that such action will not result in any additional income  
24 tax becoming payable by Mr. Gogarty."

25 .

26 The next letter is a letter from Mr. Frank Reynolds to Mr.  
27 Sheedy. It is a letter of the 21st of September, and it  
28 appears to be received on the 25th of September, of 1990 --  
29 before we go into that letter can you say what the  
30 relationship was between yourself and Mr. Reynolds and the  
31 Murphy Group generally?

32 A. My relationship with Frankie was good at that time, just

1 the same as before.

2 24 Q. What were they with the Murphy Group generally about the  
3 P60's and other issues that had arisen?

4 A. I was concerned, as you know, about the risk I was taking  
5 in accepting them, and I was told not to take them under  
6 any circumstances or to use them under any circumstances.

7 25 Q. Right. Mr. Reynolds wrote as follows on the 21st of  
8 September:

9 .

10 "I refer to your letter dated 7th September and subsequent  
11 letter dated 19th September in connection with the above  
12 case.

13 .

14 We would like to point out that it is not quite correct of  
15 you to say that Mr. John Maher said he would pay over to  
16 the Revenue not later than Friday last the monies in  
17 respect of income taxes in relation to Mr. Gogarty. What  
18 Mr. Maher did on Thursday 13th September was to ask you for  
19 your agreement for the payment of these monies from Lajos,  
20 and he pointed out that if you agreed to this on that day  
21 he would make the payment to the Revenue before close of  
22 business on the same day. As you did not agree to the  
23 arrangement the monies were not paid by us on the said  
24 date.

25 .

26 Due to the deteriorating relationship between the JMSE  
27 Directors and executives with Mr. Gogarty over this matter,  
28 and indeed as suggested by Mr. Gogarty himself, we then  
29 handed the matter to our financial and legal people in  
30 liaison with Mr. Copey to direct and progress this  
31 matter.

32 .

1     However, as advised to you by Mr. Maher over the telephone  
2     yesterday we wish to confirm that all PAYE and PRSI  
3     deductions from Mr. Gogarty's salary have been paid over to  
4     the Revenue Commissioners.

5     .

6     In order to maintain our on-going relationship with Mr.  
7     Gogarty, all matters related to the above will be dealt  
8     with on our behalf by Mr. Brian Strahan of Gerard Scallan  
9     and O'Brien.

10    .

11    We trust that this clarifies our position on this matter."

12    .

13    Now, do you -- did you feel from your point of view that  
14    there was a deterioration in the relationship between JMSE  
15    Directors and executives with you over the matters?

16    A. Yes, yes.

17    26 Q. In September of 1990, did you submit a schedule of expenses  
18    which you were claiming for consultancy services with Lajos  
19    Holdings Limited for April and May of 1990?

20    A. I would yes, I would accept that.

21    27 Q. 1475 and 1485?

22    A. Will I read it?

23    28 Q. Now, just to confirm you in fact did submit claims in  
24    respect of consultancy work that you say you did for the  
25    company?

26    A. Yes.

27    29 Q. And do you say that you did this work?

28    A. Yes.

29    30 Q. And were you paid this money, can you remember?

30    A. I don't think I was until it went to court. Now, I am not  
31    sure, but I don't think so.

32    31 Q. Did you -- on the 28th of September, of 1990, or shortly

1 thereafter, submit an account, a type written account by  
2 Archbell Structural Engineers Limited for consultancy  
3 services for year end 28th of September of 1990, page 1496?

4 A. Yes.

5 32 Q. Now, in your earlier evidence, Mr. Gogarty, you said you  
6 had been given a cheque by Mr. Bailey at a meeting you held  
7 with him, and my recollection is that you fixed this  
8 meeting at the end of August of earlier September of 1990;  
9 is that correct?

10 A. That's correct, yes.

11 33 Q. And in the light of the documentation that you have seen in  
12 the last, here today and on previous days, can you recall  
13 with any great certainty or precision the date on which  
14 that meeting took place?

15 A. Well, it was -- I am reasonably satisfied it was late  
16 August or early September of 1990, because it followed  
17 shortly after the meeting in the Swiss Cottage with myself  
18 and Junior and Frank Reynolds and Mr. Bailey and his  
19 brother, in the Swiss Cottage.

20 34 Q. Well, had the relationship between --

21 .

22 MR. ALLEN: Chairman, if I may, Sir, on a point of  
23 clarification. Mr. Gallagher refers to -- if I took him up  
24 correctly, refers to documentation which this witness has  
25 seen within the last few days, today and in the last few  
26 days, without identifying that documentation.

27 .

28 CHAIRMAN: I understood it to be the documentation you had  
29 just gone through?

30 .

31 MR. GALLAGHER: Yes, it is.

32 .

1 CHAIRMAN: That's what I understood.

2 .

3 MR. ALLEN: So be it, if that's --

4 .

5 CHAIRMAN: That's what I understood Mr. Gallagher to be  
6 doing. Pardon me.

7 .

8 MR. ALLEN: I see, so it is on that basis.

9 .

10 CHAIRMAN: On the basis of the correspondence, and as I  
11 understand more or less fixing the date relating to shortly  
12 after a meeting with your client, among others, your client  
13 at the Swiss Cottage. I know no more than that. I just  
14 heard that evidence, that's as I understood it.

15 .

16 MR. ALLEN: Thank you, Chairman.

17 .

18 35 Q. MR. GALLAGHER: Mr. Gogarty, I think you subsequently  
19 received three or four forms of P60 from Gerard Scallan and  
20 O'Brien. Can I refer you to page -- perhaps in the first  
21 instance 1499 of the 3rd of October. It is a letter from  
22 Mr. Gerard Sheedy to Mr. Brian Strahan. It reads as  
23 follows:

24 .

25 "Mr. Gogarty has been having some difficulty with your  
26 clients in relation to the P60 form which he requires in  
27 relation to the commission paid to him in relation to the  
28 money which he recovered from the ESB. As you know the  
29 money was paid to Mr. Gogarty in May of this year by Lajos  
30 Holdings Limited. Mr. Reynolds, Managing Director of JMSE  
31 sent Mr. Gogarty a number of P60 forms not which do not  
32 correctly reflect what has taken place one of the forms

1 referred to a payment of £147,588 which was said to have  
2 been made by Grafton Construction Company Limited for the  
3 year ended 5th April 1989. And then another form referred  
4 to a payment of £9573 from Reliable Construction (Dublin)  
5 Limited for the year ended 5th April 1989.

6 .

7 I have spoken with Mr. John Maher, an accountant with JMSE,  
8 and have informed him that Mr. Gogarty requires a P60 form  
9 from Lajos Holdings Limited reflecting the payment which  
10 was made to him by Lajos Holdings Limited in May 1989 --  
11 A. 1990.

12 36 Q. Sorry, I beg your pardon.

13 "I believe that Mr. Maher is agreeable to issue such a  
14 certificate.

15 .

16 Mr. Maher mentioned that he has referred the matter to  
17 you. I cannot imagine that there can be any difficulty in  
18 furnishing Mr. Gogarty with the appropriate P60 form from  
19 Lajos Holdings Limited, and I would be grateful if you  
20 would confirm to your clients that the certificate can and  
21 should now be issued."

22 .

23 That is a response to a letter from Mr. Strahan who says on  
24 page 1500:

25 .

26 "We have been requested by our clients to write to you in  
27 relation to the provision of P60's.

28 .

29 As you are aware payment was made pursuant to the terms of  
30 an agreement dated the 3rd October 1989.

31 .

32 The amounts paid to your client have been borne by some

1 subsidiary companies of Lajos Holdings Limited. We  
2 understand the P60's have already been sent to your  
3 client. Our clients have been advised by the Directors  
4 Division of the Revenue Commissioners as to the correct  
5 fiscal year for which the P60's should have issued and the  
6 respective companies are satisfied that they have fulfilled  
7 their legal obligations by issuing P60's for the fiscal  
8 year ended the 5th April 1990, and according we would be  
9 grateful if you would arrange to return to us the P60 form  
10 sent to us under cover of Roger Copsey's letter of the 28th  
11 sent to the Revenue.

12 .

13 There seems to be a line missing at the bottom of mine --  
14 "The companies have issued replacement P60 forms which we  
15 enclose and we are instructed that the appropriate PAYE and  
16 PRSI payments have been made to the Revenue" .

17 .

18 And three P60 forms were enclosed with that letter.

19 .

20 On the 5th of October then Mr. Strahan of Gerard Scallan  
21 and O'Brien wrote to you in connection with your claim for  
22 expenses, and at a time that the company was negotiating  
23 with Revenue Commissioners concerning mileage rates.

24 .

25 On the 9th of October Gerard Scallan and O'Brien were  
26 written to by Mr. Sheedy, 1507:

27 .

28 "We are writing to you in response to your letter of the  
29 5th of October -- sorry, I should say for completeness the  
30 letter of the 5th of October from Gerard Scallan and  
31 O'Brien on 1505:

32 .

1 "Dear Gerry, thank you for your letter of the 3rd,  
2 October, 1990. You will by now presumably have received  
3 my recent letter enclosing P60 forms in respect of the  
4 payment made to your client and I trust that these are now  
5 acceptable".

6 .

7 And he wrote as follows: "We are writing to you in  
8 response to your letter of the 5th October.

9 .

10 As we have previously pointed out to your clients the  
11 commission due to our client in respect of the ESB contract  
12 was paid to Mr. Gogarty in May of this year by Lajos  
13 Holdings Limited. What Mr. Gogarty requires is a P60 form  
14 reflecting that payment in this current financial year.

15 We can not understand how such a simple issue can become so  
16 confused.

17 .

18 The P60 forms which you enclosed and those which Mr.  
19 Gogarty received earlier, reflect payments to him from  
20 companies other than Lajos Holdings Limited, which is  
21 incorrect, and for years prior to the current financial  
22 year, which is also incorrect.

23 .

24 We understand that accounts have been finalised and agreed  
25 with the Revenue Commissioners for subsidiary companies  
26 within the Lajos Group and which reflect payments to Mr.  
27 Gogarty in respect of the ESB commission for years not  
28 alone prior to the completion of the agreement between  
29 Lajos Holdings Limited and Mr. Gogarty in October 1989, but  
30 prior to the date on which agreement was reached between  
31 Mr. Gogarty and the ESB. We would welcome your  
32 explanation for this.



1 .  
2 Once again representations have been made by your clients  
3 to our client's inspector of taxes without his prior  
4 knowledge or consent. Please let us have copies of the  
5 correspondence which has been exchanged between your  
6 clients and the Revenue Commissioners and in particular a  
7 copy of the determination which has been made the directors  
8 division of the Revenue Commissioners and to which  
9 reference was made in your letter.

10 .  
11 We would point out that to you, that the income tax which  
12 should have been deducted from the payment which was made  
13 to Mr. Gogarty in May 1990 should have been at the rate of  
14 53% and not at the rate of 58% (which would have been  
15 correct if the payment had in fact been made prior to 5th  
16 April 1990 which was not the case) Our client's request is  
17 perfectly straight forward, he requires a P60 form in  
18 respect of the payment of £215,000 made to him by Lajos  
19 Holdings Limited in May 1990".

20 .  
21 Now, on the 12th of October or thereabouts, did you receive  
22 a letter from Joseph Murphy Junior, under the Lajos  
23 Holdings Limited note paper? It is a letter of the 12th of  
24 October of 1990, it is:

25 .  
26 "I would advise that no further expenses of any nature  
27 whatsoever are to be incurred by you on behalf of Lajos  
28 Holdings Limited or any other of the Murphy Group companies  
29 effective from Monday 15th October 1990, unless and until  
30 further prior approval thereof is obtained in advance and  
31 authorised either by myself or by Frank Reynolds. Yours  
32 fatefully Joseph Murphy, Director. "

1 A. That's correct.

2 37 Q. Can you explain the circumstances, the reason why that  
3 letter was written?

4 A. Well, the situation had worsened. The relationships  
5 between us had worsened. I have, I am in no way critical  
6 of Frank Reynolds, I can understand his position, that he  
7 was now faced in a somewhat similar situation to myself,  
8 over the years where we had both given loyal service to Mr.  
9 Murphy and he was now Managing Director and big control,  
10 and he had his own personal family interests to look after  
11 and he was doing what I had done, served Mr. Murphy  
12 loyally, and, of course, I now was dispensable. But I  
13 don't hold that against him.

14 38 Q. On the 16th of October Mr. Reynolds wrote to you in  
15 connection with the expenses claim and he wrote as follows;

16 .  
17 "Please find attached a copy of the letter of the 12th of  
18 the 10th 1990 as advised to me by J. Murphy Junior. I would  
19 also like to advise that where approval for expense claims  
20 is requested from me that I in turn would have to obtain  
21 advance approval from Mr. Murphy.

22 .  
23 Assuring you of my best attention at all times.

24 .  
25 Yours faithfully Frank Reynolds, Managing Director" .

26 .  
27 Did you reply on the 17th of October to Mr. Murphy, 1527?

28 Did you reply in the following terms:

29 .  
30 "Dear, Mr. Murphy I received your letter undated. I also  
31 received a letter from Frank Reynolds to inform me that he  
32 would require your prior approval in order to let me have

1 his prior approval for expenses which I might otherwise  
2 incur on behalf of Lajos Holdings Limited. There are a  
3 number of points which I would like to make arising from  
4 your letter and the letter from Frank Reynolds.

5 .  
6 My agreement with Lajos Holdings Limited is to act as  
7 consultant to that company and to any other company in the  
8 Lajos Group. It does not include my acting as consultant  
9 for any of the "Murphy Group companies" to which you refer  
10 in your letter. If I accept instructions to accept work  
11 on behalf of a company other than a company within the  
12 Lajos Group, I will charge appropriate fees for such  
13 work.

14 .  
15 As I am not provided with an office or with secretarial,  
16 telephone and other services, any work which I understand  
17 must necessarily be carried out from my home. Should it  
18 become necessary for me to undertake any travelling or to  
19 make any telephone calls this will involve me in  
20 expenditure. The effect of your letter is that I must not  
21 make any journeys or make any telephone calls without your  
22 prior approval I am at a loss to understand how this  
23 arrangement will work, in effect I will be unable to make  
24 contact with any third party, whether by telephone or by  
25 correspondence or by visiting them personally without your  
26 prior approval.

27 .  
28 Furthermore I will not be able to initiate a telephone call  
29 to you to require your approval as this would require the  
30 use of my private telephone for business purposes, thus  
31 incurring an expense on behalf of a company within the  
32 Lajos Holdings Group.

1 .  
2 I am, of course, prepared to abide by your instructions and  
3 will continue to do so. However, my concern is that I  
4 will not be able to exercise my function as a consultant in  
5 a proper manner if I am to be subject to the constraint  
6 which is contained in your letter.

7 .  
8 I have submitted an account to Lajos Holdings Limited in  
9 respect of expenses which I have incurred in the course of  
10 my work as a consultant for the Lajos Holdings Group. I  
11 have also submitted a statement of fees due to me in  
12 respect of work which I have undertaken on behalf of AGSE,  
13 which is not within the Lajos Group. I have not yet  
14 received reimbursement for those expenses or payment of the  
15 fees which are properly due to me. I would request that  
16 you arrange for the immediate payment to me of the amounts  
17 due.

18 .  
19 I am particularly concerned that I have not been able to  
20 obtain a P60 in respect of the payment which I received  
21 from Lajos Holdings Limited in May last in connection with  
22 the ESB Moneypoint contract.

23 .  
24 I must submit my income tax return for this year not later  
25 than 1st November and must include that payment in my  
26 return. The P60 which I have previously requested will  
27 form a central part of my return and I would request that  
28 you would arrange for a P60 to be issued to me without  
29 further delay in respect of that payment. In the event  
30 that the form is not made available to me so that I can  
31 submit my income tax return in due time, I will hold Lajos  
32 Holdings Limited responsible for any loss which I may

1 suffer particularly interest which may be charged by the  
2 Revenue authorities" .

3 .

4 Mr. Gogarty -- Mr. Murphy replied to that letter on the  
5 19th of October, of 1990, 1531 in the following terms:

6 .

7 "Dear Mr. Gogarty, I thank you for your letter dated 17th  
8 October 1990 and apologise or not dating my previous  
9 letter. A dated copy of this letter has since been  
10 presented to you, accompanied by a letter dated from Mr. F.  
11 Reynolds dated 16th October 1990.

12 .

13 In regard to the matter of your fees in respect of work  
14 undertaken on behalf of AGSE, you seem to have  
15 misunderstood your agreement dated 3 October, 1989. The  
16 agreement is clearly between yourself, Lajos Holdings  
17 Limited, subsidiary companies or holding company,  
18 associated company, Group companies, JMSE Limited and AGSE  
19 Limited. Therefore, the work undertaken on behalf of AGSE  
20 Limited is within your consultancy agreement and no extra  
21 fees will be paid.

22 .

23 There are no references to an hourly rate of £30 for work  
24 carried out for AGSE or a business mileage rate of 60 pence  
25 per mile with Lajos Holdings. Therefore these accounts  
26 will not be paid to you. I understand that you have  
27 already been paid one expense claim in this respect.

28 This, I can inform you, was overpaid and was made without  
29 my authority. However, I will not seek to recover this  
30 over payment.

31 .

32 Any telephone expenses you wish to recover will have to be

1 documented properly, i.e. to whom the call was made and in  
2 what respect. In addition the only travelling expenses that  
3 will be paid are those that are properly vouched and have  
4 my advance approval and are incurred by you in the  
5 performance of your services as a consultant.

6 .

7 I do not understand your concern with regard to the P60's  
8 as these have been sent to your solicitors and the relevant  
9 payments made  
10 to the Revenue" .

11 .

12 I think you replied on the 24th of October, 1990, to Mr.  
13 Murphy, page 1533:

14 .

15 "Dear Mr. Murphy, My solicitor, Mr. Gerald Sheedy, of  
16 McCann Fitzgerald has replied to your letter of 19th inst.

17 .

18 I am now replying to the final paragraph of your letter.

19 .

20 The commission in respect of the settlement of the ESB  
21 claim was paid to me in May 1990 since this payment was  
22 made to me in the tax year 1990/91 the rate of tax to be  
23 deducted from the payment is the rate in force for this  
24 year, i.e. 53 percent. The rate of tax deducted by your  
25 company was 56 percent. You should, therefore, refund to  
26 me an amount equal to 3 percent over deducted i.e. £215,000  
27 pounds at 3 percent. Equal to £6,450.

28 .

29 Furthermore, since the tax was deducted from me in this tax  
30 year 1990/91, it is regarded as a payment on account  
31 against my tax liability for this year. It cannot be  
32 transferred back to last year. This means that due to the

1 delay on your companies part in making the payment to me, I  
2 am taxable on the payment for the last tax year when I  
3 earned it, but I cannot get credit for the tax deducted  
4 until the end of the current tax year.

5 .

6 The problem with the P60 is that it shows the tax as having  
7 been deducted in the tax year 89/90 when it was neither  
8 deducted nor paid over to the Collector General. The form  
9 P60 will also be at variance with the companies form P35  
10 summarising the year end payments for the year ended 5th  
11 April 1990.

12 .

13 A further problem which arises for me is that I was advised  
14 that the amounts paid to me were paid through the accounts  
15 of various group companies for the year ended 31st May,  
16 1989. The companies concerned were the Grafton  
17 Construction Company Limited, Reliable Construction  
18 (Dublin) Limited and Wexburn Limited.

19 .

20 I have to state that I did not work for any of these  
21 companies. None of the above companies was involved in  
22 the ESB claim.

23 .

24 I was told that the reason for putting the payments through  
25 these companies was to get the tax write-off at higher  
26 rates of tax than those which would have applied had the  
27 payments had been made through JMSE Limited.

28 .

29 My concern is that the Inspector of Taxes will now have  
30 information from your accounts, that I was paid these sums  
31 by the above companies and will assess me to tax on them.

32 .

1 He will also be aware from my termination agreement which  
2 was sent to him, that I was due the money from the ESB  
3 settlement, and will assess me to tax on that sum, as I was  
4 clearly entitled to it for the work done for that  
5 company.

6 .  
7 My only recourse at this stage is to visit the Inspector of  
8 Taxes with my solicitor and put all the documentation and  
9 facts before him and try to settle the matter so that I  
10 will end up paying  
11 only correct taxes" .

12 .  
13 And on the same day Mr. Sheedy wrote to JMSE in the  
14 following terms:

15 .  
16 "Mr. Gogarty asked us to reply to a letter of 19th October  
17 addressed to him.

18 .  
19 We confirm that Mr. Gogarty will not initiate any telephone  
20 calls or undertake any travel or incur any expenditure in  
21 his capacity as a consultant to Lajos Holdings Limited or  
22 any of its subsidiary companies without your personal prior  
23 approval. In order to avoid any possible misunderstanding  
24 between you and Mr. Gogarty, we have advised Mr. Gogarty  
25 that he should only act upon your prior approval when  
26 conveyed to him in writing. Mr. Gogarty is aware and  
27 concerned that these arrangements may impact adversely on  
28 his effectiveness as a consultant to the Lajos Group.  
29 Furthermore, they may cause Mr. Gogarty difficulty in the  
30 completion by him of such works as he may be requested to  
31 carry out for the Group.

32 .



1 He will comply strictly with your instructions.

2 .

3 We do not agree that your interpretation of the terms of  
4 the agreement dated 3rd October, 1989, between Mr. Gogarty  
5 and Lajos Holdings Limited. At the time when that agreement  
6 was completed AGSE was a subsidiary of Lajos Holdings  
7 Limited. The meaning of JMSE Limited and AGSE are defined  
8 in the agreement, and in each definition are described as a  
9 subsidiary of Lajos Holdings Limited, the company.

10 .

11 The agreement provides that Mr. Gogarty will resign as a  
12 Director of the company and Group companies, and in  
13 particular JMSE Limited and AGSE Limited. Furthermore, he  
14 has agreed to act as a consultant to the company and to  
15 JMSE Limited and AGSE Limited or any other Group company at  
16 his current salary of £23,500 for a period of five years  
17 from the date of his resignation. It is quite clear that,  
18 by the agreement, Mr. Gogarty offered his consultancy  
19 services to the company and any of its subsidiary  
20 companies. From the time when AGSE ceased to be a  
21 subsidiary of the company, it no longer came within the  
22 terms of the agreement between Mr. Gogarty and the  
23 company.

24 .

25 In relation to Mr. Gogarty's consultancy services; we have  
26 advised Mr. Gogarty that he is entitled to charge a  
27 reasonable fee for all work which he has undertaken for  
28 AGSE from the time when it ceased to be a subsidiary of the  
29 company and to recover all expenses properly incurred by  
30 him in the course of his work as a consultant for AGSE. We  
31 must advise you that in the event that Mr. Gogarty does not  
32 receive payment of his fees or reimbursement for his

1 expenses proceedings will be instituted on behalf of Mr.  
2 Gogarty against AGSE Limited without further notice.  
3 .  
4 Mr. Gogarty will write to you personally in connection with  
5 the final paragraph of your letter:" .  
6 .  
7 Did you receive a letter then of the, from John Maher in  
8 reply to your letter addressed to Mr. J Murphy? It was in  
9 the following terms, page 1540:  
10 .  
11 "Dear Mr. Gogarty, further to your letter of the 24th of  
12 October addressed to Mr. J. Murphy which he instructed me  
13 to reply to..  
14 As the payment to you of £215,000 was provided for in the  
15 accounts for the year ended 31st May '89 to '90, it was  
16 necessary  
17 for the P60's to be issued for the year 1989/90 to comply  
18 with the current tax legislation.  
19 .  
20 Directors division may choose to assess you in relation to  
21 the £215,000 in either '89 to '90 or '90 to '91. If they  
22 choose the latter, a liability will arise for 1990 to 1991  
23 which will be offset by a greater refund arising in the  
24 year 1989 to 1990.  
25 .  
26 The P60 issued to you is not at variance with the companies  
27 P35 for the year ended 5th April, 1990.  
28 .  
29 There is no question of you being taxed twice, the  
30 Directors Division will assess you, as mentioned above, on  
31 the basis of the P60's supplied by you. It is important  
32 to realise that responsibility for the payment of PAYE tax

1 rests solely with the employer" .

2 .

3 You then replied on the ---- I will come back to that in a  
4 moment -- there is a reply to that letter of Mr. Maher, was  
5 sent by you on the 14th of November, and is to be found on  
6 1542, to Mr. Murphy and it is:

7 .

8 "Dear Mr. Murphy, I am in receipt of John Maher's letter  
9 of the 5th inst., a copy of which I enclose what he says is  
10 incorrect.

11 .

12 1. I was advised that the bulk of the payment of £215,000  
13 was provided for in the accounts for the year ended 31  
14 May'89. I did not earn the money until after that date.

15 .

16 2. I did not carry out the work for Grafton Construction  
17 Company Limited, and I should not be shown as having earned  
18 any money from that company.

19 .

20 My contract was with Lajos Holdings Limited to negotiate on  
21 behalf of JMSE Limited.

22 .

23 3. The money was paid to me in the tax year 1990/91. The  
24 tax deducted should relate to the rates of tax for that  
25 year. You have over deducted £6,450. Please let me have  
26 a cheque for this amount by return.

27 .

28 The income is taxable in the year 1989/90 as it was earned  
29 in that year. The Inspector of Taxes does not have a  
30 choice in the matter.

31 .

32 4. My concern is that the Inspector of Taxes is aware that

1 I was entitled to £215,000 under my contract with Lajos  
2 Holdings Limited. You have now advised him that I was  
3 paid £191,067 by Grafton Construction Company Limited  
4 during the tax year 1989/1990. I want to ensure that he  
5 does not tax me on both amounts because of the issue of an  
6 incorrect form P60 .

7 .

8 Please advise me of the name of the Inspector of Taxes with  
9 whom this matter was discussed and the name of the  
10 Inspector of Taxes  
11 dealing with Joseph Murphy Structural Engineers Limited and  
12 Grafton Construction company Limited, so that I can arrange  
13 to meet them and explain what has happened directly to them  
14 and get their assurances that I will not be taxed on the  
15 money which you claim I received from Grafton Construction  
16 Company Limited" .

17 .

18 Now, there is further correspondence I will come to in a  
19 moment, but in the meantime you or your solicitor received  
20 a letter, to be found on page 1539. It is a letter from  
21 Paddy Jones, solicitors, in Fleetwood, McCann Fitzgerald  
22 and AGSE Limited.

23 .

24 "I have been consulted by Archbell Greenwood Structural  
25 Engineers Limited, Copse Road, Fleetwood in connection  
26 with the above matter. And I have received from my client  
27 company a copy of your letter of 24 October, 1990,  
28 addressed to Lajos Holdings Limited and note your interest  
29 on behalf of Mr. James Gogarty.

30 .

31 I would advise that I do not accept that your client has  
32 any valid claim for commission under the terms of

1 consultancy agreement 3rd October, 1989, as against my  
2 client company, and any proceedings which your client sees  
3 fit to institute will be most strenuously resisted, and in  
4 this respect I am authorised to accept service of any  
5 process on behalf of my client company.

6 .  
7 The terms and conditions of the consultancy agreement are  
8 clear and unequivocal, and I have also advised my client  
9 company that there appears to have been an over payment of  
10 expenses to your client which are not properly vouched in  
11 accordance with the terms of such agreement and accordingly  
12 they reserve their future rights in this matter to seek  
13 reimbursement of any such overpaid expenses".

14 .  
15 Can you recall what happened that claim ultimately against  
16 AGSE?

17 A. Well I can. I was faced with a situation of suing them,  
18 and I had already incurred a lot of expense to take them  
19 on, but the position can be clearly stated, as far as I am  
20 concerned, it wasn't from any fear that I was wrong in  
21 claiming against them, because I gave evidence earlier on  
22 about a meeting with Mr. Copey on the 6th of July, of  
23 1989, when he brought me down to his archives, and at that  
24 time he agreed, and subsequently confirmed it in writing,  
25 that AGSE had been sold out of the Lajos Holdings Group and  
26 off the Irish trust, to distance itself completely from the  
27 Irish trust, the Irish trust.

28 .  
29 And I am not being, I am saying the truth. At that time  
30 both Frank Reynolds and I, he more than me in fact, but  
31 both were worried that Joe Murphy Senior had been  
32 liquidating all his assets in Ireland, in Ireland, and the

1 only thing that was left was JMSE, JMSE.  
2 .  
3 And at that date, when the shares in Lajos were sold out of  
4 the Irish trust to a UK trust, to distance itself  
5 completely for their own purposes, it owed JMSE 1.8 million  
6 pounds -- 1.8 million pounds. And Frank Reynolds and Gay  
7 and I were very concerned, there is documentation about  
8 this too, very concerned because here now is a situation  
9 where they claim they hadn't been advised by Mr. Copsey of  
10 this situation and they were worried about the insolvency  
11 of JMSE because of the risk in recovering that debt of 1.8  
12 million, and there is correspondence from Mr. Copsey to  
13 them back and forward telling them that they had been  
14 reckless in their work as Directors, but the fact is this,  
15 that 1.8 million debt. As Copsey told them now, as a  
16 result of what he had done and they had done, that JMSE  
17 just ranked as a non-secure creditor of AGSE, as much as to  
18 say they could pee for their money if anything happened.  
19 .  
20 So that all Mr. Murphy's assets were stripped completely  
21 out of the country as far as I was concerned and as far as  
22 Frankie was concerned, that's what I am saying and there is  
23 evidence to that effect.

24 39 Q. Did you, in fact, pursue the claim for the expenses against  
25 AGSE?

26 A. I didn't, no. That doesn't say I believed I was entitled  
27 to it, but that's another day's work, because of what I was  
28 up against, and there will be evidence to show that my  
29 statement and my sworn statement is correct, that that's  
30 what was done by Copsey and Mr. Murphy Senior, to distance  
31 AGSE from all the Group, and if you read the agreement, I  
32 am not a lawyer, although I am, although I am learning a

1 lot, that as of the 6th of April, the 6th of July, 1990,  
2 AGSE was no longer a subsidiary of Lajos Holdings Limited  
3 or the Irish trust.

4 40 Q. You have referred to the 6th of July, 1990, and you earlier  
5 referred to the 6th of July, 1989?

6 A. 1989, I am sorry "9", where the motion down for discussion  
7 was the sale of AG -- of Lajos Holding shares of AGSE out  
8 of the trust.

9 41 Q. Now, turn to the correspondence that followed, I think on  
10 the 5th of October -- sorry, 5th of December, 1990, McCann  
11 Fitzgerald wrote to Gerard Scallan O'Brien, page 1548, and  
12 set out as follows:  
13 .  
14 "We refer to our letter of the 16th of November .  
15 .  
16 Mr. Gogarty instructed us yesterday that the following sums  
17 remain due and owing to him.  
18 .  
19 £6,450 in respect of the over deduction of income tax, and  
20 which is referred to in our letter to you of the 16th of  
21 November. There was a typographical error in that letter  
22 which stated the amount to be £6,4050.  
23 .  
24 The monthly payment due to him as at 30th November last and  
25 of the terms of his agreement dated 3rd October, 1989, with  
26 Lajos Holdings Limited.  
27 .  
28 The sum of £3,748.70 in respect of expenses properly  
29 incurred by Mr. Gogarty in the course of carrying out his  
30 duties as consultant to Lajos Holdings Limited and its  
31 subsidiary companies, details of which have already been  
32 submitted by Mr. Gogarty.

1 .

2 We are instructed to inform you that, unless payment in  
3 full of these sums is received on or before Friday 16th  
4 December next, legal proceedings will be instituted for the  
5 recovery of these amounts without further notice."

6 .

7 You write to Mr. Murphy on the 18th of December, 1990, page  
8 1550 in the following terms:

9 .

10 "Dear Mr. Murphy, since you have not --

11 A. I think that's to Mr. Murphy Junior, is it?

12 42 Q. Well you tell me?

13 A. That's Mr. Murphy Junior.

14 43 Q. Yes.

15 .

16 "Dear Mr. Murphy, since you have not replied to my letter  
17 of 13th November, 1990, I must now proceed to sort out my  
18 tax affairs directly with the Inspector of Taxes.

19 .

20 While I am anxious to get me tax affairs put in order, I do  
21 not want to create any conflict between the Revenue  
22 Commissioners and your companies. I propose to send the  
23 enclosed letter to the Inspector of Taxes on 1st January  
24 1991. If you have any comments to make on the letter I will  
25 be happy to consider them" .

26 .

27 The letter enclosed was a letter of 1st of January, 1991.

28 It is addressed to the Inspector of Taxes, Directors  
29 Division, and you enclosed a copy. You said as follows:

30 .

31 "I enclose a company of contract dated 3rd October, 1989,  
32 between Lajos Holdings Limited and myself.



1 .  
2 I have been employed for many years by JMSE Limited which  
3 is a subsidiary of Lajos Holdings Limited. During 1989 I  
4 agreed with Mr. Joseph Murphy Senior, who is the owner of  
5 the Group that I would undertake negotiations on behalf of  
6 the company  
7 with the ESB. The company was in dispute with the Board  
8 regarding claims arising in respect of work carried out on  
9 behalf of the Board on the Moneypoint Generating Station.

10 .  
11 My agreement was that I should receive one half of the  
12 excess of the settlement figure over £130,000. The figure  
13 agreed with the Board was £560,000. I was therefore  
14 entitled to receive £215,000 from Lajos Holdings Limited  
15 for carrying out this work. This sum was paid to me in  
16 May 1990.

17 .  
18 It is my understanding that I am taxable on this money in  
19 the tax year 1989/90, as I earned the money during that  
20 year. I also understand that the tax deducted from the  
21 payment should be at the rates applicable to 1990/91 as the  
22 money was paid in that year. The tax will be a credit  
23 against my 1990/91 tax liability. I should therefore have  
24 a tax over payment for that year which can be set against  
25 the under payment arising for 1989/90.

26 .  
27 I have received the enclosed forms P60 from the company.  
28 You will see that there is no form P60 showing a payment  
29 from Lajos Holdings Limited. The form P60 from JMSE  
30 Limited shows my salary as £23,539.92, which is the correct  
31 salary figure.

32 .

1 The other forms P60 are as follows:'89/'90 - Reliable  
2 Construction Limited- 9,573.  
3 '89/'90 - Wexburn Limited- 14,360.  
4 Tax year -'89/'90 - Grafton Construction Company Limited -  
5 43,479.  
6 '88/'89 - Grafton Construction Company Limited- 147,588.  
7 .

8 I have never worked for any of these companies and they  
9 have no connection with my once off negotiation with the  
10 ESB. Furthermore, the negotiations took place during the  
11 period May 1989 to November 1989, so that the form P60 for  
12 1988/89 from Grafton Construction Company Limited is  
13 obviously incorrect. I understand that the accounts of  
14 that company for the year ended 31 May, 1989, also reflect  
15 these payments.

16 .  
17 Tax was deducted from the payment in May 1990, but at the  
18 1989/90 rates of tax the company has over deducted £6,450  
19 and have refused to repay this sum to me. I understand  
20 that the tax was paid over to you in August 1990/89. Can  
21 you confirm that this is correct?

22 .  
23 I was advised that the whole matter had been discussed with  
24 one of your officials and approved by him. I can get no  
25 written confirmation on this point.

26 .  
27 My concern is that the issue of these incorrect forms P60  
28 will lead to my being assessed to tax incorrectly, and  
29 indeed twice on the amount received. My belief is that  
30 I'm assessable to tax for the year 1989/90 on the sum of  
31 £215,000 received for work carried out for JMSE Limited  
32 under my contract with Lajos Holdings Limited and that I am

1 not assessable to tax on payments received from any of the  
2 other companies.

3 .

4 Can you please confirm that this is the correct view of  
5 this matter and that you will not seek to tax me on any sum  
6 in excess of the £215,000 received under the contract" .

7 .

8 Did you write that letter to Mr. Murphy?

9 A. I wrote that letter, yeah.

10 44 Q. Did you write to him again on the 2nd of January, of 1991,  
11 reference 1553?

12 .

13 "Dear Mr. Murphy, since you have not replied to my letter  
14 of the 13 November, 1990, I must now proceed to sort out my  
15 tax affairs directly with the Inspector of Taxes.

16 .

17 While I am anxious to get my tax affairs put in order I do  
18 not want to create any conflict between the Revenue  
19 Commissioners and your companies. I propose to send the  
20 enclosed letter to the Inspector of Taxes on 11th January,  
21 1991. If you have any comments to make on the letter I  
22 will be happy to consider them. " .

23 .

24 A further letter of the 3rd of January, page 1554:

25 .

26 "Mr. Gogarty has not received payments of the monies due  
27 to him under the terms of his agreement with Lajos Holdings  
28 Limited. Accordingly we are now instituting legal  
29 proceedings against your clients"

30 .

31 Did you receive then, Mr. Gogarty, a letter of the 4th from  
32 Lajos Holdings Limited and signed by Mr. Joseph Murphy?

1 .

2 "Further to your letter of the 2nd of January, of 1991,

3 and the following is my reply.

4 .

5 I welcome your comments that you do not wish to create any

6 conflict between the Revenue Commissioners and my

7 companies. You were paid a pension of £300,000 together

8 with a salary of £215,000 which totals £515,000 and not

9 insignificant sum, you must agree.

10 This amounts approximately to nearly 10 percent of the

11 turnover of JMSE for the year ended 31 May, 1990.

12 .

13 Your agreement was with Lajos Holdings Limited. The

14 allocation of your payments was dictated by commercial and

15 taxation requirements. The Board of Lajos Holdings

16 Limited has the absolute discretion in allocating payments

17 among its subsidiary companies in such a form as it deems

18 fit.

19 .

20 All proper procedures were followed; the PAYE and PRSI were

21 deducted in accordance with current tax legislation. P35's

22 were submitted and the appropriate payments were made to

23 the Revenue Commissioners. The salaries charged in the

24 accounts were in agreement with the PAYE returns, thus the

25 Revenue Commissioners have no grounds for dispute.

26 .

27 It is not true of you to say you never worked for Grafton

28 Construction Company Limited, Reliable Construction

29 Limited, Wexburn Limited, as for many years you were the

30 key employee and Director of these companies.

31 .

32 I suggest that you submit the P60's to the Directors

1 Division without submitting your proposed letter. It is my  
2 opinion that they will tax you on £147,588 for 88/89, and  
3 on £67,412 for 89/90 and will give you credit for tax  
4 deducted as per the P60's when they issue the balancing  
5 statements, and the matter will rest at that.

6 .

7 However, if the Revenue Commissioners seek to tax you on  
8 the £215,000 a second time, which is most unlikely, I would  
9 then enter into correspondence or negotiations wherein it  
10 can be clearly demonstrated that all payments made by Lajos  
11 Holdings Limited to you have been properly disclosed by  
12 you.

13 .

14 I note your comment re £6,450 being over deducted. The  
15 company was obliged under current tax legislation to deduct  
16 1989/90 rates of tax, as the amounts had been provided for  
17 in the accounts: 1989/90".

18 .

19 Did you receive that letter from Mr. Murphy?

20 A. Did I? Yes.

21 45 Q. Mr. Murphy says that it is not true, that you never worked  
22 for Grafton Construction Company Limited, Reliable  
23 Construction Limited, Wexburn Limited as for many years you  
24 were a key employee and Director of these companies, what  
25 do you say to that?

26 A. I say two things. That first of all they tried to  
27 represent that situation to the Revenue and they failed.

28 .

29 Secondly, I have lately seen a statement by Mr. Brendan  
30 Devine which I believe would confirm that I was never an  
31 employee of Grafton Construction Company and he was the  
32 Secretary and sole administer of that company.

1 .

2 MR. CALLANAN: I wonder would it be possible to break?

3 .

4 CHAIRMAN: I was just thinking about that as Mr. Gallagher  
5 was apparently going to change topic.

6 .

7 MR. GALLAGHER: I was just about to go on to deal with the  
8 litigation that arose immediately following.

9 .

10 CHAIRMAN: That's a change of topic in that sense. If we  
11 broke for 10 minutes just to give the witness a break.

12 .

13 THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS

14 FOLLOWS:

15 .

16

17 46 Q. MR. GALLAGHER: Mr. Gogarty, were you aware at the time of  
18 the correspondence that was passing between your solicitors  
19 and solicitors for JMSE and others?

20 A. I was, yes.

21 47 Q. I think that -- on the 3rd of May, 1991, you commenced  
22 proceedings against Lajos Holdings in the Circuit Court?

23 A. I think that would be correct.

24 48 Q. And the Endorsement of Claim which starts off by referring  
25 to the agreement of the 3rd of October, 1989. It went on  
26 to recite as follows at paragraph 5, paragraph 4.

27 .

28 "It was expressly provided in the said agreement at Clause  
29 3, sub Clause 3 that the Defendant should repay to the  
30 Plaintiff all telephone charges and all out-of-pocket  
31 vouchered expenses, properly incurred by him in the  
32 performance of his services as a consultant.

1 .  
2 5. Following his resignation from the Defendant as a  
3 director, the Plaintiff carried out his consultancy duties  
4 from his home and incurred a number of out-of-pocket  
5 expenses, including telephone charges which amount in total  
6 to £3,746.70. Details of such out-of-pocket expenses were  
7 furnished to the Defendant on or about the 31st of October,  
8 1990.

9 .  
10 6. The Plaintiff has made demands upon the Defendant for  
11 the repayment of such expenses notwithstanding the terms of  
12 the said agreement, the Defendant has wrongly failed,  
13 refused and neglected to repay the said expenses to the  
14 Plaintiff whereby the Defendant is in breach of the  
15 contract.

16 .  
17 7. It was further a term of the said agreement that the  
18 Defendant would pay a commission to the Plaintiff depending  
19 upon the outcome of certain negotiations being conducted by  
20 the Plaintiff with the Electricity Supply Board on behalf  
21 of Joseph Murphy Structural Engineers Limited, a wholly  
22 owned subsidiary of the Defendant. Subsequently, the  
23 amount of commission due by the Defendant to the Plaintiff  
24 was agreed in the sum of £215,000, and on the 7th of May,  
25 1990, the sum of £98,900 was paid by the Defendant to the  
26 Plaintiff being the next sum due after deduction of PAYE  
27 and other statutory deductions from the said commission.

28 .  
29 8. The defendant is obliged to furnish to the Plaintiff a  
30 certificate of pay, tax and pay related social insurance  
31 (commonly known as a P60 form) for the year ended 5th  
32 April, 1991, and the Defendant should have furnished the

1 Plaintiff with a single P60 form reflecting the said  
2 payment of £215,000.  
3 .

4 9. On the 28th of August, 1990, the Defendant sent the  
5 Plaintiff a total of four P60 forms covering various  
6 amounts, totalling £215,000 allegedly paid by three of the  
7 Defendant companies, associated companies which forms were  
8 incorrect, in that two of the said forms related to the  
9 year ended 5th April, 1989, and none of the said forms  
10 referred to the Defendant as the employer.  
11 .

12 10. Subsequently on the 5th of October, 1990, the Defendant  
13 caused three amended P60 forms to be sent to the Plaintiff,  
14 all of which related to the year ended the 5th of April,  
15 1990, and which payments did total £215,000. But where the  
16 said payments were described as having been made by the  
17 three associated companies of the Defendant. The three P60  
18 forms in question reflect the following payments;

19 1. £191,067 paid by the Grafton Construction Company  
20 Limited in the year ended 5th April, 1990.  
21 2. £14,360 paid by Wexburn Limited in the year ended 5th of  
22 April, 1990. 3. £9,573 paid by Reliable Construction  
23 (Dublin) Limited in the year ended 5th April, 1990.  
24 .

25 However, the said total of £215,000 was, in fact, paid by  
26 the Defendant and for the purpose of properly and  
27 accurately dealing with his income tax affairs. The  
28 Plaintiff requires and is entitled to a single P60 form  
29 reflecting a payment of £215,000 by the Defendant for the  
30 year ended the 5th of April, 1991.  
31 .

32 Notwithstanding demands made by the Plaintiff upon the



1 Defendant the Defendant has wrongfully failed, refused and  
2 neglected to furnish the said P60 form to the Plaintiff.

3 .

4 And the Plaintiff claims;

5 1. As against the Defendant damages in the sum of  
6 £3,748.70, plus interest pursuant to Section 22 of the  
7 Courts Act 1981 as and from the 31st of October, 1990,  
8 until date of payment, not exceeding £15,000.

9 .

10 2. As against the Defendant, an injunction directing the  
11 Defendant to furnish to the Plaintiff a P60 form  
12 reflecting the payment of £215,000 by the Defendant to the  
13 Plaintiff for the year ended 5th April, 1991.

14 3. Such further or other relief as to this Honourable Court  
15 should seem fit.

16 4. Costs."

17 .

18 Now, the Defence was filed, you swore an affidavit in those  
19 proceedings. And in the course of those proceedings there  
20 was a Notice for Particulars, dated the 21st of January, of  
21 1992, from McCann Fitzgerald, in which they sought among  
22 other things, at 6, "the wages sheets and income tax  
23 deduction cards for Grafton/Reliable and Wexburn related to  
24 Mr. Gogarty's alleged employment with those companies. "

25 .

26 And they also asked for at No. 1, the bank statements of  
27 Grafton/Reliable and Wexburn for the period when each  
28 payment was debited to each respective companies bank  
29 accounts. I understand you have the book of these  
30 documents before you? You may not be familiar with them,  
31 Mr. Gogarty, but I am now referring to page 14 of that book  
32 you have before you.

1 .

2 Do you have that? Have you?

3 A. I do. Yes.

4 49 Q. Page 14? Yes, well then the reply to that is to be found

5 at page 17 from Gerard Scallan and O'Brien. And that is a

6 letter of the 31st of March, of 1992. There is a Defence

7 then delivered by the Defendant company, it is an undated

8 Defence. It is on page --

9 .

10 CHAIRMAN: 19.

11 50 Q. MR. GALLAGHER: It is a Defence in the following terms.

12 "The Defendant denies that the Plaintiff --

13 .

14 CHAIRMAN: Mr. Gallagher, that is a traverse -- it is a

15 total traverse, we don't need to go through each single

16 paragraph.

17 .

18 51 Q. MR. GALLAGHER: There is a lodgement of £1,020 by the

19 Defendants in that matter, and the matter I think

20 eventually came for hearing before the Circuit Court, the

21 late Mr. Justice Spain I believe; is that correct?

22 A. Lord have Mercy on him, yeah.

23 52 Q. I am looking at page 2693, it is page 26 of the typewritten

24 page. It is a copy of an order of the Circuit Court, dated

25 the 8th of March, of 1994, and the proceedings record

26 number was shown as 6642/1991 between James Gogarty,

27 Plaintiff, and Lajos Holdings Limited, and having recited

28 the introduction and the appearances the order continued:

29

30 "And it appearing to the Court that the Plaintiff is

31 entitled to succeed on foot of the claim in the civil

32 bill.

1 .

2 The court doth order:

3 .

4 1. That the Plaintiff do recover from the Defendant the sum  
5 of £618.70.

6 2. That the Plaintiff do recover from the Defendant the  
7 cost of the proceedings when taxed and ascertained based on  
8 the equity scale.

9 3. That out of the sum of £1,020 lodged with the Defence  
10 that the sum of £618.70 be paid to the Plaintiff with the  
11 balance of £401.30 together with interest accrued thereon  
12 to be paid back to the Defendant's solicitor.

13 4. And the court doth grant injunction and doth order that  
14 the Defendant do furnish to a Plaintiff a P60 form  
15 reflecting the payment of the sum of £215,000 by the  
16 Defendant to the Plaintiff for the year ended the 5th of  
17 April, 1994". And it is signed by the County Registrar,  
18 Mr. Quinlan.

19 .

20 Now, following that were you served with a Notice of Appeal  
21 from that order, an appeal to the High Court?

22 A. That's right, they appealed it.

23 53 Q. Who appealed the order?

24 A. The Murphy's.

25 54 Q. I see. Now, who was acting for you at that time in  
26 connection with that Circuit Court action?

27 A. Mr. Michael Hegarty of Smith O'Brien & Hegarty.

28 55 Q. Sorry, would you mind speaking up?

29 A. Mr. Michael Hegarty of Smith O'Brien & Hegarty, solicitors.

30 56 Q. Can you say what happened after that? Did you have any  
31 contact with Mr. Murphy Junior or Mr. Murphy Senior?

32 A. Well, when the case was under appeal he had contact with

1 me.

2 57 Q. And how did that arise?

3 A. Well, on the 19th of June, of 1994, I was in bed at home  
4 and I was on my own, my wife was out in her brother's  
5 place. And I went to bed at about half past two in the  
6 morning the phone rang. And I lifted the receiver beside  
7 the bed. And I recognised the voice but he says "You know  
8 who this is? This is Joe Murphy Junior" I says "I recognise  
9 the voice".

10 58 Q. What time of the morning did you say this was?

11 A. It was about half past two in the morning, a Sunday  
12 morning.

13 59 Q. Yes. What else was said?

14 A. Well, we had an argument. He threatened me, accused me of  
15 going to the Revenue and he told me, he said he was on his  
16 way out to kick "every fucking bone in my body" and to  
17 "break every bone in my body and to kick the shite out of  
18 me" and he "wouldn't leave a roof over my head".

19 60 Q. Was anything else said in the course of that conversation?

20 A. Yes, there was, there was. I denied ever going to the  
21 Revenue, which I never did and I took issue with him. I  
22 felt he was on his way out.

23 61 Q. What do you mean he was "on his way out"?

24 A. To assault me or to not leave a roof over my head. And I  
25 threatened him with the law as I thought, because I said it  
26 was going through the solicitors and he said "fuck the  
27 solicitors" he said, "you will get your P60 put by me when  
28 I am finished". I made a statement to that effect at the  
29 time, but I said I couldn't talk to him any longer, I said  
30 -- I hung up. I hung up. And I took a glass of water. I  
31 thought about it. And I had nobody in the house with me.  
32 And I lifted the phone and I dialed 999. And I contacted

1 the Guards that were in the squad car or something, you  
2 know, and I explained to them what happened. And they told  
3 me to keep cool, that they were on their way out to the  
4 house and that they would come out as quick as possible.  
5 So I laid back in the bed and I took another drink of  
6 water. Shortly after the phone rang again and I thought it  
7 was the Guards and it was that blackguard back again on the  
8 phone, accusing me of hanging up and that he was on his way  
9 out and all this sort of thing.

10 .

11 So I thought at the time that the Guards were coming back  
12 and I intended, I did intend to hold him on the line and I  
13 kept after him; I am not saying I wasn't abusive, but I was  
14 defending meself and me wife and family and my house, and I  
15 would do that to the last drop of my blood in my body.

16 .

17 Lucky enough my wife came back, but before I hung up, and I  
18 beckoned to her to come into the room so she could listen  
19 in to some of the conversation. Then the door, the doorbell  
20 rang and she went down, and it was, there was two guards  
21 there, two nice fellows. They came in and I understood, I  
22 understand we had another phone in the hall and one of them  
23 lifted the phone and listened in to some of the  
24 conversation. Then I got up and dressed myself, well I put  
25 my dressing gown on me and I went down to the sitting-room  
26 and we talked there for about, I would say a couple of  
27 hours.

28 .

29 They calmed me down and assured me that they would protect  
30 me and they said that they would have no difficulty in  
31 locating the caller and that they would interview him and  
32 they would prepare a file for the DPP, and that in the

1 meantime that they would see that I got, that I would get  
2 protection and that they would keep an eye on the house.  
3 They were very nice. We had a cup of tea. I explained to  
4 them the whole background to it, what was before, behind it  
5 with the Circuit Court case, the legal cases, and that  
6 there was one of them Circuit Court cases under appeal.  
7 And I told them the background to it and that that fellow  
8 was fit for anything, he had a previous conviction for  
9 assault.

10 .

11 CHAIRMAN: Well now, please --

12 .

13 MR. COONEY: Mr. --

14 .

15 CHAIRMAN: Now, just keep control of the witness please.

16 62 Q. MR. GALLAGHER: Can you recall anything else that was said  
17 on that occasion, either by Mr. Murphy, to Mr. Murphy or by  
18 you to the Gardai?

19 A. Well, yes. They told me that they would have no difficulty  
20 in locating him and that they would interview him, and I  
21 filled them in on his, where he was located in Santry.  
22 They assured me that they would see that the file went to  
23 the DPP.

24 63 Q. Can you remember the names of the Gardai who called to your  
25 house?

26 A. There was a Detective Officer McNealy and I am not sure --  
27 I forget the other fellow's name at the moment. It will  
28 come back to me. There were two of them in it. Two of  
29 them in it.

30 64 Q. Did you make a statement to the Gardai?

31 A. I did.

32 65 Q. Following that incident?

1 A. I did.

2 66 Q. Did you make that on the 23rd of June, of 1989?

3 A. Yes.

4 .

5 MR. COONEY: Mr. Chairman, sorry I have no objection to  
6 this statement going into evidence, but if it is put in by  
7 the person who took it, because I think the circumstances  
8 in which the statement was made and what proceeded that  
9 statement are important.

10 .

11 CHAIRMAN: You are talking about the Garda witness?

12 .

13 MR. COONEY: The garda witness who took the statement and  
14 I would respectfully suggest that that is the time to  
15 introduce it, Mr. Chairman, so the context --

16 .

17 CHAIRMAN: We can do it at the; excuse me; we can do it at  
18 the moment to identify his signature to the statement.

19 Do you have the original?

20 .

21 MR. GALLAGHER: I don't have the original but I have a  
22 photocopy.

23 .

24 MR. COONEY: I will agree the photocopy.

25 .

26 MR. GALLAGHER: I suggest, Sir, that it is appropriate  
27 that this witness should be asked about the statement that  
28 he made, which was virtually contemporaneous, the matter he  
29 has referred to. He at least should be allowed to give his  
30 version of it. He can certainly be cross-examined. The  
31 Gardai will be called as to the circumstances in which it  
32 was taken. They can deal with all of that at the

1 appropriate time. Otherwise it may involve the recalling of  
2 Mr. Gogarty in a different way --

3 .

4 CHAIRMAN: It doesn't. It amounts to this, Mr. Gallagher;  
5 he has given an account on oath, broadly speaking of what  
6 happened. I am not saying it is identical to what  
7 happened. He makes a contemporaneous statement at the  
8 time. He identifies the statement for the purposes of the  
9 record. If anybody suggests that his recollection of the  
10 events is in error, surely whoever is in charge of the  
11 witness and, yourself presumably, at that time can put the  
12 statement to him and say this is a contemporaneous  
13 statement, isn't that the sequence that should happen?  
14 Until Mr. Gogarty in anyway or somebody else, challenges  
15 Mr. Gogarty's account, which presumably, according to you,  
16 I haven't got the statement, is a more or less  
17 contemporaneous statement, sets it out.

18 .

19 MR. GALLAGHER: With the greatest respect, no Sir, I say  
20 the account is relevant, that it should be admitted at this  
21 stage. If it is not admitted at this stage it may  
22 conceivably not arise at all. It is an important  
23 contemporaneous account.

24 .

25 CHAIRMAN: The document is now in. It becomes part of my  
26 record. And it's contents become part of my record because  
27 he has identified it as his statement; isn't that so?

28 .

29 MR. COONEY: My Friend seems to misinterpret the place of  
30 such a document in a hearing like this. What the witness  
31 is entitled to do is give a first hand account of the  
32 events as he experienced them and witnessed them on the



1 night in question. The fact that he wrote a note of them  
2 shortly afterwards doesn't make that note admissible to  
3 supplement his sworn evidence of what he experienced. What  
4 he says, what he wrote down, Mr. Chairman, may become  
5 relevant and may be introduced in evidence if there is a  
6 challenge to his evidence at a later stage.

7 .

8 CHAIRMAN: That is what I understand.

9 .

10 MR. GALLAGHER: This is a --

11 .

12 CHAIRMAN: Just a moment, we can't have two people  
13 together. Mr. Gallagher?

14 .

15 MR. GALLAGHER: This is a statement which was made by Mr.  
16 Gogarty himself of his own volition. As I understand it,  
17 it was not made to the Gardai. It was, as I understand it,  
18 presented to the Gardai as his statement. And it is also  
19 relevant I suggest, in the context of events at that time.  
20 This is not a question of submitting evidence in a criminal  
21 trial. This is an inquiry. And I suggest that you are  
22 entitled to and should look at this document, give it what  
23 weight it is entitled to and you should do it at this  
24 stage, and allow whatever cross-examination or other  
25 evidence that may be relevant to it to be dealt with at a  
26 later stage. It is relevant now. This witness, it is his  
27 statement, why should he not do it? Why should he not be  
28 allowed deal with this statement in the way he was allowed  
29 to deal with, for example with the letters that were  
30 written in or about the same time or indeed four or five  
31 years earlier? It is relevant at this stage. It should be  
32 admitted and should be heard at this stage to be given such

1 weight as is appropriate to it, of course.

2 .

3 CHAIRMAN: Well, Mr. Gallagher, it would appear to me that

4 the correspondence is a sequence of events, the

5 correspondence replying one to another. That is why you

6 read correspondence and the correspondence is admitted. It

7 is possible to challenge each letter and say "I want that

8 letter proved", "I want the signature proved". This is not

9 a normal book of correspondence. Here is a situation where

10 the witness has given an account of a sequence of events of

11 a particular night. He says he made a complaint to the

12 Gardai. And I take that, I accept from you in the sense

13 that he, that he subsequently, you say, furnished a

14 statement to the Gardai as distinct from the Gardai taking

15 a statement from him.

16 .

17 MR. GALLAGHER: That is my understanding.

18 .

19 CHAIRMAN: Correct in that regard. But it seems to me that

20 that document, once you identify the signature to it,

21 becomes part and parcel of the record. I don't think it is

22 necessary to read it into the public record as such. It

23 may well become part and parcel of, as I say, the debate,

24 as it were, if Mr. Gogarty is challenged on anything that

25 he says in court today as to what happened on the night in

26 question.

27 .

28 MR. GALLAGHER: Well it may be --

29 .

30 CHAIRMAN: Or if an alternative version is put to him it

31 certainly would be relevant that he should be, that the

32 document should then be put to him and say "this is your

1 contemporaneous account".

2 .

3 MR. GALLAGHER: With respect, Sir, it is a matter for your

4 ruling. I suggest this is an appropriate time given that

5 you may, I don't know, but that you may wish to refer or

6 rely upon in some respects this or indeed any other

7 document that is tendered in evidence. The appropriate

8 time to tender it in evidence generally speaking, is when

9 witnesses are being called. I am sure there will be

10 occasions when documents are omitted or overlooked, but

11 generally speaking when a document is relevant this is the

12 time to circulate it. It is a document that is exhibited,

13 that has been circulated to all concerned, and in my

14 respectful submission it is a document that should be in

15 the public arena. The public are entitled to hear it in

16 the same way they are entitled to hear every rebuttal of

17 this document, if any.

18 .

19 CHAIRMAN: I just want to hear Mr. Callanan first and Mr.

20 Cooney. I will then give you a right of reply. I am not

21 in anyway excluding you.

22 .

23 MR. COONEY: I understand that.

24 .

25 CHAIRMAN: Yes, Mr. Callanan?

26 .

27 MR. CALLANAN: I do wish to be heard in relation to this.

28 There seems to be absolutely no basis for any objection to

29 this statement becoming part of the record of the Tribunal

30 in the way in which other documents to date have become

31 part of the record, rather than creating a special category

32 to deal with it. The witness has said he made this

1 statement. It may well be that Mr. Cooney, in due course,  
2 wants to cross-examine Mr. Gogarty and to show some  
3 disparity between the account he has just given and the  
4 contents of the statement which he furnished to the Guards,  
5 but that, in my submission, cannot possibly afford a basis  
6 for objecting to that statement becoming part of the record  
7 of the Tribunal at a public inquiry in the ordinary way.

8 .

9 Therefore, I also obviously agree entirely with Mr.  
10 Gallagher's submission, that this is the appropriate time  
11 at which to do that, and it in no way inhibits Mr. Cooney  
12 from proceeding with the cross-examination on the basis of  
13 any disparity he wants to identify between Mr. Gogarty's  
14 evidence to the Tribunal and the statement.

15 .

16 CHAIRMAN: Mr. Gallagher, just before Mr. Cooney replies,  
17 would you just clarify for me; I don't actually have the  
18 document in front of me. Is the document a document which  
19 is simply a narrative account signed by Mr. Gogarty, and  
20 furnished to the Gardai or is it a Garda statement?

21 .

22 MR. GALLAGHER: It is a narrative account signed, as I  
23 understand it, there are two narrative accounts; one signed  
24 by Mr. Gogarty, a three paged document signed by him on the  
25 23rd of June, of 1989, and I understand, simply to, from  
26 what Mr. Gogarty tells me, my understanding is that it was  
27 typed by him or on his behalf shortly after the event and  
28 was not a Garda statement taken in the normal way that a  
29 Garda would take a statement. It is a narrative account, a  
30 contemporaneous account, in my respectful submission, and  
31 one that is admissible and admissible at this stage.

32 .

1 CHAIRMAN: Mr. Cooney, in those circumstances it seems it  
2 is effectively a corroborative document of what he is  
3 actually saying at the time. It is a contemporaneous, or  
4 near contemporaneous account of the events. Why do you say  
5 that shouldn't come in?

6 .

7 MR. COONEY: Because a document that is not made is not  
8 primary evidence. The primary evidence is the evidence of  
9 the witness himself recounting what he actually  
10 experienced, what he saw and witnessed on the occasion in  
11 question. That is primary evidence and only primary  
12 evidence.

13 .

14 CHAIRMAN: Isn't it also evidence that he, at or about the  
15 same time recorded in -- I don't know because I don't have  
16 it in front of me -- in somewhat similar terms the event,  
17 and therefore it is corroboration and he is entitled to  
18 address --

19 .

20 MR. COONEY: With respect, Mr. Chairman, I know no rule of  
21 evidence which states that a document may be introduced as  
22 corroborative evidence, and I respectfully challenge Mr.  
23 Gallagher and Mr. Callanan to find such a ruling in any  
24 book on the law of evidence. It simply isn't done.

25 .

26 A witness may refresh his memory by reference to a  
27 contemporaneous document, if he requires to do so. So far,  
28 Mr. Chairman, Mr. Gogarty hadn't indicated that his memory  
29 of the events of that night is so insufficient that he  
30 requires to refresh it by reference to the document he made  
31 within 24 hours or 40 hours after the event occurred.  
32 That's the first thing I say.

1 .  
2 The second thing, Mr. Chairman, is that the real reason why  
3 Mr. Gallagher wants to introduce this document I think was  
4 inadvertently mentioned by him towards the second last  
5 submission, when he said "the public have a right to know  
6 what is in this document". That, Mr. Chairman, is an  
7 absurd submission to make to a Tribunal, to suggest that  
8 that is a consideration which could override the rules of  
9 evidence which have to be followed and practiced in our  
10 courts.

11 .  
12 The document might also be introduced in evidence at a  
13 later stage if any of Mr. Gogarty's evidence on this regard  
14 is being challenged as to its accuracy, Mr. Chairman.

15 .  
16 That is my submission.

17 .  
18 MR. CALLANAN: I wonder could I just say, Mr. Chairman, in  
19 relation to that? It is not a matter of Mr. Gogarty  
20 refreshing his memory. This document is as much a part of  
21 the sequence of events as would be, let us say a  
22 solicitor's letter, written on Mr. Gogarty's behalf to Mr.  
23 Murphy Junior or Mr. Murphy Junior's legal representatives,  
24 setting forth what had occurred; and there is absolutely no  
25 basis for the application which Mr. Cooney has made to the  
26 Tribunal to exclude Mr. Gogarty's statement; and that it  
27 all the more so, given the extremely evasive manner in  
28 which Mr. Gogarty's accounts of that, the two telephone  
29 calls as set forth in Mr. Gogarty's affidavit, the  
30 extremely evasive manner which that is being met by Mr.  
31 Murphy Junior in his statement to the Tribunal at paragraph  
32 --

1 .

2 MR. COONEY: This is quite improper, for Mr. Callanan to  
3 make that submission. He knows it. I hope he will learn  
4 from it and won't do it again.

5 .

6 MR. GALLAGHER: Sir, can I just say one final thing in  
7 relation to this? Mr. Cooney talks about the rules of  
8 evidence. Mr. Cooney seeks to equate this inquiry, this  
9 investigation to a criminal trial or a civil trial. It is  
10 not the equivalent. This is an investigation, an inquiry  
11 that you are carrying out. You are entitled to look at any  
12 document that may be of assistance to you. In fact I --  
13 you are obliged, I would go so far as to say, obliged to  
14 look at any document that may be of assistance to you. And  
15 it is not appropriate to equate this in any respect to a  
16 criminal trial. Nobody is on trial here.

17 .

18 It is an inquiry to try to get to the truth. If this  
19 assists you in that journey then it is a document you  
20 should look at and you should look at now. Because it is  
21 -- we have had examples of demands being made for  
22 documents which may very well show discrepancies in  
23 versions that were given by witnesses, and in certain  
24 circumstances such documents of course are relevant and  
25 must be produced, and no doubt will be put to witnesses at  
26 various times during the course of this inquiry.

27 .

28 It is appropriate, in my respectful submission, as part of  
29 the narrative, it has a probative value. The weight to be  
30 attached to it is a matter for you. It is of probative  
31 value. It should be admitted at this stage and should not  
32 be excluded.

1 .

2 CHAIRMAN: I propose to rule that the document is germane  
3 to the inquiry. It may or may not have additional  
4 probative value. That is a matter for me to consider in due  
5 course. I am admitting the document as such.

6 .

7 MR. COONEY: May it please Your Lordship.

8 .

9 67 Q. MR. GALLAGHER: Mr. Gogarty, can I pass to you now a  
10 photocopy of a three paged typewritten document?

11 A. Yes.

12 68 Q. Is that a document that bears your signature?

13 A. Yes.

14 69 Q. When was that document typed or when was it dictated? Can  
15 you tell the Tribunal the circumstances when it came in,  
16 which it came into being?

17 A. My recollection was that it was a couple of days after the  
18 event. A Detective Sergeant Sherry came in then on it a  
19 day or two afterwards, into the investigation and I filled  
20 him in, in the same way I spoke to the two detective  
21 officers, and I told him that I had a solicitor acting for  
22 me and that I would be talking to him, and he said that to  
23 confine my statement, not to be too lengthy with it, to  
24 confine it to the events of that night. Which I did.

25 70 Q. Did you then --

26 A. And I, between phone calls and letters to my solicitor, I  
27 passed it on to my solicitor and to Sergeant Sherry. That  
28 is my recollection.

29 71 Q. Did you dictate this letter or did you write it out or how  
30 did it come to be?

31 A. I wrote it out myself, from what I can recollect, on the  
32 night and I kept to the night itself except that --



1 72 Q. All right. Would you read the statement, Mr. Gogarty,  
2 please?

3 A. I will.

4 .

5 MR. COONEY: Sorry, Mr. Chairman.

6 .

7 MR. GALLAGHER: Perhaps I will read the statement.

8 .

9 MR. COONEY: Mr. Chairman, I am not quite sure whether  
10 this statement was dictated by the witness to his  
11 solicitor, who wrote it out, or whether he wrote it out?

12 Perhaps My Friend would clarify?

13 .

14 CHAIRMAN: He said he wrote it out, he personally wrote it  
15 out. This is typewritten, he said he personally wrote it  
16 out.

17 .

18 MR. COONEY: Well, who typed it? I wonder would he tell  
19 us.

20 .

21 73 Q. MR. GALLAGHER: Can you tell Mr. Cooney who typed it; tell  
22 the Tribunal rather?

23 A. My recollection is that it was my wife.

24 74 Q. Thank you. Would you read it, Mr. Gogarty please?

25 A. "On Sunday night the 19th of June, 1994, I was at home on my  
26 own. My wife, Anna, was visiting her brother and his  
27 family and I was not expecting her home until after 2AM on  
28 Monday the 20th of June.

29 .

30 I was watching television on my own and at about 11 p.m. I  
31 retired to bed and fell asleep.

32 .

1 I was suddenly awakened out of a deep sleep by the  
2 telephone ringing beside my bed. I didn't check the time  
3 but it would have been somewhat after 2AM on Monday  
4 morning. I lifted the receiver and the voice said "Jim".  
5 I said "yes", and it was a man's voice which I recognised  
6 as Joseph Murphy Junior. He said "Joseph Murphy Junior".  
7 "Joseph Murphy here". I said "oh yes, I recognise the  
8 voice". He said "have you your tape handy"? I said "what  
9 do you mean?". He said "you know fucking well what I mean,  
10 you fucking bastard". I said "I am sorry, I don't know  
11 what you mean but tell me". He said "have your tape ready  
12 because I want you to fucking tape what I have to say". I  
13 said "I don't need a tape". He said "tape this, you  
14 bastard. You wrote to the Revenue and brought them into my  
15 company". I said "I did not, and I object to your threats  
16 and conduct". He said "you can object all you like when I  
17 am not finished and I want to make sure you tape what I am  
18 saying". I repeated that I didn't need to use a tape. He  
19 said "I am telling you, you will get your fucking P60 and  
20 your expenses but it will cost you dearly". I said "what  
21 do you mean? The court has said I am entitled to the  
22 correct P60, and I accept the court's decision, but my  
23 solicitors tell me you are appealing the decision and I  
24 have left the matter with them". He said "fuck the  
25 solicitors, there will be no appeal, and I will have no  
26 more of your legal hassle, and I am telling you to tape  
27 this to make sure you get the message. I am going out to  
28 your house and I will break every fucking bone in your body  
29 and then I will kick the fucking shite out of you, and when  
30 I am finished with you you won't have a roof over your head  
31 and I will put a stop to all your legal hassles". I said  
32 that those are very serious threats. He says "you are

1 getting the message. How about you wrote to the Revenue,  
2 you bastard". I said "I did not write to the Revenue and I  
3 bet you five pound that I didn't and. What's more, if you  
4 produce a letter that I wrote to the Revenue I will eat it  
5 in your presence". He said "you are a fucking liar, and  
6 you can ring Frank Reynolds and Gay Grehan and they will  
7 tell you what you did". I said "I don't see any reason why  
8 I should ring Frank Reynolds and Gay Grehan, I did nothing  
9 to them. All I have done is have recourse to the law to get  
10 justice and my entitlements, and I have accepted the  
11 court's decision, but it's you that is appealing". He says  
12 "you are a fucking liar and there will be no appeal. I  
13 want to get on with my life and I am making sure I put a  
14 stop to your hassle". I said "I am taking your threats  
15 seriously and I didn't think you were such an evil man to  
16 stoop to such threats". He said "don't give me bullshit you  
17 fucking bastard". I said "I am not going to listen to you  
18 anymore of your vile language and threats" and I hung up  
19 the receiver.  
20 .  
21 I thought for a few moments, and as I was alone in the  
22 house and felt sure from his attitude that he would be on  
23 his way out to my home to carry out the threats, I decided  
24 to phone the police. I then dialed 999 and spoke to a Guard  
25 and told him of the threatening phonecall and of my fears  
26 for my own safety. He took particulars and assured me they  
27 would come immediately. I was very upset and felt weak.  
28 At the time fearful while expecting the police I took a  
29 drink of water and laid back on my bed to rest when the  
30 phone rang again. Thinking it was the police I lifted the  
31 receiver and was shocked to hear him again.  
32 .

1 He said "have you all that taped?" I asked why he was  
2 persisting in phoning up and threatening me. He said  
3 "because I want you to be fully aware of what I said. I  
4 am going to put a stop to you and your legal hassles now".  
5 .  
6 At this stage my wife came into the room and I beckoned her  
7 over to the phone and she listened in.  
8 .  
9 I said that he was upsetting my wife and family. And he  
10 then said "I apologise if I have upset Anna but I have no  
11 apologies to make to you, you fucking bastard. You wrote  
12 to the Revenue, don't deny it". I said "I did not". He  
13 again said "you are a fucking liar and you are trying to  
14 take your hassle with others out on me and Frank and Gay.  
15 I saw your letter and you are a liar to deny it". I said  
16 "what do you mean by others? And who are these others?" He  
17 said "Conroy is gone and Sweeney and Downes are gone and  
18 Copsy is gone, so what are you after"? I said "that may  
19 be, but neither you nor they can walk away from what was  
20 done to me, and that is why my legal advisors took legal  
21 action, and I have accepted the court's decision, which  
22 vindicated me, and it is you who is appealing". He said  
23 "there will be no fucking appeal. You will get your  
24 fucking P60 and expenses, but you will pay dearly for your  
25 hassle by the time I am finished with you, because I will  
26 say it again, I am going out to your house and I will break  
27 every bone in your body and I will kick the shite out of  
28 you and you won't have a roof over your head".  
29 .  
30 I said "Mr. Murphy, I am taking your threats very seriously  
31 and will be consulting my solicitors and if you have any  
32 sense you will do the same". I think it was this point

1 Anna left the room. He continued "don't give me that Mr.  
2 Murphy shit. You are a liar and you know it. Admit it. I  
3 saw your letter and you will pay for it". I said I saw no  
4 point in further discussion and that he had accused me in  
5 the wrong and had issued very serious threats, and I had to  
6 consider my position and my family's. After some words in  
7 similar vein Anna came back into the bedroom and beckoned  
8 to me and I hung up.

9 .

10 She said the police were downstairs, and I went  
11 downstairs. I was exhausted at the time and felt very  
12 weak, and both Anna and I were very distressed. She made a  
13 cup of tea which I drank and I discussed the phonecalls  
14 with the two policemen and one a Mr. Martin O'Sullivan and  
15 the other a Mr. Meany.

16 .

17 I also gave them some of the background to the legal case  
18 which is under appeal. They were very considerate and  
19 helped me to relax a bit and assured me they would pursue  
20 the matter and would see to it that I and my family would  
21 get some protection. I understand from Detective  
22 O'Sullivan that he heard some of our conversation before I  
23 hung up.

24 .

25 On Tuesday the 21st I met a Detective Sergeant Sherry and  
26 his colleague by appointment and filled him in on what  
27 happened. I told him I would be seeing my solicitor on  
28 Wednesday the 22nd of June, and they suggested after  
29 meeting with them they would contact me as to whether I  
30 would be making a formal complaint.

31 .

32 75 Q. That was dated the 23rd of June, of 1990; is that correct?

1 A. Yes.

2 76 Q. 1994, I beg your pardon?

3 A. I think it was the 22nd.

4 77 Q. Well, the 22nd.

5 .

6 CHAIRMAN: The 22nd?

7 A. I think it was the 22nd.

8 78 Q. MR. GALLAGHER: And did your wife also make -- I am not

9 going to ask you to read the statement, did she make a

10 statement at the same time?

11 A. She made a statement at the same time. I had spoken to my

12 solicitors.

13 79 Q. Right. Now, did you have any personal contact with Mr.

14 Murphy? Did you meet Mr. Murphy at any stage prior to this

15 event or subsequent to it?

16 A. That was 1994.

17 80 Q. Yes?

18 A. Well, after we issued the proceedings, issued the

19 proceedings in, it was I think in 1992, you see the

20 proceedings were issued in '91 but it went on to 1994. It

21 was I think it was another Sunday, a Sunday morning in

22 February. I was it was around about 12 o'clock. I know I

23 remember it was the night of a rugby match with England or

24 some place and he rang and it was him. I knew the way he

25 was talking that he might have had a drink or two on him,

26 you know.

27 81 Q. Sorry, would you speak into the microphone, Mr. Cooney is

28 having difficulty.

29 A. I think because of the way he was talking, I felt that he

30 had a bit of drink on him.

31 .

32 CHAIRMAN: Could we not speculate please and just deal

1 with what he said and what you said to him.  
2 82 Q. MR. GALLAGHER: What did he say, Mr. Gogarty?  
3 A. He said "look at" he says, "I am ringing up to talk to you  
4 about the worsening relations between yourself and my  
5 father". And he says "Is there no way that this can be  
6 resolved having regard to the long years that you were  
7 working together?". I said "that is not my fault", I says  
8 "I didn't create the situation", I don't think I did. He  
9 was stressing and urging me to meet him to get, for a  
10 rapprochement with his father. I said "It is not my way,  
11 it is not my job, it is between your father and myself",  
12 and I said I would think about it. And my recollection is  
13 that I spoke to my solicitor, Gerry Sheedy, about it and  
14 asked him, with his advice could I meet Mr. Murphy. He  
15 said he saw no harm in it and I met him in the Belvedere  
16 Court Hotel. That is my recollection.

17 83 Q. What is the name of the hotel?

18 A. I think it was the Belvedere Court, is that what you call  
19 it? It is a big hotel in Dublin.

20 84 Q. Is it the Berkley Court?

21 A. Yes, the Berkley Court Hotel. And it was an acrimonious  
22 meeting because he didn't discuss his father at all with  
23 me. And his interest was to get me to drop me case against  
24 them, against the companies about the P60's, you see. And  
25 I says I can't, I says, unless you correct the P60  
26 situation I am advising my solicitor that it has to go to  
27 court. We got into a bit of a barney then, you see, and it  
28 was acrimonious that we agree -- we left with no  
29 resolution. That is my recollection of it. But he accused  
30 me of fraud and he accused me of this, that and the other.

31 85 Q. What did he accuse you of?

32 A. Fraud.

1 86 Q. In relation to what?

2 A. In relation to the ESB money.

3 87 Q. I see.

4 A. Claiming that I had, that I hadn't properly kept the Board

5 informed, you know, of what I was doing with the ESB.

6 88 Q. What did you say to him in relation, in response?

7 A. I said "You talk to Frank Reynolds. Talk to your father.

8 They know where, what happened with the ESB negotiations".

9 89 Q. Did he say anything to that?

10 A. He was abusive, will you stop --

11 90 Q. Did you have any other meeting with Mr. Murphy that you can

12 recall?

13 A. That was the last meeting that I recall. I saw him in the

14 court then later on.

15 91 Q. Pardon?

16 A. I saw him in the court later on.

17 92 Q. I see. And what role did Mr. Murphy have in JMSE at the

18 time of that meeting, so far as you were concerned?

19 A. Well, it seemed to me that he had taken over completely

20 from the father. He was now in command. He was now in

21 command.

22 93 Q. Would you describe how you felt and your state of mind

23 after you received that?

24 A. I should have said I think now, I am right in saying I

25 should have said that I met the father, Senior, the

26 previous January, I think it was the previous January. I

27 think it was the previous January.

28 94 Q. When, January of what year?

29 A. 1991.

30 95 Q. Yes.

31 A. When the case was on. Because it was a tragic thing, the

32 thing was this, his wife, Una, died and she was -- the



1 funeral -- I thought, I had a great regard for her and her  
2 problems too and I thought I should go to the funeral and I  
3 went to the funeral. So there was people there and I went  
4 up to Joe Senior and I shook hands with him and apologised  
5 to him about what his problem was, and we had a few words,  
6 but he didn't seem to be greatly interested in developing  
7 the conversation, in fact he made a remark to me, but  
8 anyway --

9 96 Q. Yes, I want you to come back, if you would, to describing  
10 how you felt about, what your state of mind was after the  
11 telephone conversation you say that you had, or telephone  
12 calls that were made by Mr. Murphy Junior in June of 199 --

13 A. 1994.

14 97 Q. Yes.

15 A. Well, we were frightened out of our wits. Sure I had no  
16 peace of mind since, that he is out there. I felt that he  
17 should have been, should have been charged.

18 98 Q. Just describe your own state of mind. You say you were  
19 frightened out of your wits. Did that cause you continuing  
20 problems? Did it restrict your activities in anyway?

21 A. Yes, sure completely. Sure I hardly went out. I couldn't  
22 go out at all. I spent most of my time at home between the  
23 garden and doing my crosswords.

24 99 Q. And what period did that extend over?

25 A. Well that -- oh, a lot of things happened you see. That  
26 was in 1994, and they then withdrew the appeal. Sometime  
27 that year they withdrew the appeal. But then my  
28 consultancy agreement was then running out, even though I  
29 hadn't done any work for them for the three or four years,  
30 but that wasn't because I wasn't available for the work,  
31 but the relations were very strained, very strained. You  
32 know, it was dreadful to think of all those things that

1 could have be sorted out with a bit of goodwill and  
2 decency, decency of what I had gone through, but anyway  
3 instead of that then they sued me for a months consultancy  
4 fees that they claimed that they had overpaid me, do you  
5 know.

100 Q. We will come to that. That I think, that was in November  
7 of 1994, they commenced proceedings against you for the  
8 return of £1,554.18?

9 A. Which they claimed they had overpaid me and which was a  
10 lie, and they lost their case. We let them sue me and they  
11 sued me.

1 101 Q. And what happened in those proceedings?

13 A. It went to the District Court before Mr. Justice O'Leary  
14 and --

1 102 Q. What was the outcome?

16 A. Oh, sure he dismissed the case with complete costs to me.  
17 He didn't want to go into any of that, any of the nitty  
18 gritty, the skuldugery. He gave me a clear-cut decision.

1 103 Q. Following the phonecalls from Mr. Murphy did you receive  
20 another telephone call which wasn't from Mr. Murphy but  
21 from somebody else?

22 A. Oh I did, sure that is the problem, you see I did. I think  
23 it was only a week after that in fact that, I think it was  
24 a Saturday night there was a phonecall came. And it says  
25 "It is the Guards here in Howth". I was in bed at the  
26 time. I think it was around about 11 o'clock, I was on my  
27 own again.

28 .

29 MR. COONEY: Mr. Chairman, is this intended to reflect on  
30 my client in -- if it is, you need to be a bit, the  
31 evidence would need to be a bit more clear-cut and some  
32 names --

1 .

2 CHAIRMAN: First of all I want to find out who made the  
3 phonecall?

4 .

5 MR. COONEY: We are now in the range of sort of damaging  
6 gossip.

7 A. I was trying to find out since who made the phonecall.

8 .

9 MR. COONEY: Sorry, I am talking to the judge.

10 A. I apologise completely.

11 .

12 CHAIRMAN: Unless the phonecall can be either personally  
13 or as to content, can be identified with some participant  
14 in this inquiry, it certainly doesn't add relevance, it is  
15 just a piece of gossip.

16 .

17 MR. GALLAGHER: I don't accept that it came from any  
18 person in the inquiry because I don't know, but it does, it  
19 is relevant in my respectful submission because there is a  
20 phonecall that was made shortly after the telephone calls  
21 that were made by Mr. Murphy. It -- it was a telephone  
22 call that had an effect on this witness, as I understand  
23 it, and it is a matter that you are entitled to take into  
24 account in considering the entirety of the evidence.

25 .

26 CHAIRMAN: Mr. Gallagher, I appreciate that, but there  
27 must be some nexus between a call and participants in this  
28 inquiry.

29 .

30 MR. GALLAGHER: Well --

31 .

32 CHAIRMAN: The fact that it occurred contemporaneously

1 with other events does not necessarily follow that it was  
2 in anyway associated.

3 .

4 MR. GALLAGHER: I am not suggesting it was in that sense,  
5 Sir, what I do say is it is relevant in the context of what  
6 was done, what was not done by Mr. Gogarty and the impact  
7 that this may have had on his actions or inactions  
8 subsequently. It is in that context and in that context --

9 .

10 CHAIRMAN: Mr. Gallagher, we are ranging very, very wide  
11 at this moment in time. Now, I have been very --

12 .

13 MR. GALLAGHER: I will pass from it at the moment, if you  
14 wish. It is simply that it was in the narrative context of  
15 what Mr. Gogarty had recorded, and it is not an allegation  
16 that is made specifically, or indeed generally, against  
17 anybody here, but it does, in my respectful submission,  
18 help to set the context in which Mr. Gogarty's evidence is  
19 to be set and the reasons.

20 .

21 CHAIRMAN: I accept that Mr. Gogarty was upset by the  
22 events which we have just had recounted by him. That is a  
23 matter, when I say I accept that, I will give the evidence  
24 which he gives what probative value I feel is appropriate  
25 when I come down to -- to assess the evidence as such. He  
26 has identified he got the call, he got it from Mr. - a  
27 voice which he identified as Mr. Murphy. That is acceptable  
28 in the sense that there is a nexus, but as I understand it,  
29 I am looking at paragraph 85 of the statement -- there is  
30 nothing, I have no doubt the events that are described  
31 there were extremely stressful to Mr. Gogarty. I couldn't  
32 think of anything that would be more stressful, but you

1 must relate that to a person in this inquiry or a person  
2 involved.

3 .

4 MR. GALLAGHER: Well, sir--

5 .

6 CHAIRMAN: You can't just fire a buckshot in the air and  
7 hope that it hits a passing grouse.

8 .

9 MR. GALLAGHER: It is not a question of firing buckshot.

10 It is a narrative account of what happened. It occurred, if  
11 you accept that it happened, it occurred within a  
12 relatively short time, a week or so after the event, and it  
13 perhaps helps to show what Mr. Murphy or Mr. Gogarty's  
14 state of mind was at that time. It is in that context and  
15 in that context only, because what was done or not done by  
16 somebody may be influenced by matters which --

17 .

18 CHAIRMAN: Mr. Gallagher, let's be quite clear about  
19 this. I have every sympathy with any man who gets a  
20 telephone call in relation to a member of his family  
21 perpetrated to be from a Garda Station and it turns out to  
22 be a hoax. But before I am going to in anyway attribute  
23 any probative value to it whatsoever, there must be a nexus  
24 established. Now that is clear and unequivocal. Either you  
25 establish a nexus or you pass from it.

26 .

27 MR. GALLAGHER: Well, I will pass from it at the moment  
28 sir, certainly. It is now one o'clock.

29 .

30 CHAIRMAN: Yes, well it has been a stressful morning for  
31 Mr. Gogarty, and in the circumstances I think we will  
32 adjourn for the day.

1 There is the ruling; do you want to have that done at two  
2 o'clock?

3 .

4 MR. GALLAGHER: A quarter past two.

5 .

6 CHAIRMAN: Very good. Quarter past two. I will do it  
7 then. Thank you very much.

8 .

9 THE HEARING WAS THEN ADJOURNED TO 2:15.

10 .

11 THE HEARING RESUMED AT 2:15 AS FOLLOWS:

12 .

13 REGISTRAR: Judgement in relation to cross-examination.

14 .

15 CHAIRMAN: This application arises from a letter written  
16 by the Tribunal to the parties, on January 18th, 1999. In  
17 that letter it was stated;

18 .

19 "Such persons who have not furnished a statement of their  
20 evidence on a particular issue in advance, shall not be  
21 entitled to cross-examine Mr. Gogarty on that issue until  
22 after they have given their own oral evidence on the  
23 issue" .

24 .

25 The reason that that letter was written was that the  
26 Tribunal was not satisfied that all of the parties had  
27 provided full statements of the evidence which they  
28 intended to give to the Tribunal. It is a well  
29 established principle of law that where it is intended to  
30 call evidence before a Tribunal which may affect the  
31 interests or reputation of any person, that person is  
32 entitled to be given advance notice of such evidence.

1 .  
2 The stated objective of this letter was as stated in  
3 previous correspondence to some of the parties, to "level  
4 the pitch" for parties who had cooperated with the  
5 Tribunal by providing a statement of their evidence in  
6 advance for circulation to other affected parties, in other  
7 words to ensure fairness for all parties.

8 .  
9 Counsel to the Tribunal has opened the extensive  
10 correspondence which has been exchanged between the  
11 Tribunal and a number of parties, in which the Tribunal has  
12 endeavoured, with varying degrees of success, to obtain  
13 full and timely statements of the evidence of the witnesses  
14 who are required to give evidence.

15 In the course of that correspondence the solicitors for Mr.  
16 Gogarty by letter dated the 17th of January, of 1999,  
17 complained that Mr. Bailey had not, in his statement,  
18 adequately dealt with the issue referred to in paragraph 64  
19 and 65 of Mr. Gogarty's affidavit. They indicated that  
20 they would object to their client being cross-examined by  
21 Mr. Bailey's counsel until a supplemental statement dealing  
22 with this issue had been obtained.

23 .  
24 The shortcomings in the statements which had been submitted  
25 by some parties, as identified by counsel to the Tribunal,  
26 related to the statements of evidence furnished by Messrs.,  
27 by the Murphy parties, Bailey/Bovale and Ray Burke. He  
28 complained that in general these parties did not, as they  
29 were requested by the Tribunal, provide full narrative  
30 statements of their version of the events referred to in  
31 Mr. Gogarty's affidavit.

32 .

1 Counsel to the Tribunal said that there was an impression  
2 from the statements from those, these parties that we did  
3 not have the full story and that there was a real  
4 likelihood that we were going to be faced with a situation  
5 where matters adverse to his character and good name would  
6 be put to Mr. Gogarty of which he and the Tribunal had no  
7 prior notice.

8 .  
9 Counsel to the Tribunal suggested possible solutions, one  
10 was that the parties might submit further statements, the  
11 other was that all cross-examination be deferred until  
12 after each party had given their evidence-in-chief. In  
13 that way it was suggested, all parties would have advance  
14 notice of the case being made by the others.

15 .  
16 He submitted that a Tribunal has complete flexibility in  
17 the matter of procedures, subject only to the overall  
18 requirement to act fairly. He referred me to the six  
19 cardinal principles identified in the Salmon report and to  
20 the subsequent comment on these principles by Mr. Justice  
21 Croom Johnson in the "Report of the Tribunal appointed to  
22 inquire into certain issues arising out of the operations  
23 of the Crown Agents as Financers on own account in the  
24 years 1967 to 1974". And of Sir Richard Scott in his  
25 Spring lecture to the Chancery Bar on the 2nd of May, of  
26 1995, which is reported in the October 1995 edition of the  
27 Law Quarterly Review. Counsel submitted that in adopting  
28 this procedure all of the procedural requirements  
29 identified by the Supreme Court in the case of "in Re:  
30 Haughey (1971) Irish Reports 217" would be met.  
31 Finally, he referred me to the observations of Mr. Justice  
32 Hederman in the case of "Goodman International and Laurence



1 Goodman -v- The Honourable Mr. Justice Hamilton (1992), IR  
2 524".  
3 .  
4 Counsel for Mr. Gogarty supported the proposal to defer all  
5 cross-examination until after all parties had given their  
6 evidence-in-chief. He said that procedural fairness  
7 required that since his client had made full disclosure in  
8 advance other parties should be required to do the same.  
9 He pointed out that this is an inquiry, it is not a  
10 criminal prosecution, or a lis inter-partes, and he relied  
11 upon the decision of the European Commission on Human  
12 Rights in "Goodman International and Goodman - V Ireland,  
13 European Human Reports (1992). Commission Digest 26".  
14 .  
15 Counsel on behalf of the Murphy parties submitted that the  
16 basis had not been laid for either of the courses suggested  
17 by counsel to the Tribunal. He drew attention to the fact  
18 that the observations of Sir Richard Scott in relation to  
19 the procedures to be adopted by Tribunals of Inquiry were  
20 criticised by Sir Jeffrey Howe. He submitted that such  
21 procedures were not permissible in the jurisdiction,  
22 because they would not comply with the requirements laid  
23 down by the Supreme Court in the case of in Re: Haughey.  
24 He made the point that the legal jurisprudence on Tribunals  
25 is established in the six cardinal principles in Salmon and  
26 the four requirements set out in Re: Haughey, both of which  
27 have been approved by the Supreme Court in "Bohan - V -  
28 United Farmers Association, 1993 IR".  
29 .  
30 He did not, however, deal with the point that the  
31 statements which had been submitted by his clients had been  
32 truncated, nor did he offer to furnish further

1 statements.  
2 .  
3 Counsel for Mr. Bailey relied on precedent. He referred  
4 to the procedures implemented by previous tribunals, and he  
5 suggested that this established some sort of a benchmark,  
6 departure from which would be legally unsafe.

7 .  
8 He submitted that the course, that the course suggested by  
9 counsel to the Tribunal would not pass the in Re: Haughey  
10 test and would infringe his client's constitutional  
11 rights. He submitted that the legislation did not give a  
12 power to a Tribunal to compel a person to furnish a  
13 narrative statement. He said that his client was in a  
14 different position to that of Mr. Gogarty, in that Mr.  
15 Gogarty was in a position of an accuser and his client was  
16 in the position of an accused person.

17 .  
18 I have read the statements of evidence submitted on behalf  
19 of these parties. The statements appear to fall short of  
20 the detailed narrative statements which these parties were  
21 requested by the Tribunal to provide. I am also of the  
22 opinion that the concerns expressed by Mr. Gogarty's  
23 solicitors in their letter to the Tribunal of January 17th,  
24 1999, may in certain circumstances, not be unreasonable.

25 .  
26 Having considered all the submissions made to me by counsel  
27 I am satisfied that a Tribunal of Inquiry does have  
28 complete flexibility in respect of what procedures it  
29 adopts, subject only to the overall requirement of  
30 fairness.

31 .  
32 I do not accept the proposition that this Tribunal is bound

1 by some procedural straitjacket created by the precedent or  
2 procedures adopted by previous Tribunals. Different  
3 Tribunals have different procedural requirements, and the  
4 courts have repeatedly underpinned the proposition that  
5 Tribunals are masters of their own procedures.

6 .

7 Neither do I accept that the procedure suggested by counsel  
8 to the Tribunal does not comply with the principles of  
9 fairness set out in the case in Re: Haughey. The relevant  
10 principle is the right of a person "to cross-examine, by  
11 counsel, his accuser or accusers". Counsel to the  
12 Tribunal did not suggest that this right be removed but  
13 merely that it be deferred. The course suggested by  
14 counsel to the Tribunal appears to me to be a sensible one,  
15 and would in normal circumstances provide a solution to the  
16 problem. However, regrettably the circumstances are not  
17 normal. It has been clearly flagged to the Tribunal that  
18 if this course is adopted it will be challenged in the  
19 courts.

20 .

21 The exercise which the Tribunal is engaged in at present is  
22 the taking of Mr. Gogarty's evidence and related evidence  
23 out of turn because of Mr. Gogarty's age and state of  
24 health. The adoption of any course by me which would have  
25 the apparently inevitable result of creating a delay of up  
26 to six months or more while the matter is being litigated  
27 in the courts would be incompatible with this objective in  
28 that the act would be a negation of the reason for taking  
29 his evidence out of turn. Consequently that is an option  
30 that is not available to me.

31 .

32 The rationale of the legal requirement that a person should

1 be furnished in advance with a copy of the evidence which  
2 may reflect on his good name is that it would be unfair to,  
3 as it were, "spring" such evidence on him for the first  
4 time in the witness-box. As a matter of basic fairness he  
5 should have the opportunity, if necessary, of taking legal  
6 advice on it, in relation to the evidence to be adduced.

7 .

8 I am obliged to ensure fairness of procedures as much for  
9 Mr. Gogarty as for anybody else. It appears to me that  
10 there is a distinction to be made between on the one hand  
11 cross-examining the witness on the basis of merely  
12 challenging the veracity of his evidence, perhaps on the  
13 basis of inadequacy of recollection, self-interest,  
14 incompleteness of information and so forth, and on the  
15 other hand cross-examining a witness by putting to him  
16 matters which involve positive accusations of wrongdoing or  
17 misconduct on his part of which he had no prior notice.

18 .

19 In my view the latter scenario would in the ordinarily  
20 understood sense of the word and indeed in the legal sense  
21 be unfair. I utterly reject the suggestion that any steps  
22 which I take to avoid such unfairness involves any form of  
23 favoritism of Mr. Gogarty.

24 .

25 I have decided the procedure which will be adopted at this  
26 stage will be as follows:

27 .

28 1. Counsel for the Murphy's/JMSE, Bailey/Bovale and Mr.  
29 Burke, and such other parties which I may permit, will be  
30 allowed to cross-examine Mr. Gogarty at the conclusion of  
31 his examination by counsel to the Tribunal.

32 .

1 2. If any party puts to Mr. Gogarty any matter of which  
2 there has no prior notice and which involves an assertion  
3 of wrongdoing or impropriety on his part, Mr. Gogarty may,  
4 if appropriate, be given an opportunity by me to consider  
5 the matter and at my discretion, and solely at my  
6 discretion, to take limited consultation with his  
7 lawyers.

8 .  
9 I should stress these procedures apply as much to the other  
10 parties involved with this Tribunal as they do with Mr.  
11 Gogarty.

12 .  
13 In addition, I repeat what I said at the commencement of  
14 this sitting; namely that I expect counsel when  
15 cross-examining Mr. Gogarty, and indeed all other witnesses  
16 before this Tribunal, to conduct the examination of  
17 witnesses with courtesy and respect.

18 .  
19 And that is the end of my ruling of the matter.

20 .  
21 MR. COONEY: May it please you, Mr. Chairman. May I say  
22 that so far as I am concerned your intention to treat a  
23 witness with courtesy and respect is superfluous.

24 .  
25 CHAIRMAN: Very good gentlemen, thank you very much.

26 .  
27 MR. ALLEN: Thank you, Chairman.

28 .  
29 THE HEARING WAS THEN ADJOURNED UNTIL THE 2ND OF FEBRUARY,  
30 1999.

31  
32